

**APPENDIX F
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Application Affidavit (WRD-201)

THE STATE OF TEXAS§
§
COUNTY OF [County where applicant is located]§
§
[APPLICANT]§

BEFORE ME, the undersigned, a Notary Public in and for the State of Texas, on this day personally appeared [affiant, affiant's title, and official capacity], who being by me duly sworn, upon oath says that (i) to the best of his/her knowledge and belief, the facts and information contained in the Application to the Texas Water Development Board for financial assistance are true and correct, (ii) the [applicant] will comply with all representations in the Application to the Texas Water Development Board for financial assistance, all laws of the State of Texas, and all rules and published policies of the Texas Water Development Board, (iii) to the best of his/her knowledge, there is no litigation or other proceeding pending or threatened against [the applicant] before any court, agency, or administrative body wherein an adverse decision would materially adversely affect the financial condition of [the applicant] or the ability of [the applicant] to issue debt and (iv) the Application to the Texas Water Development Board for financial assistance was approved by the [city council, board of directors] in an open meeting.

(signature of affiant)
Name: [name of official representative]
Title: [official capacity]

SWORN TO AND SUBSCRIBED BEFORE ME, by [name of affiant, title and official capacity], this (day) day of (Month), 200(yr).

(signature of notary)
Notary Public, State of Texas

(NOTARY'S SEAL)

Application Filing and Authorized Representative Resolution (WRD-201a)

A RESOLUTION by the _____ of the _____ requesting financial assistance from the Texas Water Development Board; authorizing the filing of an application for assistance; and making certain findings in connection therewith.

WHEREAS, the _____ hereby finds and determines that there is an urgent need for the to construct _____ and such capital improvements cannot be reasonably financed unless financial assistance is obtained from the Texas Water Development Board; now, therefore,

BE IT RESOLVED BY THE _____ OF THE _____:

SECTION 1: That an application is hereby approved and authorized to be filed with the Texas Water Development Board seeking financial assistance in an amount not to exceed \$ to provide for the costs of _____.

SECTION 2: That _____ be and is hereby designated the authorized representative of the _____ for purposes of furnishing such information and executing such documents as may be required in connection with the preparation and filing of such application for financial assistance and the rules of the Texas Water Development Board.

SECTION 3: That the following firms and individuals are hereby authorized and directed to aid and assist in the preparation and submission of such application and appear on behalf of and represent the _____ before any hearing held by the Texas Water Development Board on such application, to wit:

Financial Advisor:

Engineer:

Bond Counsel:

PASSED AND APPROVED, this the __ day of _____, 200__.

ATTEST:

(Seal)

Site Certificate (ED-101)

This is to certify that the _____

(Legal Name of Applicant, i.e., City, District, etc.)

has now acquired, taken bona fide options on, or initiated formal condemnation proceedings against all property (sites, easements, rights-of-way, or specific use permits) necessary for construction, operation and maintenance of water/wastewater facilities described as _____

(Proposed Contract No. and Description)

in accordance with plans and specifications approved by the Texas Water Development Board. Any deeds or documents required to be recorded to protect the title(s) held by

(Legal Name of Applicant)

have been recorded or filed for record wherever necessary.

In the event of conflicts with existing underground utilities or to preserve unknown cultural or historic resources, the _____

(Name of Applicant)

has the right of eminent domain and will take condemnation action, if necessary, to acquire any sites, easements or rights-of-way which may be required to change the location of any of the facilities described above; and upon acquisition of the rights-of-way and recording of documents, will submit another site certificate to that effect.

EXECUTED this _____ day of _____, 20__ .

(Signature)

(Title)

NOTE: This certificate MUST BE EXECUTED BY AN ATTORNEY OR AN ABTRACTOR qualified to evaluate the Applicant's interest in the site and make such a determination.

Underground Water Rights Questionnaire (WRD-208a)

Section 17.123 of the Texas water Code requires that before the Board can deliver funds to an Applicant proposing underground water development, the Applicant must supply information from which the Executive Administrator can make a written finding that the Applicant has the right to use the water that the project will provide.

In order to provide the necessary facts which the Executive Administrator can make the findings required for the resolution, you are requested to complete and return this Questionnaire.

1. Does the Applicant own the land at the well site? _____ (If not, what is the Applicant's intent regarding the site?)
2. Have the water rights been conveyed away by the Applicant or its predecessors in title, or reserved, prior to the Applicant's acquisition of the land at the well site?
3. Is the project located in an underground water conservation district? _____
4. If the answer to 3 is yes, has any necessary permit been obtained? _____

(An *Underground Water Rights Affidavit* (WRD-208b) from a title company addressing questions 1, 2, and 3 is required by the Board.)

Signed the _____ day of _____, 20 _____.

Name

Title

Underground Water Rights Affidavit (WRD-208b)

THE STATE OF TEXAS

§

COUNTY OF _____

§

[County where Applicant is located]

BEFORE ME, the undersigned authority, on this day personally appeared

_____ known to me to be the person whose name is subscribed to the following instrument and being duly sworn, upon oath stated;

“This affidavit is given pursuant to requirements of Sec. 17.123 of the Texas Water Code in connection with a proposed water well project site located at:

My name is _____ . I am the manager of _____

_____ . I do hereby certify that I have reviewed the records on file at the _____ County Courthouse

and certify the following:

1. the _____ is the owner of the land upon which the Proposed water well project is located;
2. the water rights beneath the proposed water well project site are owned by the _____ and have not been conveyed to or reserved to any other person;
3. The proposed water well project site is not located within an underground water conservation district.”

_____ Affiant

SWORN TO AND SUBSCRIBED BEFORE ME, _____

this _____ day of _____, 20_____.

_____ Notary Public, State of Texas

[NOTARY’S SEAL]

Wastewater Project Information (WRD-253a)								
A. Project Name			B. Project No.			C. County		
C. Program(s)			D. Loan Amount			F. Loan Term		
G. Wastewater Project Description: (multiphase project, new, expansion, expansion of collection system, etc.)								
Attach map of service area affected by Project or other documentation.								
H. Wastewater Receiving Stream		I. TCEQ Permit No.		J. Segment No.		K. Long. & Lat. of Discharge Location		
L. Projected Wastewater Flows								
1. Design Flow MGD			2. 2-Hour Peak MGD					
M. Proposed Permit Parameters								
1. CBOD5 mg/l			4. NH3-N mg/l					
2. BOD5 mg/l			5. DO mg/l					
3. TSS mg/l								
N. Other Pertinent Planning Information (Describe)								
O. Projected Population from application for 20 year period preferably in 5 year increments. Attach justification and list service area populations if different from Planning Area.		Year	Reference Year 2000	2005	2010	2015	2020	20__
		Population						
Project Design Year		20__		Design Population				
P. Current Water Supply Information								
Surface Water Supply Name			Certificate No.			Annual Amount Used and Unit		
Ground Water Supply Aquifer			County					
Well Field Location			Annual Amount Used and Unit					
Q. Proposed Water Supply Information (over loan repayment period)								
Surface Water Supply Name			Certificate No.			Annual Amount Used and Unit		
Ground Water Supply Aquifer			County					
Well Field Location			Annual Amount Used and Unit					

R. Consulting Engineer Name	S. Telephone No.	T. E-mail address
U. Applicant Contact Name, Title	V. Telephone No.	W. E-mail address

Water Project Information (WRD-253D)

E. Project Name		F. Project No.		C. County				
G. Program(s)		H. Loan Amount		F. Loan Term				
G. Wastewater Project Description: (multiphase project, new, expansion, expansion of collection system, etc.)								
Attach map of service area affected by Project or other documentation.								
H. Wastewater Receiving Stream		I. TCEQ Permit No.	J. Segment No.	K. Long. & Lat. of Discharge Location				
L. Projected Wastewater Flows								
1. Design Flow MGD		2. 2-Hour Peak MGD						
M. Proposed Permit Parameters								
1. CBOD5 mg/l		4. NH3-N mg/l						
2. BOD5 mg/l		5. DO mg/l						
3. TSS mg/l								
N. Other Pertinent Planning Information (Describe)								
O. Projected Population from application for 20 year period preferably in 5 year increments. Attach justification and list service area populations if different from Planning Area.		Year	Reference Year 2000	2005	2010	2015	2020	20__
		Population						
Project Design Year		20__		Design Population				
P. Current Water Supply Information								
Surface Water Supply Name			Certificate No.		Annual Amount Used and Unit			
Ground Water Supply Aquifer					County			
Well Field Location					Annual Amount Used and Unit			
Q. Proposed Water Supply Information (over loan repayment period)								
Surface Water Supply Name			Certificate No.		Annual Amount Used and Unit			

Ground Water Supply Aquifer		County
Well Field Location		Annual Amount Used and Unit
R. Consulting Engineer Name	S. Telephone No.	T. E-mail address
U. Applicant Contact Name, Title	V. Telephone No.	W. E-mail address



Water Conservation Utility Profile
(Revised April 25, 2002)



The purpose of the Water Utility Profile is to assist an applicant with water conservation plan development and to ensure that important information and data be considered when preparing your water conservation plan and goals. This form should be used by applicants for financial assistance (submitted to the TWDB) or by an entity applying for a water right (submitted to the TCEQ). Please complete all questions as completely and objectively as possible. You may contact the Municipal Water Conservation Unit of the TWDB at 512-936-2391 for assistance, or the Resource Protection Team at 512-239-4691 if submitted to the TCEQ.

Name of Utility: _____

Address & Zip: _____

Telephone Number: _____ Fax: _____

Form Completed By: _____

Title: _____

Signature: _____ Date: _____

Name and Phone Number of Person/Department responsible for implementing a water conservation program:

I. CUSTOMER DATA

A. Population and Service Area Data

1. Please attach a copy of your Certificate of Convenience and Necessity (CCN) from the TCEQ, and a service-area map.

2. Service area size (square miles): _____

3. Current population of service area: _____

4. Current population served by utility: a: water _____
b: wastewater _____

5. Population served by water utility for the previous five years:

Year	Population
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

6. Projected population for service area in the following decades:

Year	Population
2010	_____
2020	_____
2030	_____
2040	_____
2050	_____

7. List source(s)/method(s) for the calculation of current and projected population:

B. Active Connections

1. Current number of active connections by user type. Check whether multi-family service is counted as Residential _____ or Commercial _____

<u>Treated water users:</u>	<u>Metered</u>	<u>Not-metered</u>	<u>Total</u>
Residential	_____	_____	_____
Commercial	_____	_____	_____
Industrial	_____	_____	_____
Public	_____	_____	_____
Other	_____	_____	_____

2. List the net number of new connections per year for most recent three years:

Year	_____	_____	_____
Residential	_____	_____	_____
Commercial	_____	_____	_____
Industrial	_____	_____	_____
Public	_____	_____	_____
Other	_____	_____	_____

C. High Volume Customers

List annual water use for the five highest volume retail and wholesale customers (please indicate if treated or raw water delivery)

	<u>Customer</u>	<u>Use (1,000gal./yr.)</u>	<u>Treated/Raw Water</u>
(1)	_____	_____	_____
(2)	_____	_____	_____
(3)	_____	_____	_____
(4)	_____	_____	_____
(5)	_____	_____	_____

II. WATER USE DATA FOR SERVICE AREA

A. Water Accounting Data

1. Amount of water use for previous five years (in 1,000 gal.):

Please indicate : Diverted Water _____
 Treated Water _____

Year	_____	_____	_____	_____	_____
January	_____	_____	_____	_____	_____
February	_____	_____	_____	_____	_____
March	_____	_____	_____	_____	_____
April	_____	_____	_____	_____	_____
May	_____	_____	_____	_____	_____
June	_____	_____	_____	_____	_____
July	_____	_____	_____	_____	_____
August	_____	_____	_____	_____	_____
September	_____	_____	_____	_____	_____
October	_____	_____	_____	_____	_____
November	_____	_____	_____	_____	_____
December	_____	_____	_____	_____	_____
Total	_____	_____	_____	_____	_____

Please indicate how the above figures were determined (e.g., from a master meter located at the point of a diversion from a stream or located at a point where raw water enters the treatment plant, or from water sales).

2. Amount of water (in 1,000 gallons) delivered (sold) as recorded by the following account types (See #1, Appendix A) for the past five years.

<u>Year</u>	<u>Residential</u>	<u>Commercial</u>	<u>Industrial</u>	<u>Wholesale</u>	<u>Other</u>	<u>Total Sold</u>
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____

3. List previous five years records for unaccounted-for water use (See #2, Appendix A)

<u>Year</u>	<u>Amount (gal.)</u>	<u>%</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

4. List previous five years records for annual peak-to-average daily use ratio (See #3, Appendix A)

<u>Year</u>	<u>Average MGD</u>	<u>Peak MGD</u>	<u>Ratio</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

5. Municipal per capita water use for previous five years (See #4, Appendix A):

<u>Year</u>	<u>Population</u>	<u>Total Diverted (or Treated) (1,000 gal.)</u>	<u>Industrial Sales (1,000 gal.)</u>	<u>Municipal Per Capita Use (gpcd)</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

6. Seasonal water use for the previous five years (in gallons/person/day) (See #5, Appendix A):

<u>Year</u>	<u>Population</u>	<u>Base Per Capita Use</u>	<u>Summer Per Capita Use</u>	<u>Seasonal Use</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

B. Projected Water Demands

Provide estimates for total water demands for the planning horizon of the utility. Indicate sources of data and how projected water demands were determined. Attach additional sheets if necessary.

III. WATER SUPPLY SYSTEM

A. Water Supply Sources

List all current water supply sources and the amounts available with each:

	<u>Source</u>	<u>Amount Available</u>
Surface Water:	_____	_____MGD
Groundwater:	_____	_____MGD
Contracts:	_____	_____MGD
Other:	_____	_____MGD

B. Treatment and Distribution System

1. Design daily capacity of system: _____ MGD
2. Storage Capacity: Elevated _____ MGD, Ground _____ MGD
3. If surface water, do you recycle filter backwash to the head of the plant?
Yes _____ No _____. If yes, approximately _____ MGD.
4. Please describe the water system. Include the number of treatment plants, wells, and storage tanks. If possible, include a sketch of the system layout.

IV. WASTEWATER UTILITY SYSTEM

A. Wastewater System Data

1. Design capacity of wastewater treatment plant(s): _____ MGD
2. Is treated effluent used for irrigation on-site _____, off-site _____, plant washdown _____, or chlorination/dechlorination _____? If yes, approximately _____ gallons per month. Could this be substituted for potable water now being used in these areas _____?
3. Briefly describe the wastewater system(s) of the area serviced by the water utility. Describe how treated wastewater is disposed of. Where applicable, identify treatment plant(s) with the TCEQ name and number, the operator, owner, and, if wastewater is discharged, the receiving stream. Please provide a sketch or map which locates the plant(s) and discharge points or disposal sites.

B. Wastewater Data for Service Area

1. Percent of water service area served by wastewater system: ____%
2. Monthly volume treated for previous three years (in 1,000 gallons):

Year	_____	_____	_____
January	_____	_____	_____
February	_____	_____	_____
March	_____	_____	_____
April	_____	_____	_____
May	_____	_____	_____
June	_____	_____	_____
July	_____	_____	_____
August	_____	_____	_____
September	_____	_____	_____
October	_____	_____	_____
November	_____	_____	_____
December	_____	_____	_____
Total	_____	_____	_____

V. UTILITY OPERATING DATA

A. List (or attach) water and wastewater rates, and rate structure for all classes.

B. Other relevant data: Please indicate other data or information that is relevant to both the applicant's water management operations and design of a water conservation plan.

VI. CONSERVATION GOALS

Please use the data provided in this survey to establish conservation goals (additional data may be used).

A. Water conservation goals for municipal utilities are generally established to maintain or reduce consumption, as measured in:

1. gallons per capita per day used;
2. unaccounted-for water uses;
3. peak-day to average-day ratio; and/or
4. an increase in reuse or recycling of water.

B. TCEQ/TWDB conservation staff assess the reasonableness of water conservation goals based on whether the applicant addresses the following steps:

1. identification of a water or wastewater problem;
2. completion of the utility profile;
3. selection of goals based on the technical potential to save water as identified in the utility profile; and
4. performance of a cost-benefit analysis of conservation strategies.

If at least the first three steps have been completed and are summarized in the water conservation plan, then staff can conclude that there is substantiated basis for the goals, and that the water conservation plan is integrated into water management. Therefore, the established conservation goals can be deemed reasonable.

C. Complete the following in gallons per capita per day (gpcd) to quantify the water conservation goals for the utility's service area:

1. Estimation of the technical potential for reducing per capita water use (see Appendix B).

	Conservation Scenario
	<u>Mostly Likely</u>
a. Reduction in unaccounted-for uses:	_____
b. Reduction in indoor water use due to water-conserving plumbing fixtures:	<u>20.5</u>
c. Reduction in seasonal use:	_____
d. Reduction in water use due to public education programs:	_____

TOTAL TECHNICAL POTENTIAL FOR REDUCING PER CAPITA WATER USE: _____

*Subtract these totals from the dry-year per capita use to calculate the long-run planning goal.

2. Planning goal

The planning goal equals the dry year per capita water use minus the total technical potentials calculated in number one above.

Planning goal (in gpcd): _____

Goal to be achieved by year: _____

3. Needed reduction in per capita use to meet planning goal

Current per capita use: _____

Planning goal (from #2 above): _____

Difference between current use and goal: _____
(Represents needed reduction in per capita use to meet goal.)

Appendix A

Definitions of Utility Profile terms

1. **Residential** sales should include residential sales to residential class customers only.
Industrial sales should include manufacturing and other heavy industry.
Commercial sales should include all retail businesses, offices, hospitals, etc.
Wholesale sales should include water sold to another utility for a resale to the public for human consumption.

2. **Unaccounted-for water** is the difference between water diverted or treated (as reported in Section IIA1, p. 4) and water delivered (sold)(as reported in Section IIA2, p. 4). Unaccounted-for water can result from:
 1. inaccurate or incomplete record keeping;
 2. meter error;
 3. unmetered uses such as firefighting, line flushing, and water for public buildings and water treatment plants;
 4. leaks; and
 5. water theft and unauthorized use.

3. The **peak-day to average-day ratio** is calculated by dividing the maximum daily pumpage (in million gallons per day) by the average daily pumpage. Average daily pumpage is the total pumpage for the year (as reported in Section IIA1, p. 4) divided by 365 and expressed in million gallons per day.

4. **Municipal per capita use** is defined as total municipal water use dividing by the population and the 365 days. Total municipal water use is calculated by subtracting the industrial sales and wholesale from the total water diverted or treated (as reported in Section IIA1, p. 4).

$$\text{Total municipal water use} = \text{Total water diverted or treated} - \text{industrial sales} - \text{wholesale}$$
$$\text{Municipal per capita use (gpcd)} = \text{Total municipal water use} / \text{population} / 365 \text{ days}$$

Note: The AWWA considers the municipal per capita use as the most representative figure to use in long-range water supply and conservation planning.

5. **Seasonal water use** is the difference between base (winter) daily per capita use and summer daily per capita use. To calculate **the base daily per capita use**, average the monthly diversions for December, January, and February, and divide this average by 30. Then divide this figure by the population. To calculate the **summer daily per capita use**, use the months of June, July, and August.

Appendix B

Estimating the Technical Potential for Reducing Per Capita Water Use

The technical potential for reducing per capita water use is the range in potential water savings that can be achieved by implementing specific water conservation measures. The bottom of the range represents the potential savings under a "most likely," or real-world conservation scenario. The top of the range represents the potential savings under an "advanced" conservation scenario. The conservation measures include:

- reducing unaccounted-for water uses;
- reducing indoor water use due to water-conserving plumbing fixtures;
- reducing seasonal water use; and
- reducing water use through public education programs.

Guidelines and examples for calculating the technical potential water savings for each of these conservation measures are given below.

I. Reducing unaccounted-for water uses

The TCEQ considers unaccounted-for water uses of 15% or less as acceptable for communities serving more than 5,000 people. Smaller, older systems that have a larger service area may legitimately experience larger losses. Losses above 15% may be an area of concern, and provide a conservation potential.

The bottom of the range for technical potential savings for unaccounted-for uses is zero. To calculate the top of the range, see the following example:

$$\begin{aligned} \text{Unaccounted-for uses} &= 19.5\% \\ \text{Dry-year per capita water use} &= 250 \text{ gallons per capita per day (gpcd)} \\ \text{Potential for reduction in unaccounted-for use} &= (250 \text{ gpcd} \times 19.5\%) - (250 \text{ gpcd} \times 15\%) \\ &= 48.75 \text{ gpcd} - 37.5 \text{ gpcd} \\ &= 11.25 \text{ gpcd} \\ \text{Technical Potential Savings Range} &= 0 \text{ to } 11.25 \text{ gpcd} \end{aligned}$$

II Reducing Indoor Water Use due to Water-Conserving Plumbing Fixtures

The TCEQ uses **20.5 gpcd** as the most reliable figure upon which to base potential water savings, which represents the "most likely" conservation scenario. This figure is based upon the estimate that by 2050, 90% of pre-1990 homes, and all new homes will have been equipped with water conserving plumbing fixtures.

The figure used for the "advanced" conservation scenario, 21.7 gpcd, is an estimate of the average savings that would result from a home equipped exclusively with water-conserving plumbing fixtures. This figure is considered "advanced" because in a typical city, 100% of the homes are not exclusively equipped with water-conserving fixtures.

III. Reducing Seasonal Water Use

The Texas Water Development Board (TWDB) has calculated seasonal use as a percentage of average annual per capita use for East Texas (20%), West Texas (25%), and a statewide average of 22.5%. Seasonal water use is calculated by multiplying the average annual per capita use in gpcd by the appropriate percentage.

The technical potential for reduction in seasonal use is then calculated by multiplying the seasonal use by 7% for the "most likely" conservation scenario, and by 20% for the "advanced" scenario. Below is an example calculation:

Average annual per capita use = 185 gpcd
Geographical location = West Texas
Seasonal use = $(185 \text{ gpcd} \times 25\%) = 46.25 \text{ gpcd}$
Potential reduction in seasonal use (Most Likely scenario) = $(46.25 \times 7\%) = 3.24 \text{ gpcd}$
Potential reduction in seasonal use (Advanced scenario) = $(46.25 \times 20\%) = 9.25 \text{ gpcd}$

Technical Potential Savings Range = 3.24 to 9.25 gpcd

IV. Reducing Water Use through Public Education Programs

The technical potential for water conservation from public education programs is estimated to be from 2% of the average annual per capita use for the "most likely" conservation scenario to 5% for the "advanced" scenario, according to the "Water Conservation Guidebook," published in 1993 by the American Water Works Association. Below is an example calculation:

Average annual per capita use = 185 gpcd
Potential reduction in water use (Most Likely scenario) = $(185 \times 2\%) = 3.7 \text{ gpcd}$
Potential reduction in water use (Advanced scenario) = $(185 \times 5\%) = 9.25 \text{ gpcd}$

Technical Potential Savings Range = 3.7 to 9.25 gpcd

To calculate the **total technical potential** for reducing municipal per capita water use, simply add the individual technical potential amounts calculated in items I - IV above. In this case **the total technical potential range equals 27.44 gpcd to 51.45 gpcd.**

Summary of Technical Potential Calculations		
Conservation Measure	Calculation Procedure	Example Result
Reducing unaccounted-for uses	(Dry-year demand) x (Unacc.-for percentage if more than 15%, minus 15%)	0 to 11.25 gpcd
Reducing indoor water use due to water- efficient plumbing fixtures	20.5 gpcd ("rule of thumb") to 21.7 gpcd (advanced)	20.5 to 21.7 gpcd
Reducing seasonal water use	Seasonal use (Avg. use x 22.5%) x 7% and 20%	3.24 to 9.25 gpcd
Reducing water use through public education programs	Average use x 2% and 5%	3.7 to 9.25 gpcd
	Total Technical Potential Savings	27.44 to 51.45 gpcd

To calculate the long-run planning goal, subtract these totals from the **dry-year water demand**.
For example:

<p>Long-run planning goal = (Dry year water demand) minus (total technical potential) = 250 gpcd - 27.44 gpcd = 222.56 gpcd ("most likely" scenario) = 250 gpcd - 51.45 gpcd = 198.55 gpcd ("advanced" scenario)</p>
--

<p>Long-run planning goal for municipal water use = 222.56 to 198.55 gpcd</p>
--

Resolution Standard Conditions for Taxable Loans (WRD-276)
(Water Supply Corporation Conditions)

1. this commitment is contingent on financing from the Board's taxable bonds or such other source as the Board may hereafter determine;
2. that the Corporation's indebtedness to the Board shall be evidenced by (bonds/loans) specifically secured by:
 - a. a **(first lien or parity lien)** on the revenues of the Corporation's water system ("the system"); and
 - b. a **(first lien or prorata parity lien)** mortgage on the system.
3. that the (bond resolution/loan agreement) contain a provision for the accumulation of a Reserve Fund, to be held by a depository of the Corporation, of no less than average annual debt service requirements, to be accumulated in equal monthly installments over the initial sixty (60) months following the date of closing;
4. all funds received by the Corporation from the Board pursuant to this commitment pending their use for the purpose for which they are borrowed shall either be secured by a pledge by a financial institution of general obligations of the United States or obligations unconditionally guaranteed by the United States or invested in accordance with the requirements of the Public Funds Investment Act, Chapter 2256, Texas Government Code;
5. that the (bond resolution/loan agreement) contain a provision that no additional revenue bonds may be issued unless net system revenues for the last complete fiscal year or twelve (12) consecutive calendar month period ending not more than ninety (90) days preceding the adoption of additional bonds shall have not less than 1.25 x the average annual debt service requirements after giving effect of the additional bonds;
6. that the (bond resolution/loan agreement) shall include a special covenant prohibiting the Corporation from encumbering, pledging or otherwise impairing the revenues of the System in any manner to the payment of any obligations or with respect to any liability, except for the payment of (1) maintenance and operating expenses payable within the current fiscal year with current revenues budgeted therefor and (2) additional bonds issued in accordance with paragraph 5, and that the Corporation will in no way encumber, pledge or otherwise impair its title to the land used for the system or interests therein, or improvements and facilities of the system without prior Board approval;
7. that the (bond resolution/loan agreement) contain a provision that the Corporation will at all times maintain and collect sufficient rates and charges to produce gross system revenues in an amount necessary to:
 - a. pay all maintenance, operating and administrative expenses;
 - b. meet the debt service requirements of all outstanding bonds/loans; and
 - c. to maintain the funds established and required by such resolution/loan agreement;
8. if there is an existing loan of the Corporation that is to be outstanding after any loan(s) made by the Board pursuant to this commitment, the lien or liens securing the Board's loan shall be at least on a parity with lien or liens securing such outstanding loan;
9. that the Corporation file a Deed of Trust with the County Clerk in which the property is located, and with the Secretary of State's Office, as per Section 35.01 et. seq. of the Texas Business and Commerce

Code, as evidence of the Board's first (**or parity**) lien mortgage security interest in the Corporation's system;

10. that the Corporation file a security instrument with the Secretary of State's Office, as per Section 35.01 et seq of the Texas Business and Commerce Code, to evidence the Board's security interest in any equipment directly related to water supply and or sewer service, owned or to be acquired by the Corporation;
11. that prior to closing, the Corporation obtain a commitment from a title insurance company, resulting in the issuance of a mortgagee policy of title insurance on the property owned in fee simple, upon which the Board will be given a (**or parity**) lien first lien mortgage;
12. that the Corporation cure any defects or liens upon the property listed in Schedule C of the title insurance company commitment that the Executive Administrator for the Board deem necessary;
13. that the Corporation provide the Board with an attorney's letter of assurance, relating to the Corporation's easements, which states that there are no known complaints or defects affecting the easements;
14. that prior to closing, the Corporation will submit to the Executive Administrator of the Board evidence that the Corporation's by-laws have been amended to include the following requirements:
 - a. as long as the Corporation is indebted for a loan or loans made by or through the Board, the by-laws shall not be altered, amended or repealed without the prior written consent of the Executive Administrator of the Board; and
 - b. the Corporation is a nonprofit Corporation and no part of the income of the Corporation will be distributed to the Corporation's members, directors, or officers;
15. that the (bond resolution/loan agreement) contain a provision that in the event the Corporation converts to a district and the Corporation desires to sell its obligations to the district, the conveyance and the assumption of the Board's loan to the Corporation must be approved by the Board prior to the transfer;
16. that the (bond resolution/loan agreement) authorizing the issuance of obligations will state that obligations can be called for early redemption only in inverse order of maturity, and on any date beginning on or after the first interest payment date which is 10 years from the dated date of the obligations, at a redemption price of par, together with accrued interest to the date fixed for redemption;
17. that the political subdivision, or an obligated person for whom financial or operating data is presented either individually or in combination with other issuers of the political subdivision's obligations or obligated persons, will, at a minimum, covenant to comply with requirements for continuing disclosure on an ongoing basis substantially in the manner required by Securities and Exchange Commission (SEC) rule 15c2-12 and determined as if the Board were a Participating Underwriter within the meaning of such rule, such continuing disclosure undertaking being for the benefit of the Board and the beneficial owner of the political subdivision's obligations, if the Board sells or otherwise transfers such obligations, and the beneficial owners of the Board's bonds if the political subdivision is an obligated person with respect to such bonds under rule 15c2-12;

Instructions on use of Texas Water Development Board

Supplemental Conditions for State Loan Projects (ED-004G)

(Including: State Participation, & Rural Water Assistance Fund)

Applicability

These Supplemental Conditions contain provisions that are worded to comply with certain statutes and regulations which specifically relate to the (projects receiving state funds only) and to the State loan programs (Dfund II), including State Participation and the Rural Water Assistance Fund (RWAFF) Programs. Provisions that are applicable to the project's funding source or dollar value of the contract are so noted within with the provision.

Construction projects that have Colonia Wastewater Treatment Assistance Program (CWTAP) funding do not use these conditions but instead use the EPA Supplemental Conditions and TWDB Special Conditions ED-004C. Construction projects which are financed by CWSRF Tier III (projects receiving federal funds) and Drinking Water State Revolving Fund do not use these conditions but instead use TWDB Supplemental Conditions ED-004E. Construction projects which are financed by Clean Water State Revolving Fund (CWSRF) Tier II use ED-004F.

Application of Conditions

The conditions and forms listed under *Instructions to Bidders* are to be included in the instructions to bidders for construction services. The provisions listed under *Construction Contract Supplemental Conditions* should be included with the other general and special conditions that are typically included in the construction contract documents by the design engineer.

Modifications to Provisions

The Applicant may need to modify parts of these provisions to better fit the other provisions of the construction contract. The Applicant and the consulting engineer should carefully study these provisions before incorporating them into the construction contract documents. In particular, Water Districts and other types of districts should be aware of statutes relating to their creation and operation which may affect the application of these conditions.

Condition number 12 (Archeological Discoveries and Cultural Resources) and 13 (Endangered Species) may be superseded or modified by project specific conditions established during the application process.

These documents may confer certain duties and responsibilities on the consulting engineer that are beyond, or short of, what the Applicant intends to delegate. The Applicant should ensure that the contractual agreement with the engineer provides for the appropriate services. Otherwise the Applicant should revise the wording in these special conditions to agree with actually delegated functions.

Good Business Practices

There are other contract provisions that the Owner and Designer need to include as a matter of good

business practices. It is recommended that provisions addressing the following matters be included in the construction contract. Contract Provisions that satisfy these are available from TWDB upon request.

- Specifying the time frame for accomplishing the construction of the project, and the consequences of not completing on time, including liquidation damages.
- Specifying the type and dollar value of and documentation of insurance the contractor is to carry. As a minimum the contractor should carry liability and builder's risk insurance
- Identifying the responsibility of the contractor - Responsibility and warranty of work.
- Price reduction for defective pricing of negotiated costs.
- Differing site conditions - notice and claims regarding site conditions differing from indicated conditions.
- Covenants against contingent fees - Prohibit contingent fees for securing business.
- Gratuities - Prohibitions against offering and accepting gratuities
- Audit and access records
- Suspension of work - Conditions under which owner may suspend work.
- Termination - Conditions under which owner may terminate
- Remedies - Procedures for resolving disputes.

Other Requirements

There may be other local government requirements and applicable Federal and State statutes and regulations that are not accommodated by these conditions. It is the Loan/Grant Recipient's responsibility to ensure that the project and all contract provisions are consistent with the relevant statutes and regulations.

Advertisements for Bids

The official advertisement for bids that is published in newspapers should include certain information including:

- A clear description of what is being procured.
- How to obtain P&S, and necessary forms and information.
- The date and time by which bids are to be received. (deadline)
- The address where bids are to be provided.
- Acknowledgement of any special requirements such as mandatory pre-bid conference
- Right to reject any and all bids.

Bid proposal

The Bid proposal form should account for the following.

- If lump sum bid, account for Property Consumed in Contracts to Improve Real Property; Tax Code 151.056.
- Distinguish Eligible and Ineligible items.
- Accommodate Trench Safety requirements with separate per unit pay item for trench excavation safety protection Health and Safety Code Chapter 756.
- Include space for Contractor to acknowledge receipt of each Addendum issued during the bidding process.

Bidding Process:

The Plans and Specifications should include an explanation of how the bids will be processed. The

explanation should include the following components.

- Whether a Pre-bid Conference, will be held, whether it is optional or mandatory, and where and when it will be held.
- Specify the criteria and process for determining responsiveness and responsibility of the bidder.
- Specify the method of determining the successful bidder and award (IE. Award to the lowest responsive responsible bidder, accounting for any multiple parts to bids.)
- Allow for withdrawal of a bid due to a material mistake.
- Identify the time frame that the bids may be held by the Owner before awarding a contract. (IE. Typically for 60 or 90 days.)
- Acknowledge right of the Owner to reject any and all bids.

All proposed modifications to these conditions should be brought to the attention of and discussed with the appropriate TWDB area engineer. The TWDB engineer can also answer any questions regarding these conditions. The questions and proposed modifications can be sent to the following address.

Texas Water Development Board
Office of Project Finance & Construction Assistance
P. O. Box 13231, Capitol Station
Austin, Texas 78711-3231
(512) 463-7853 FAX (512) 475-2086

SUPPLEMENTAL CONDITIONS

For State Loan Projects Funded through:

Water Development Fund II

Including:

State Participation
&
Rural Water Assistance Fund

TWDB SUPPLEMENTAL CONDITIONS

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1. Contingent Award of Contract
2. Bid Guarantee
3. Nonresident Bidder

Form to be submitted with bids:

- Vender Compliance with Reciprocity on Nonresident Bidders. (WRD-259)

Construction Contract Supplemental Conditions

1. Supersession
2. Privity of Contract
3. Definitions
4. Laws to be Observed
5. Review by Owner, TWDB, and EPA
6. Performance and Payment Bonds
7. Progress Payments and Payment Schedule
8. Workman's Compensation Insurance Coverage
9. Changes
10. Prevailing Wage Rates
11. Archeological Discoveries and Cultural Resources
12. Endangered Species
13. Hazardous Materials
14. Project Sign
15. Operation and Maintenance Manuals and Training
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Required Forms to be submitted with executed contracts:

- Contractor's act of Assurance (ED-103)
- Contractor's Act of Assurance Resolution (ED-104)

TWDB SUPPLEMENTAL CONDITIONS

Instructions to Bidders

1. CONTINGENT AWARD OF CONTRACT

This contract is contingent upon release of funds from the Water Development Board.

Any contract or contracts awarded under this Invitation for Bids are expected to be funded in part by a loan or grant from the Texas Water Development Board, and a grant from the United States Environmental Protection Agency (U.S. EPA.) Neither the State of Texas, or U.S. EPA nor any of its departments, agencies, or employees are or will be a party to this Invitation for Bids or any resulting contract.

2. BID GUARANTEE

Each bidder shall furnish a bid guarantee equivalent to five percent of the bid price. (Water Code 17.183). If a bid bond is provided, the contractor shall utilize a surety company which is authorized to do business in Texas in accordance with Art. 7.19-1. Bond of Surety Company; Chapter 7 of the Insurance Code.

3. Award of Contract to Nonresident Bidder

A governmental entity may not award a governmental contract to a nonresident bidder unless the nonresident underbids the lowest bid submitted by a responsible resident bidder by an amount that is not less than the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which the nonresident's principal place of business is located. (Source: Texas Government Code Chapter 2252 Subchapter A Nonresident Bidders, (§ 2252.002.) The bidder will complete form WRD-259 **which must be submitted with the bid.**

Construction Contract Supplemental Conditions

Conditions:

1. SUPERSESSION

The Owner and the contractor agree that the TWDB Supplemental Conditions apply to that work eligible for Texas Water Development Board assistance to be performed under this contract and these clauses supersede any conflicting provisions of this contract.

2. PRIVACY OF CONTRACT

Funding for this project is expected to be provided in part by the Texas Water Development Board. Neither the State of Texas, nor any of its departments, agencies or employees is, or will be, a party to this contract or any lower tier contract. This contract is subject to applicable provisions 31 TAC Chapter 363 in effect on the date of the assistance award for this project.

3. DEFINITIONS

- (a) The term Owner means the local entity contracting for the construction services.
- (b) The term "TWDB" means the Executive Administrator of the Texas Water Development Board, or other person who may be at the time acting in the capacity or authorized to perform the functions of such Administrator, or the authorized representative thereof.

4. LAWS TO BE OBSERVED

In the execution of the Contract, the Contractor must comply with all applicable Local, State and

Federal laws, including but not limited to laws concerned with labor, safety, minimum wages, and the environment. The Contractor shall make himself familiar with and at all times shall observe and comply with all Federal, State, and Local laws, ordinances and regulations which in any manner affect the conduct of the work, and shall indemnify and save harmless the Owner, Texas Water Development Board, and their representatives against any claim arising from violation of any such law, ordinance or regulation by himself or by his subcontractor or his employees.

5. REVIEW BY OWNER, and TWDB

- (a) The Owner, authorized representatives and agents of the Owner, and TWDB shall, at all times have access to and be permitted to observe and review all work, materials, equipment, payrolls, personnel records, employment conditions, material invoices, and other relevant data and records pertaining to this Contract, provided, however that all instructions and approval with respect to the work will be given to the Contractor only by the Owner through authorized representatives or agents.
- (b) Any such inspection or review by the TWDB shall not subject the State of Texas to any action for damages.

6. PERFORMANCE AND PAYMENT BONDS

Each contractor awarded a construction contract furnish performance and payment bonds:

- (a) the performance bond shall include without limitation guarantees that work done under the contract will be completed and performed according to approved plans and specifications and in accordance with sound construction principles and practices;
- (b) the performance and payment bonds shall be in a penal sum of not less than 100 percent of the contract price and remain in effect for one year beyond the date of approval by the engineer of the political subdivision; and
- (c) the contractor shall utilize a surety company that is authorized to do business in Texas in accordance with Art. 7.19-1. Bond of Surety Company; Chapter 7 of the Insurance Code.

7. PROGRESS PAYMENTS AND PAYMENT SCHEDULE

- (a) The Contractor shall submit for approval immediately after execution of the Agreement, a carefully prepared Progress Schedule, showing the proposed dates of starting and completing each of the various sections of the work, the anticipated monthly payments to become due the Contractor, and the accumulated percent of progress each month.
- (b) The following paragraph applies only to contracts awarded on a lump sum contract price:

COST BREAKDOWN - The Contractor shall submit to the Owner a detailed breakdown of his estimated cost of all work to be accomplished under the contract, so arranged and itemized as to meet the approval of the Owner or funding agencies. This breakdown shall be submitted promptly after execution of the agreement and before any payment is made to the Contractor for the work performed under the Contract. After approval by the Owner the unit prices established in the breakdown shall be used in estimating the amount of partial payments to be made to the Contractor.

- (c) Progress Payments.

- (1) The Contractor shall prepare his requisition for progress payment as of the last day of the month and submit it, with the required number of copies, to the Engineer for his review. Except as provided in Paragraph (3) of this subsection, the amount of the payment due the

Contractor shall be determined by adding to the total value of work completed to date, the value of materials properly stored on the site and deducting: (1) five percent (5%) of the total amount, as a retainage and (2) the amount of all previous payments. The total value of work completed to date shall be based on the actual or estimated quantities of work completed and on the unit prices contained in the agreement (or cost breakdown approved pursuant to section 6.b relating to lump sum bids) and adjusted by approved change orders. The value of materials properly stored on the site shall be based upon the estimated quantities of such materials and the invoice prices. Copies of all invoices shall be available for inspection by the Engineer.

- (2) The Contractor shall be responsible for the care and protection of all materials and work upon which payments have been made until final acceptance of such work and materials by the Owner. Such payments shall not constitute a waiver of the right of the Owner to require the fulfillment of all terms of the Contract and the delivery of all improvements embraced in this Contract complete and satisfactory to the Owner in all details.
 - (3) This clause applies to contracts when the Owner is a Municipal Utility District, or Water Control and Improvement District. The retainage shall be ten percent of the amount otherwise due until at least fifty percent of the work has been completed. After the project is fifty percent completed, the District may reduce the retainage from ten percent to no less than five percent.
 - (4) The five percent (5%) retainage of the progress payments due to the Contractor may not be reduced until the building of the project is substantially complete and a reduction in the retainage has been authorized by the TWDB.
 - (5) The following clause applies only to contracts where the total price at the time of execution is \$400,000 or greater and the retainage is greater than 5% and the Owner is not legally exempted from the condition (i.e. certain types of water districts).
The Owner shall deposit the retainage in an interest-bearing account, and the interest earned on such retainage funds shall be paid to the Contractor after completion of the contract and final acceptance of the project by the Owner.
- (d) Withholding Payments. The Owner may withhold from any payment otherwise due the Contractor so much as may be necessary to protect the Owner and if so elects may also withhold any amounts due from the Contractor to any subcontractors or material dealers, for work performed or material furnished by them. The foregoing provisions shall be construed solely for the benefit of the Owner and will not require the Owner to determine or adjust any claims or disputes between the Contractor and his subcontractors or Material dealers, or to withhold any moneys for their protection unless the Owner elects to do so. The failure or refusal of the Owner to withhold any moneys from the Contractor shall in no way impair the obligations of any surety or sureties under any bond or bonds furnished under this Contract.
- (c) Payments. Subject to Submission of Certificates. Each payment to the Contractor by the Owner shall be made subject to submission by the Contractor of all written certifications required of him and his subcontractors by Section 3 hereof (relating to labor standards) and other general and special conditions elsewhere in this contract.
- (e) Final Payment.
- (1) Upon satisfactory completion of the work performed under this contract, as a condition before final payment under this contract or as a termination settlement under this contract the contractor shall execute and deliver to the Owner a release of all claims against the Owner

arising under, or by virtue of, this contract, except claims which are specifically exempted by the contractor to be set forth therein. Unless otherwise provided in this contract, by State law or otherwise expressly agreed to by the parties to this contract, final payment under this contract or settlement upon termination of this contract shall not constitute a waiver of the Owner's claims against the contractor or his sureties under this contract or applicable performance and payment bonds.

- (2) After final inspection and acceptance by the Owner of all work under the Contract, the Contractor shall prepare his requisition for final payment which shall be based upon the carefully measured or computed quantity of each item of work at the applicable unit prices stipulated in the Agreement or cost breakdown (if lump sum), as adjusted by approved change orders. The total amount of the final payment due the Contractor under this contract shall be the amount computed as described above less all previous payments.
- (3) The retainage and its interest earnings, if any, shall not be paid to the Contractor until the TWDB has authorized a reduction in, or release of, retainage on the contract work.
- (4) Withholding of any amount due the Owner, under general and/or special conditions regarding "Liquidated Damages," shall be deducted from the final payment due the Contractor.

8. WORKMAN'S COMPENSATION INSURANCE COVERAGE

- (a) The contractor shall certify in writing that the contractor provides workers' compensation insurance coverage for each employee of the contractor employed on the public project.
- (b) Each subcontractor on the public project shall provide such a certificate relating to coverage of the subcontractor's employees to the general contractor, who shall provide the subcontractor's certificate to the governmental entity.
- (c) A contractor who has a contract that requires workers' compensation insurance coverage may provide the coverage through a group plan or other method satisfactory to the governing body of the governmental entity.
- (d) The employment of a maintenance employee by an employer who is not engaging in building or construction as the employer's primary business does not constitute engaging in building or construction.
- (e) In this section:
 - (1) "Building or construction" includes:
 - (A) erecting or preparing to erect a structure, including a building, bridge, roadway, public utility facility, or related appurtenance;
 - (B) remodeling, extending, repairing, or demolishing a structure; or
 - (C) otherwise improving real property or an appurtenance to real property through similar activities.
 - (2) "Governmental entity" means this state or a political subdivision of this state. The term includes a municipality.

9. CHANGES

- (a) The Owner may at any time, without notice to any surety, by written order, make any change in the work within the general scope of the contract, including but not limited to changes:
 - (1) In the specifications (including drawings and designs);
 - (2) In the time, method or manner of performance of the work;
 - (3) In the Owner-furnished facilities, equipment, materials, services or site, or
 - (4) Directing acceleration in the performance of the work.
 - (5) The original contract price may not be increased under this section by more than 25 percent. The original contract price may not be decreased under this section by more than 25 percent without the consent of the contractor. (Local Government Code 271.060)

- (b) A change order shall also be any other written order (including direction, instruction, interpretation or determination) from the Owner which causes any change, provided the contractor gives the Owner written notice stating the date, circumstances and source of the order and that the contractor regards the order as a change order.
- (c) Except as provided in this clause, no order, statement or conduct of the Owner shall be treated as a change under this clause or entitle the contractor to an equitable adjustment.
- (d) If any change under this clause causes an increase or decrease in the contractor's cost or the time required to perform any part of the work under this contract, whether or not changed by any order, the Owner shall make an equitable adjustment and modify the contract in writing. Except for claims based on defective specifications, no claim for any change under paragraph (a)(2) above shall be allowed for any costs incurred more than 20 days before the contractor gives written notice as required in paragraph (a)(2). In the case of defective specifications for which the Owner is responsible, the equitable adjustment shall include any increased cost the contractor reasonably incurred in attempting to comply with those defective specifications.
- (e) If the contractor intends to assert a claim for an equitable adjustment under this clause, the contractor must, within 30 days after receipt of a written change order under paragraph (a)(1) or the furnishing of a written notice under paragraph (a)(2), submit a written statement to the Owner setting forth the general nature and monetary extent of such claim. The Owner may extend the 30-day period. The contractor may include the statement of claim in the notice under paragraph (2) of this changes clause.
- (f) No claim by the contractor for an equitable adjustment shall be allowed if made after final payment under this contract.
- (g) Changes that involve an increase in price will be supported by documentation of the cost components.

10. PREVAILING WAGE RATES

This Contract is subject to Government Code Chapter 2258 concerning payment of Prevailing Wage Rates. The Owner will determine what are the general prevailing rates in accordance with the statute. The applicable provisions include, but are not limited to the following:

§ 2258.021. Right to be Paid Prevailing Wage Rates

- (a) A worker employed on a public work by or on behalf of the state or a political subdivision of the state shall be paid:
 - (1) not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed; and
 - (2) not less than the general prevailing rate of per diem wages for legal holiday and overtime work.
- (b) Subsection (a) does not apply to maintenance work.
- (c) A worker is employed on a public work for the purposes of this section if the worker is employed by a contractor or subcontractor in the execution of a contract for the public work with the state, a political subdivision of the state, or any officer or public body of the state or a political subdivision of the state.

Added by Acts 1995, 74th Leg., ch. 76, § 5.49(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, § 18.01, eff. Sept. 1, 1997.

§ 2258.023. Prevailing Wage Rates to be Paid by Contractor and Subcontractor; Penalty

- (a) The contractor who is awarded a contract by a public body or a subcontractor of the contractor shall pay not less than the rates determined under Section 2258.022 to a worker employed by it in the execution of the contract.
- (b) A contractor or subcontractor who violates this section shall pay to the state or a political subdivision of the state on whose behalf the contract is made, \$60 for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the contract. A public body awarding a contract shall specify this penalty in the contract.

- (c) A contractor or subcontractor does not violate this section if a public body awarding a contract does not determine the prevailing wage rates and specify the rates in the contract as provided by Section 2258.022.
- (d) The public body shall use any money collected under this section to offset the costs incurred in the administration of this chapter.
- (e) A municipality is entitled to collect a penalty under this section only if the municipality has a population of more than 10,000.

Added by Acts 1995, 74th Leg., ch. 76, § 5.49(a), eff. Sept. 1, 1995.

§ 2258.024. Records

- (a) A contractor and subcontractor shall keep a record showing:
 - (1) the name and occupation of each worker employed by the contractor or subcontractor in the construction of the public work; and
 - (2) the actual per diem wages paid to each worker.
- (b) The record shall be open at all reasonable hours to inspection by the officers and agents of the public body.

Added by Acts 1995, 74th Leg., ch. 76, § 5.49(a), eff. Sept. 1, 1995.

§ 2258.025. Payment Greater Than Prevailing Rate Not Prohibited

This chapter does not prohibit the payment to a worker employed on a public work an amount greater than the general prevailing rate of per diem wages.

Added by Acts 1995, 74th Leg., ch. 76, § 5.49(a), eff. Sept. 1, 1995.

11. ARCHEOLOGICAL DISCOVERIES AND CULTURAL RESOURCES

No activity which may affect a State Archeological Landmark is authorized until the Owner has complied with the provisions of the Antiquities Code of Texas. The Owner has previously coordinated with the appropriate agencies and impacts to known cultural or archeological deposits have been avoided or mitigated. However, the Contractor may encounter unanticipated cultural or archeological deposits during construction.

If archeological sites or historic structures are discovered after construction operations are begun, the Contractor shall immediately cease operations in that particular area and notify the Owner, the TWDB, and the Texas Historical Commission, (512-463-6096). The Contractor shall take reasonable steps to protect and preserve the discoveries until they have been inspected by the Owner's representative and the TWDB. The Owner will promptly coordinate with the Texas Historical Commission and any other appropriate agencies to obtain any necessary approvals or permits to enable the work to continue. The Contractor shall not resume work in the area of the discovery until authorized to do so by the Owner.

12. ENDANGERED SPECIES

No activity is authorized that is likely to jeopardize the continued existence of a threatened or endangered species as listed or proposed for listing under the Federal Endangered Species Act (ESA), and/or the State of Texas Parks and Wildlife Code on Endangered Species, or to destroy or adversely modify the habitat of such species.

If a threatened or endangered species is encountered during construction, the Contractor shall immediately cease work in the area of the encounter and notify the Owner, who will immediately implement actions in accordance with the ESA and applicable State statutes. These actions shall include reporting the encounter to the TWDB, the U. S. Fish and Wildlife Service, and the Texas Parks and Wildlife Department, obtaining any necessary approvals or permits to enable the work to continue, or implement other mitigative actions. The Contractor shall not resume construction in the area of the encounter until authorized to do so by the Owner.

13. HAZARDOUS MATERIALS

Materials utilized in the project shall be free of any hazardous materials, except as may be specifically provided for in the specifications.

If the Contractor encounters existing material on sites owned or controlled by the Owner or in material sources that are suspected by visual observation or smell to contain hazardous materials, the Contractor shall immediately notify the Engineer and the Owner. The Owner will be responsible for the testing for and removal or disposition of hazardous materials on sites owned or controlled by the Owner. The Owner may suspend the work, wholly or in part during the testing, removal or disposition of hazardous materials on sites owned or controlled by the Owner.

14. PROJECT SIGN

A project IDENTIFICATION SIGN will be provided to the contractor. The contractor shall erect the sign in a prominent location at the construction project site or along a major thoroughfare within the community as directed by the Owner.

15. OPERATION AND MAINTENANCE MANUALS AND TRAINING

- (a) The Contractor shall obtain installation, operation, and maintenance manuals from manufacturers and suppliers for equipment furnished under the contract. The Contractor shall submit three copies of each complete manual to the Engineer within 90 days after approval of shop drawings, product data, and samples, and not later than the date of shipment of each item of equipment to the project site or storage location.
- (b) The Owner shall require the Engineer to promptly review each manual submitted, noting necessary corrections and revisions. If the Engineer rejects the manual, the Contractor shall correct and resubmit the manual until it is acceptable to Engineer as being in conformance with design concept of project and for compliance with information given in the Contract Documents. Owner may assess Contractor a charge for reviews of same items in excess of three (3) times. Such procedure shall not be considered cause for delay. Acceptance of manuals by Engineer does not relieve Contractor of any requirements of terms of Contract.
- (c) The Contractor shall provide the services of trained, qualified technicians to check final equipment installation, to assist as required in placing same in operation, and to instruct operating personnel in the proper manner of performing routine operation and maintenance of the equipment.
- (d) Operations and maintenance manuals specified hereinafter are in addition to any operation, maintenance, or installation instructions required by the Contractor to install, test, and start-up the equipment.
- (e) Each manual to be bound in a folder and labeled to identify the contents and project to which it applies. The manual shall contain the following applicable items:
 - (1) A listing of the manufacturer's identification, including order number, model, serial number, and location of parts and service centers.
 - (2) A list of recommended stock of parts, including part number and quantity.
 - (3) Complete replacement parts list.
 - (4) Performance data and rating tables.

- (5) Specific instructions for installation, operation, adjustment, and maintenance.
- (6) Exploded view drawings for major equipment items.
- (7) Lubrication requirements.
- (8) Complete equipment wiring diagrams and control schematics with terminal identification.

16. AS-BUILT DIMENSIONS AND DRAWINGS

- (a) Contractor shall make appropriate daily measurements of facilities constructed and keep accurate records of location (horizontal and vertical) of all facilities.
- (b) Upon completion of each facility, the Contractor shall furnish Owner with one set of direct prints, marked with red pencil, to show as-built dimensions and locations of all work constructed. As a minimum, the final drawings shall include the following:
 - (1) Horizontal and vertical locations of work.
 - (2) Changes in equipment and dimensions due to substitutions.
 - (3) "Nameplate" data on all installed equipment.
 - (4) Deletions, additions, and changes to scope of work.
 - (5) Any other changes made.

Forms to be submitted with executed contracts:

- [Contractor's act of Assurance](#) (ED-103)

Vendor Compliance with Reciprocity on Non-Resident Bidders (WRD-259)

Government Code 2252.002 provides that, in order to be awarded a contract as low bidder, a non-resident bidder must bid projects for construction, improvements, supplies or services in Texas at an amount lower than the lowest Texas resident bidder by the same amount that a Texas resident bidder would be required to underbid a non-resident bidder in order to obtain a comparable contract in the state in which the non-resident's principal place of business is located. A non-resident bidder is a contractor whose corporate offices or principal place of business is outside of the state of Texas. This requirement does not apply to a contract involving Federal funds. The appropriate blanks in Section A must be filled out by all out-of-state or non-resident bidders in order for your bid to meet specifications. The failure of out-of-state or non-resident contractors to do so will automatically disqualify that bidder. Resident bidders must check the blank in Section B.

A. Non-resident vendors in _____ (give state), our principal place of business, are required to be _____ percent lower than resident bidders by state law. A copy of the statute is attached.

Non-resident vendors in _____ (give state), our principal place of business, are not required to underbid resident bidders.

B. Our principal place of business or corporate offices are in the State of Texas: _____

BIDDER:

_____ Company

_____ City State Zip

By: (please print)

_____ Signature

_____ Title: (please print)

THIS FORM MUST BE RETURNED WITH YOUR BID

CONTRACTOR'S ACT OF ASSURANCE (ED-103)

STATE OF TEXAS

COUNTY OF _____

BEFORE ME, _____, a Notary Public duly commissioned and qualified in and for the County of _____ in the State of Texas came and appeared _____, as represented by _____, the corporation's _____, who declares he/she is authorized to represent _____ pursuant to provisions of a resolution adopted by said corporation on the _____ day of _____, 20____ (a duly certified copy of such resolution is attached to and is hereby made a part of this document).

_____, as the representative of _____, declares that _____ assures the Texas Water Development Board that it will construct _____ project at _____, Texas, in accordance with sound construction practice, all laws of the State of Texas, and the rules of the Texas Water Development Board.

GIVEN UNDER MY HAND and seal of office this _____ day of _____, 20____ A.D.

Printed Name

My Commission expires _____

CONTRACTOR'S ACT OF ASSURANCE RESOLUTION (ED-104)

Name

I hereby certify that it was RESOLVED by a quorum of the directors of the

_____,
name of corporation

meeting on the day of _____, 20__, that _____,

be, and hereby is, authorized to act on behalf of _____,
name of corporation

as its representative, in all business transactions conducted in the State of Texas, and;

That all above resolution was unanimously ratified by the Board of Directors at said
meeting and that the resolution has not been rescinded or amended and is now in full forces
and effect; and;

In authentication of the adoption of this resolution, I subscribe my name and
affix the seal of the corporation this _____ day of _____, 20__.

Secretary

(seal)

Water Conservation Utility Profile (WRD-264)



**Jointly Produced by the Texas Water
Development Board and the Texas Natural
Resource Conservation Commission** (Revised April
25, 2002)



The purpose of the Water Utility Profile is to assist an applicant with water conservation plan development and to ensure that important information and data be considered when preparing your water conservation plan and goals. This form should be used by applicants for financial assistance (submitted to the TWDB) or by an entity applying for a water right (submitted to the TCEQ). Please complete all questions as completely and objectively as possible. You may contact the Municipal Water Conservation Unit of the TWDB at 512-936-2391 for assistance, or the Resource Protection Team at 512-239-4691 if submitted to the TCEQ.

Name of Utility: _____

Address & Zip: _____

Telephone Number: _____ Fax: _____

Form Completed By: _____

Title: _____

Signature: _____ Date: _____

Name and Phone Number of Person/Department responsible for implementing a water conservation program:

I. CUSTOMER DATA

A. Population and Service Area Data

1. Please attach a copy of your Certificate of Convenience and Necessity (CCN) from the TCEQ, and a service-area map.
2. Service area size (square miles): _____
3. Current population of service area: _____
4. Current population served by utility: a: water _____
b: wastewater _____

5. Population served by water utility for the previous five years:

Year	Population
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

6. Projected population for service area in the following decades:

Year	Population
2010	_____
2020	_____
2030	_____
2040	_____
2050	_____

7. List source(s)/method(s) for the calculation of current and projected population:

B. Active Connections

1. Current number of active connections by user type. Check whether multi-family service is counted as Residential _____ or Commercial _____

<u>Treated water users:</u>	<u>Metered</u>	<u>Not-metered</u>	<u>Total</u>
Residential	_____	_____	_____
Commercial	_____	_____	_____
Industrial	_____	_____	_____
Public	_____	_____	_____
Other	_____	_____	_____

2. List the net number of new connections per year for most recent three years:

Year	_____	_____	_____
Residential	_____	_____	_____
Commercial	_____	_____	_____
Industrial	_____	_____	_____
Public	_____	_____	_____
Other	_____	_____	_____

C. High Volume Customers

List annual water use for the five highest volume retail and wholesale customers (please indicate if treated or raw water delivery)

	<u>Customer</u>	<u>Use (1,000gal./yr.)</u>	<u>Treated/Raw Water</u>
(1)	_____	_____	_____
(2)	_____	_____	_____
(3)	_____	_____	_____
(4)	_____	_____	_____
(5)	_____	_____	_____

II. WATER USE DATA FOR SERVICE AREA

A. Water Accounting Data

1. Amount of water use for previous five years (in 1,000 gal.):

Please indicate : Diverted Water _____
 Treated Water _____

Year	_____	_____	_____	_____	_____
January	_____	_____	_____	_____	_____
February	_____	_____	_____	_____	_____
March	_____	_____	_____	_____	_____
April	_____	_____	_____	_____	_____
May	_____	_____	_____	_____	_____
June	_____	_____	_____	_____	_____
July	_____	_____	_____	_____	_____
August	_____	_____	_____	_____	_____
September	_____	_____	_____	_____	_____
October	_____	_____	_____	_____	_____
November	_____	_____	_____	_____	_____
December	_____	_____	_____	_____	_____
Total	_____	_____	_____	_____	_____

Please indicate how the above figures were determined (e.g., from a master meter located at the point of a diversion from a stream or located at a point where raw water enters the treatment plant, or from water sales).

2. Amount of water (in 1,000 gallons) delivered (sold) as recorded by the following account types (See #1, Appendix A) for the past five years.

<u>Year</u>	<u>Residential</u>	<u>Commercial</u>	<u>Industrial</u>	<u>Wholesale</u>	<u>Other</u>	<u>Total Sold</u>
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____

3. List previous five years records for unaccounted-for water use (See #2, Appendix A)

<u>Year</u>	<u>Amount (gal.)</u>	<u>%</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

4. List previous five years records for annual peak-to-average daily use ratio (See #3, Appendix A)

<u>Year</u>	<u>Average MGD</u>	<u>Peak MGD</u>	<u>Ratio</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

5. Municipal per capita water use for previous five years (See #4, Appendix A):

<u>Year</u>	<u>Population</u>	<u>Total Diverted (or Treated) (1,000 gal.)</u>	<u>Industrial Sales (1,000 gal.)</u>	<u>Municipal Per Capita Use (gpcd)</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

6. Seasonal water use for the previous five years (in gallons/person/day) (See #5, Appendix A):

<u>Year</u>	<u>Population</u>	<u>Base Per Capita Use</u>	<u>Summer Per Capita Use</u>	<u>Seasonal Use</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

B. Projected Water Demands

Provide estimates for total water demands for the planning horizon of the utility. Indicate sources of data and how projected water demands were determined. Attach additional sheets if necessary.

III. WATER SUPPLY SYSTEM

A. Water Supply Sources

List all current water supply sources and the amounts available with each:

	<u>Source</u>	<u>Amount Available</u>
Surface Water:	_____	_____ MGD
Groundwater:	_____	_____ MGD
Contracts:	_____	_____ MGD
Other:	_____	_____ MGD

B. Treatment and Distribution System

1. Design daily capacity of system: _____ MGD
2. Storage Capacity: Elevated _____ MGD, Ground _____ MGD
3. If surface water, do you recycle filter backwash to the head of the plant?
Yes _____ No _____. If yes, approximately _____ MGD.
4. Please describe the water system. Include the number of treatment plants, wells, and storage tanks. If possible, include a sketch of the system layout.

IV. WASTEWATER UTILITY SYSTEM

A. Wastewater System Data

1. Design capacity of wastewater treatment plant(s): _____ MGD
2. Is treated effluent used for irrigation on-site _____, off-site _____, plant washdown _____, or chlorination/dechlorination _____?
If yes, approximately _____ gallons per month. Could this be substituted for potable water now being used in these areas _____?

3. Briefly describe the wastewater system(s) of the area serviced by the water utility. Describe how treated wastewater is disposed of. Where applicable, identify treatment plant(s) with the TCEQ name and number, the operator, owner, and, if wastewater is discharged, the receiving stream. Please provide a sketch or map which locates the plant(s) and discharge points or disposal sites.

B. Wastewater Data for Service Area

1. Percent of water service area served by wastewater system: ____%

2. Monthly volume treated for previous three years (in 1,000 gallons):

Year	_____	_____	_____
January	_____	_____	_____
February	_____	_____	_____
March	_____	_____	_____
April	_____	_____	_____
May	_____	_____	_____
June	_____	_____	_____
July	_____	_____	_____
August	_____	_____	_____
September	_____	_____	_____
October	_____	_____	_____
November	_____	_____	_____
December	_____	_____	_____
Total	_____	_____	_____

V. UTILITY OPERATING DATA

- A. List (or attach) water and wastewater rates, and rate structure for all classes.

- B. Other relevant data: Please indicate other data or information that is relevant to both the applicant's water management operations and design of a water conservation plan.

VI. CONSERVATION GOALS

Please use the data provided in this survey to establish conservation goals (additional data may be used).

A. Water conservation goals for municipal utilities are generally established to maintain or reduce consumption, as measured in:

1. gallons per capita per day used;
2. unaccounted-for water uses;
3. peak-day to average-day ratio; and/or
4. an increase in reuse or recycling of water.

B. TCEQ/TWDB conservation staff assess the reasonableness of water conservation goals based on whether the applicant addresses the following steps:

1. identification of a water or wastewater problem;
2. completion of the utility profile;
3. selection of goals based on the technical potential to save water as identified in the utility profile; and
4. performance of a cost-benefit analysis of conservation strategies.

If at least the first three steps have been completed and are summarized in the water conservation plan, then staff can conclude that there is substantiated basis for the goals, and that the water conservation plan is integrated into water management. Therefore, the established conservation goals can be deemed reasonable.

C. Complete the following in gallons per capita per day (gpcd) to quantify the water conservation goals for the utility's service area:

1. Estimation of the technical potential for reducing per capita water use (see Appendix B).

Scenario	Conservation
	<u>Mostly Likely</u>
a. Reduction in unaccounted-for uses:	_____
b. Reduction in indoor water use due to water-conserving plumbing fixtures:	<u>20.5</u>
c. Reduction in seasonal use:	_____
d. Reduction in water use due to public education programs:	_____

TOTAL TECHNICAL POTENTIAL FOR REDUCING PER CAPITA WATER USE: _____

*Subtract these totals from the dry-year per capita use to calculate the long-run planning goal.

2. Planning goal

The planning goal equals the dry year per capita water use minus the total technical potentials calculated in number one above.

Planning goal (in gpcd): _____

Goal to be achieved by year: _____

3. Needed reduction in per capita use to meet planning goal

Current per capita use: _____

Planning goal (from #2 above): _____

Difference between current use and goal: _____
(Represents needed reduction in per capita use to meet goal.)

Appendix A

Definitions of Utility Profile terms

1. **Residential** sales should include residential sales to residential class customers only.
Industrial sales should include manufacturing and other heavy industry.
Commercial sales should include all retail businesses, offices, hospitals, etc.
Wholesale sales should include water sold to another utility for a resale to the public for human consumption.
2. **Unaccounted-for water** is the difference between water diverted or treated (as reported in Section IIA1, p. 4) and water delivered (sold)(as reported in Section IIA2, p. 4).
Unaccounted-for water can result from:
 1. inaccurate or incomplete record keeping;
 2. meter error;
 3. unmetered uses such as firefighting, line flushing, and water for public buildings and water treatment plants;
 4. leaks; and
 5. water theft and unauthorized use.
3. The **peak-day to average-day ratio** is calculated by dividing the maximum daily pumpage (in million gallons per day) by the average daily pumpage. Average daily pumpage is the total pumpage for the year (as reported in Section IIA1, p. 4) divided by 365 and expressed in million gallons per day.
4. **Municipal per capita use** is defined as total municipal water use dividing by the population and the 365 days. Total municipal water use is calculated by subtracting the industrial sales and wholesale from the total water diverted or treated (as reported in Section IIA1, p. 4).

Total municipal water use = Total water diverted or treated - industrial sales - wholesale
Municipal per capita use (gpcd) = Total municipal water use/population/365 days

Note: The AWWA considers the municipal per capita use as the most representative figure to use in long-range water supply and conservation planning.
5. **Seasonal water use** is the difference between base (winter) daily per capita use and summer daily per capita use. To calculate **the base daily per capita use**, average the monthly diversions for December, January, and February, and divide this average by 30. Then divide this figure by the population. To calculate the **summer daily per capita use**, use the months of June, July, and August.

Appendix B

Estimating the Technical Potential for Reducing Per Capita Water Use

The technical potential for reducing per capita water use is the range in potential water savings that can be achieved by implementing specific water conservation measures. The bottom of the range represents the potential savings under a "most likely," or real-world conservation scenario. The top of the range represents the potential savings under an "advanced" conservation scenario. The conservation measures include:

- reducing unaccounted-for water uses;
- reducing indoor water use due to water-conserving plumbing fixtures;
- reducing seasonal water use; and
- reducing water use through public education programs.

Guidelines and examples for calculating the technical potential water savings for each of these conservation measures are given below.

I. Reducing unaccounted-for water uses

The TCEQ considers unaccounted-for water uses of 15% or less as acceptable for communities serving more than 5,000 people. Smaller, older systems that have a larger service area may legitimately experience larger losses. Losses above 15% may be an area of concern, and provide a conservation potential.

The bottom of the range for technical potential savings for unaccounted-for uses is zero. To calculate the top of the range, see the following example:

$$\begin{aligned} \text{Unaccounted-for uses} &= 19.5\% \\ \text{Dry-year per capita water use} &= 250 \text{ gallons per capita per day (gpcd)} \\ \text{Potential for reduction in unaccounted-for use} &= (250 \text{ gpcd} \times 19.5\%) - (250 \text{ gpcd} \times 15\%) \\ &= 48.75 \text{ gpcd} - 37.5 \text{ gpcd} \\ &= 11.25 \text{ gpcd} \\ \text{Technical Potential Savings Range} &= \mathbf{0 \text{ to } 11.25 \text{ gpcd}} \end{aligned}$$

II Reducing Indoor Water Use due to Water-Conserving Plumbing Fixtures

The TCEQ uses **20.5 gpcd** as the most reliable figure upon which to base potential water savings, which represents the "most likely" conservation scenario. This figure is based upon the estimate that by 2050, 90% of pre-1990 homes, and all new homes will have been equipped with water conserving plumbing fixtures.

The figure used for the "advanced" conservation scenario, 21.7 gpcd, is an estimate of the average savings that would result from a home equipped exclusively with water-conserving plumbing fixtures. This figure is considered "advanced" because in a typical city, 100% of the homes are not exclusively equipped with water-conserving fixtures.

III. Reducing Seasonal Water Use

The Texas Water Development Board (TWDB) has calculated seasonal use as a percentage of average annual per capita use for East Texas (20%), West Texas (25%), and a statewide average of 22.5%. Seasonal water use is calculated by multiplying the average annual per capita use in gpcd by the appropriate percentage.

The technical potential for reduction in seasonal use is then calculated by multiplying the seasonal use by 7% for the "most likely" conservation scenario, and by 20% for the "advanced" scenario. Below is an example calculation:

Average annual per capita use = 185 gpcd
Geographical location = West Texas
Seasonal use = (185 gpcd x 25%) = 46.25 gpcd
Potential reduction in seasonal use (Most Likely scenario) = (46.25 x 7%) = 3.24 gpcd
Potential reduction in seasonal use (Advanced scenario) = (46.25 x 20%) = 9.25 gpcd
Technical Potential Savings Range = 3.24 to 9.25 gpcd

IV. Reducing Water Use through Public Education Programs

The technical potential for water conservation from public education programs is estimated to be from 2% of the average annual per capita use for the "most likely" conservation scenario to 5% for the "advanced" scenario, according to the "Water Conservation Guidebook," published in 1993 by the American Water Works Association. Below is an example calculation:

Average annual per capita use = 185 gpcd
Potential reduction in water use (Most Likely scenario) = (185 x 2%) = 3.7 gpcd
Potential reduction in water use (Advanced scenario) = (185 x 5%) = 9.25 gpcd
Technical Potential Savings Range = 3.7 to 9.25 gpcd

To calculate the **total technical potential** for reducing municipal per capita water use, simply add the individual technical potential amounts calculated in items I - IV above. In this case **the total technical potential range equals 27.44 gpcd to 51.45 gpcd.**

Summary of Technical Potential Calculations		
Conservation Measure	Calculation Procedure	Example Result
Reducing unaccounted-for uses	(Dry-year demand) x (Unacc.-for percentage if more than 15%, minus 15%)	0 to 11.25 gpcd
Reducing indoor water use due to water- efficient plumbing fixtures	20.5 gpcd ("rule of thumb") to 21.7 gpcd (advanced)	20.5 to 21.7 gpcd
Reducing seasonal water use	Seasonal use (Avg. use x 22.5%) x 7% and 20%	3.24 to 9.25 gpcd
Reducing water use through public education programs	Average use x 2% and 5%	3.7 to 9.25 gpcd
	Total Technical Potential Savings	27.44 to 51.45 gpcd

To calculate the long-run planning goal, subtract these totals from the **dry-year water demand**.

For example:

<p>Long-run planning goal = (Dry year water demand) minus (total technical potential) = 250 gpcd - 27.44 gpcd = 222.56 gpcd ("most likely" scenario) = 250 gpcd - 51.45 gpcd = 198.55 gpcd ("advanced" scenario)</p>
--

Long-run planning goal for municipal water use = 222.56 to 198.55 gpcd

(October, 2001)

Water Conservation Program Annual Report (WRD-265)

For Questions or Information call:
Adolph L. Stickelbault
512-936-2391
Municipal Water Conservation Unit
adolph.stickelbault@twdb.state.tx.us

Texas Water Development Board (TWDB) Rules require that entities that receive financial assistance of more than \$500,000 implement a water conservation program for the life of the loan, and report annually for at least 3 years on the progress of implementation. A water conservation plan should contain long-term elements such as ongoing public education activities, universal metering, water accounting and estimated water savings from reuse/recycling activities, leak detection and repair and other conservation activities.

The following questions are designed to provide the TWDB this information in a concise and consistent format for all loan recipients. Please fill in the blanks that pertain to your program as completely and objectively as possible. **As you complete the report form, please review your utility's water conservation plan to see if you are making progress toward meeting your stated goal(s).**

Return completed form to:

**Executive Administrator
Texas Water Development Board
P.O. Box 13231
Austin, Texas 78711-3231
ATTN: CONSERVATION**

Revised October 2001

LONG-TERM WATER CONSERVATION PROGRAM

1. Education and Information Program

(TWDB Rules require a continuing program that at minimum provides conservation information directly to each customer, one other type of annual educational water conservation activity and to provide water conservation literature to new customers when they apply for service)

What is the total number of water conservation brochures that your utility mailed to its customers during the last 12 months? _____

How many handouts were distributed to customers by field employees, at the utility office, and other programs and events? _____

Number of water conservation articles published in local newspaper(s)

Which months were conservation messages printed on utility/water bills?

In addition, the following education activities were conducted during the reporting period (presentations, school programs, exhibits, television, radio, etc.).

2. Water Conservation Retrofit and Plumbing Rebate Programs

Have you conducted a plumbing retrofit or rebate program during the last 12 months?
___ Yes ___ No

If yes, approximately _____ households received kits/rebates. Please describe your program and list specific items provided or types of fixtures rebated

3. Conservation – Oriented Rate Structure

Have your rates or rate structure changed since your last report? ___ Yes ___ No
If yes, please describe the changes and attach a copy of the new rate structure.

If you purchase water from a wholesale supplier, is this a “take or pay” contract? ___ Yes
___ No

If yes, what is your minimum volume to take? _____gallons/day.

4. Universal Metering and Meter Repair

(TWDB Rules require that your utility undertake measures to determine and control unaccounted for water, universal metering of both customer and public uses, periodic meter testing and repair, and distribution system leak detection and repair)

In the first blank fill in total number of meters in your utility for each type or size of meter.

During the past 12 months, what was the number of (system-wide):

Production (master) meters _____ (total), tested _____, repaired _____,
replaced _____.

Meters larger than 1 ½” _____ (total), tested _____, repaired _____, replaced _____.

Meters 1 ½” or smaller _____ (total), tested _____, repaired _____, replaced _____.

5. Water Audits and Leak Detection

a. The total amount of water purchased or produced during the last 12 months was

b. The total amount of account (metered) water sold during the last 12 months

c. The total amount of identified and estimated (known & explained) losses

d. The total amount of lost water (unexplained missing water)

e. What is your water loss percentage (line d. ÷ line a. x 100)
_____ %

How often do you calculate water loss or audit the water in your system? _____
(Times per year)

Number of leaks repaired on the system and at service connections _____.

Please list the main cause of water loss for water in your system: *(examples - leaks, un-metered utility or city uses, problems with master meter, customer meters, record and data*

problems, etc.):

_____ The TWDB offers free technical assistance regarding leak detection and unaccounted for water. To find out more about this free service, please place checkmark on left.

6. Water-Conserving Landscaping

Please list any water-conserving landscaping programs, educational activities, or ordinances enacted during the last 12 months.

7. Other Comments

List any other water conservation activities your utility is conducting.

DROUGHT CONTINGENCY/EMERGENCY WATER DEMAND MANAGEMENT

8. During the past 12 months, did your utility find it necessary to activate its the Drought Contingency/Emergency Demand Management Plan? (Please check one) Yes No

If you answered **yes**, was the need due to: (Please check all applicable)

(1) water shortage, (2) high demand, (3) inability to treat or pump water at required rates,

(4) equipment failure, or (5) other causes?

If you answered **yes**, what were the starting and ending dates:

Start Date (mm/dd/yr) _____

Ending Date (mm/dd/yr) _____

9. Recycling and Reuse of Water or Wastewater Effluent

What types of water recycling or reuse activities are practiced by your utility? Examples: effluent irrigation, recycling filter backwash, or using effluent for chlorination at wastewater plant, etc.

10. The recycling and/or reuse (In Question 9) amounted to approximately _____ gallons per month for _____ months. (Number of months)
11. Approximately how much water did the utility save during the reporting period due to the overall conservation program? Review your water conservation plan regarding your gpcd and/or other goal(s)
 _____ Million gallons.

EFFECTIVENESS OF THE PROGRAM

(Review the stated goal(s) of your water conservation plan to gauge effectiveness)

12. In your opinion, how you would rank the effectiveness of your utility's conservation program?

Effective ___ Somewhat effective ___ Less than effective ___ Not effective ___

13. Does the staff of your utility review the conservation program on a regular basis? ___ Yes ___ No

How often? _____

Year your plan was approved _____

14. What types of problems did your utility encounter in implementing the water conservation program during the last 12 months?

15. What might your utility do to improve the effectiveness of your program?

16. What might the TWDB do to improve the effectiveness of your program?

17. If known, how much expense has your utility incurred in implementing this program during the reporting period (*literature, materials, staff time, etc.*)? \$ _____ (dollars/year)

18. If known, how much did your program save? \$ _____ (dollars/year based on water savings and treatment or purchase of waster costs and any deferred capital costs due to conservation).

To ensure we address future correspondence to the proper person, please type or print the following:

	Name	Title	Phone
Date			

Email address:

For a list of free technical assistance services available from the TWDB, please write or call at 512-463-7955, or check out our website:

<http://twdb.state.tx.us/assistance/conservation>

Return completed form to:

**Executive Administrator
Texas Water Development Board
P.O. Box 13231
Austin, TX 78711-13231
ATTN: CONSERVATION**

Covenants Regarding Tax-Exemption
DRAFT - 3-25-02

In the resolution of the Borrower authorizing the issuance of the Bonds to be purchased by the Board, the following section shall be inserted into the resolution, to read substantially as follows:

Section __. COVENANTS REGARDING TAX-EXEMPTION. The Borrower understands that the loan (the "Loan") has been made with the proceeds of tax-exempt bonds issued by the Board. The Borrower covenants to refrain from any action which would adversely affect, or to take such action to assure, the treatment of the Bonds as obligations described in section 103 of the Internal Revenue Code of 1986 (the "Code"), the interest on which is not includable in the "gross income" of the holder for purposes of federal income taxation. In particular, but not by way of limitation the Borrower agrees to take action to satisfy the requirements set forth in this subsection (the "Eligibility Requirements"). A Loan satisfying the Eligibility Requirements is referred to in this section as a "Qualified Investment."

(a) The Borrower agrees to provide to the Board a legal opinion from the counsel to the Borrower that the Loan constitutes a Qualified Investment.

(b) The Borrower represents and covenants to assure that the proceeds of the Loan, other than proceeds used for costs of issuing the Loan, are used to finance or refinance "water facilities" within the meaning of section 142(a)(4) of the Code or "sewage facilities" within the meaning of section 142(a)(5) of the Code as authorized by the Board.

(c) The Borrower covenants to refrain from any action that would result in the Bonds being directly or indirectly "federally guaranteed" within the meaning of section 149(b) of the Code.

(d) The Borrower covenants to comply with the limitations imposed by section 147(c) of the Code (relating to the limitation on the use of proceeds to acquire land) and section 147(d) of the Code (relating to restrictions on the use of bond proceeds to acquire existing buildings, structures or other property).

(e) The Borrower covenants not to use any portion of the proceeds of the Loan to provide an airplane, sky-box or other private luxury box, health club facility, facility primarily used for gambling or store the principal business of which is the sale of alcoholic beverages for consumption off-premises.

(f) The Borrower covenants to represent and covenant that the Loan will be used in accordance with the provisions of the constitutional amendment approved by the voters of the State of Texas at a referendum held on November 4, 1997, in accordance with section 147(f) of the Code.

(g) The Borrower covenants to covenant to refrain from using any portion of the proceeds of the Loan, directly or indirectly, to acquire or to replace funds which were used, directly or indirectly, to acquire investment property (as defined in section 148(b) (2) of the Code) which produces a materially higher yield over the term of the Bonds, other than investment property acquired with --

(i) proceeds of the Loan invested for a reasonable temporary period of three years from the date of issue of the bonds by the Board, until such proceeds are needed for the facilities,

(ii) amounts invested in a bona fide debt service fund, within the meaning of section 1.148-1(b) of the Regulations, and

(iii) amounts deposited in any reasonably required reserve or replacement fund to the extent such amounts do not exceed 10 percent of the stated principal amount (or, in the case of a discount, the issue price) of the Loan.

(h) The Borrower covenants to otherwise restrict the use of the proceeds of the Loan (or amounts within the control of the Borrower that are treated as proceeds of the Bonds) or to pay rebate to the United States in order to satisfy the requirements of section 148 of the Code (relating to arbitrage).

(i) The Borrower covenants to pay to the Board excess investment earnings required to be rebated to the United States of America at such times and in such amounts as will afford the Board the reasonable ability to make such payments as required by section 148(f) of the Code.

(j) The Borrower covenants to assure that the property financed with the proceeds of the Loan is described within Asset Class Lives category 49.3 for water utilities or Asset Class Lives category 50 for municipal waste water treatment plants as set forth in Rev. Proc. 87-56, 1987-2 C.B. 674 published by the Internal Revenue Service. Such lives are 50 years and 24 years, respectively.

It is the understanding of the Board and the Borrower that the covenants contained herein are intended to assure compliance with the Code and any final, temporary or proposed regulations or rulings promulgated by the U.S. Department of the Treasury pursuant thereto (collectively, the "Regulations"). In the event that regulations or rulings are hereafter promulgated which modify or expand provisions of the Code, as applicable to the Bonds, the Board and the Borrower will not be required to comply with any covenant contained herein to the extent that such failure to comply, in the opinion of nationally-recognized bond counsel, will not adversely affect the exemption from federal income taxation of interest on the tax-exempt bonds issued by the Board under section 103 of the Code. In the event that regulations or rulings are hereafter promulgated which impose additional requirements which are applicable to the tax-exempt bonds issued by the Board, the Board and the Borrower agree to comply with the additional requirements to the extent necessary, in the opinion of nationally-recognized bond counsel, to preserve the exemption from federal income taxation of interest on the tax-exempt bonds issued by the Board under section 103 of the Code.

SAMPLE LOAN AGREEMENT (WRD-263)

(This document is provided for illustration purposes only. The actual loan agreement will be tailored to each project.)

This Loan Agreement dated as of _____, 20____, is between the Texas Water Development BOARD ("BOARD") an agency of the State of Texas and the _____ Water Supply Corporation ("CORPORATION"), a water supply corporation created pursuant to the provisions of Article 1434a, Vernon's Annotated Texas Civil Statutes (now, Chapter 67, Texas Water Code). The CORPORATION has applied for a loan from the BOARD to provide monies to finance acquisition, construction, improvements and/or extensions to the CORPORATION'S water system to serve the members of the CORPORATION. In consideration of the mutual covenants and agreements contained in this Loan Agreement, the BOARD and the CORPORATION (Parties) agree as follows:

ARTICLE I. DEFINITIONS

Section 1.01. DEFINITIONS. In addition to all other words and terms defined herein, and unless a different meaning or intent clearly appears from the context, the following words and terms shall have the following meanings, respectively, whenever they are used herein:

Additional Notes - Parity debt issued by CORPORATION for any lawful purpose subsequent to execution of this Agreement.

Agreement - This Loan Agreement, together with all exhibits attached to this Loan Agreement, and all amendments and supplements to this Loan Agreement.

Annual Debt Service Requirements - For any Fiscal Year, the amount required to pay the principal and interest for the outstanding amount of the Note coming due in such Fiscal Year.

Application - The application for financial assistance submitted by the CORPORATION to the BOARD, in reliance upon which the Loan is to be made in accordance with the terms of this Agreement, as amended or supplemented in the manner mutually acceptable to the BOARD and the CORPORATION.

Article - Any subdivision of this Agreement designated with a roman numeral.

Certificate of Convenience and Necessity - Certificate of Convenience and Necessity Number _____ to the service area currently served by the CORPORATION.

Construction (including variations of "to construct") - Any one or more of the following:

- (a) preliminary planning to determine the feasibility of a water supply project;

- (b) engineering, architectural, legal, title, fiscal, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures, or other necessary actions;
- (c) the expense of any condemnation or other legal proceeding;
- (d) erecting, building, acquiring altering, remodeling, improving, or extending a water supply project; or
- (e) the inspection or supervision of any of the items listed in this subdivision.

Construction Fund - The Fund maintained at the depository bank of the CORPORATION into which all Installments shall be wired by the BOARD for payment of the cost of the Project.

Contingency Fund - An amount accumulated from the Gross Revenues of the Waterworks System and deposited into a fund separate and apart from other funds of the CORPORATION, for the purpose of maintenance, upkeep, operation, and replacements to the System, an amount equal to three (3) times the average monthly operation and maintenance costs of the System. All expenditures from the Contingency Fund must be approved by the Development Fund Manager of the BOARD as long as this Agreement is in full force and effect.

Cost - With respect to the Project, the cost of the Construction of the Project, including, without limitation, the cost of the acquisition of all land, rights-of-way, property rights, easements, and interest, the cost of all machinery and equipment, financing charges, interest during construction, necessary reserve funds, cost of estimates and of engineering, architectural and legal services, plans, specifications, surveys, estimates of cost and of revenue, other expenses necessary or incident to determining the feasibility and practicability of Constructing such Project, administrative expense, and such other expense as may be necessary or incident to the acquisition, construction, reconstruction, improvement, and expansion thereof, the placing of the same in operation, and the financing of the Project.

Deed of Trust - The Deed of Trust and Security Agreement of even date herewith executed by the CORPORATION which establishes a security interest to secure the debt obligation to the BOARD by providing for a lien on certain real and personal property constituting the CORPORATION'S Waterworks System, in substantially the form attached hereto as Exhibit A of this Agreement.

Event of Default- A default as defined in Article VII of this Agreement.

Fiscal Year - The consecutive twelve-month period of the CORPORATION certified to the BOARD as its fiscal year.

Gross Revenues - All revenues and income of every nature derived or received by the CORPORATION from the operation and/or ownership of the Waterworks System (exclusive of

restricted gifts, grants, requests, donations and contributions), including the interest income from the investment or deposit or money in any Fund created by this Agreement.

Installments - The Note proceeds that are wired by the BOARD to the Construction Fund in accordance with the provisions of Section 6.01 of this Agreement.

Loan - The loan as described in Section 3.01.

Loan Payments or Payments - Payments required to be made by the CORPORATION to amortize the Note in accordance with the Repayment Schedule and to pay other amounts due with respect to the Note, all as provided for in this Agreement, including (1) the principal of, and interest on such Notes when due (whether at stated maturity or upon acceleration of stated maturity), (2) any other payments required hereunder.

Net Revenues - All Gross Revenues less Operation and Maintenance Expenses.

Note - the Promissory Note, a copy of which is attached hereto as Exhibit B to this Agreement.

Operation and Maintenance Expenses - All reasonable and necessary expenses required for the efficient operation and maintenance of the Waterworks System, including, without limitation, insurance premiums in connection with the BOARD, administrative expenses, salaries, labor, fees, materials, contractual and professional services, keeping the Waterworks System in good condition and working order making all needed repairs, and providing for all needed periodic and non-recurring items of maintenance.

Parties - BOARD and CORPORATION.

Project - The land, buildings, equipment, facilities, and improvements which will be funded, in whole or in part, by the BOARD, a copy of which description is attached hereto as Exhibit C to this Agreement.

Repayment Schedule - The schedule of monthly Loan Payments due from the CORPORATION to amortize the Note, subject to revision with the release of each Installment and attached hereto as Exhibit D.

Reserve Fund - The fund maintained in trust at the CORPORATION's depository bank for payment of Loan Payments in the event of failure by the CORPORATION to make payments on the requisite Loan Payments date.

Resolution - BOARD resolution number _____, dated _____, approving the Application of the CORPORATION and authorizing the execution of this Agreement.

Revenue Fund - The fund created and held by the Corporation to be maintained as long as the Loan is outstanding and unpaid. All Gross Revenues of the Waterworks System, excepting investment and income from the Reserve Fund, shall be credited to the Revenue Fund immediately upon receipt. All Operation and Maintenance Expenses of the Waterworks System shall be paid from such amounts credited to the Revenue Fund as a first charge against the Waterworks System revenues.

State - The State of Texas.

System or Waterworks System - All properties, facilities and plants currently owned and operated by the CORPORATION for water supply treatment and transmission thereto, and potable water, together with future improvements, extensions, enlargements and additions thereto.

United States - The United States of America

Water Code - Chapters 15 and 17, Texas Water Code, Vernon's Texas Codes Annotated.

ARTICLE II. RECITALS, FINDINGS, AND REPRESENTATIONS

Section 2.01. RECITALS, FINDINGS AND REPRESENTATIONS OF THE BOARD. The BOARD hereby finds and represents as follows:

- (a) It is an agency of the State, organized and existing under the constitution and statutes of the State, including particularly the Water Code.
- (b) It has determined, in the public interest, that it will finance the Cost of the Project, in reliance upon the information provided by the CORPORATION in the Application, and will make the Loan for such purpose in the manner provided in the Water Code and as described in this Agreement.
- (c) It is authorized to execute and deliver this Agreement pursuant to applicable laws, including the Water Code.
- (d) It has taken all action and has complied with all provisions of law with respect to the adoption of the Resolution and the due authorization, execution, delivery and performance of this Agreement, and this Agreement has been duly executed and constitutes a valid and binding of the BOARD, enforceable against the BOARD in accordance with its terms.

Section 2.02. RECITALS, FINDINGS AND REPRESENTATIONS OF THE CORPORATION. The CORPORATION hereby finds and represents as follows:

(a) It was created pursuant to the provisions of Article 1434a, Vernon's Annotated Texas Civil Statutes (now, Chapter 67, Texas Water Code), and the Texas Non-Profit Corporation Act, is fully qualified to transact business in the State, and is fully authorized by law and corporate proceedings to execute and deliver this Agreement and the Note.

(b) It has submitted the Application to the BOARD seeking financial assistance in paying the Costs of the Project; and there has been no material change in the affairs or financial condition of the CORPORATION since filing the Application with the BOARD.

(c) The Application accurately describes the Project and does not contain any misstatement of fact and does not omit any fact that would materially affect the Project as described in the Application.

(d) It has been duly certified to provide water utility services under its Certificate of Convenience and Necessity, and it will do or cause to be done all things necessary to preserve and keep in full force and effect the Certificate of Convenience and Necessity.

(e) It will take all necessary actions throughout the term of this Agreement to maintain its corporate existence in accordance with the provisions of Article 1434a, Vernon's Annotated Texas Civil Statutes (now, Chapter 67, Texas Water Code.)

(f) The governing body of the CORPORATION has approved this Agreement and the Note by written resolution within the context of an open meeting held in accordance with the provisions of Chapter 551, Texas Government Code.

(g) It has taken all action and has complied with all provisions of law with respect to the authorization, execution, delivery and performance of this Agreement and the Note, and the consummation of the transactions contemplated hereby and thereby, and this Agreement and the Note have been duly executed and constitute valid and legally binding obligations of the CORPORATION, enforceable against it in accordance with their respective terms.

(h) The execution of this Agreement and the performance of the transactions contemplated hereby will not violate any law or regulation, or its Articles of Incorporation, or Bylaws, or any judicial order, judgment, decree, or injunction, or contravene the provisions of or constitute a default under any agreement, indenture, note, resolution, or other instrument to which the CORPORATION is a party.

(i) It has disclosed to the BOARD all financial obligations of the CORPORATION secured by the Gross Revenues.

Section 2.03. NO WAIVER OF SOVEREIGN IMMUNITY. The execution of this Agreement and related documents shall not constitute a waiver of sovereign immunity provided pursuant to applicable laws.

ARTICLE III. LOAN TERMS AND NOTE

Section 3.01. LOAN TERMS. In consideration of the CORPORATION's duties and obligations to Construct the Project, as described in Article V hereof, the BOARD agrees to loan to the CORPORATION the principal sum of _____ (hereinafter referred to as the "Loan"), the proceeds of the Loan to be disbursed in Installments and bearing interest at fixed rates as set forth in the Note and Repayment Schedule. The term of the Loan is for ____ years from _____(date). The Loan is evidenced by a Note of even date herewith made payable to the BOARD. The CORPORATION agrees to use the Loan and its proceeds solely for activities to further the purposes set forth in the Application and in accordance with the Resolution, the terms and conditions of this Agreement, the Note, the Deed of Trust, and the rules, regulations, and policies of the BOARD. All approvals, permits and authorizations necessary in connection with the construction and operation of the Project must be completed and received by CORPORATION prior to the release of funds for construction.

Section 3.02. ISSUANCE OF NOTE. (a) In consideration of the covenants and agreements as set forth in this Agreement, and to enable the BOARD to make the Loan, this Agreement is executed to assure the payment of the Note, and to provide for the due and punctual payment by the CORPORATION of the Loan Payments to be made pursuant to the Note. The CORPORATION shall make the Loan Payments as provided in this Agreement.

(b) Notwithstanding any provisions of this Agreement or any other contract or agreement to the contrary, the CORPORATION'S approval of this Agreement shall be the CORPORATION'S agreement that all covenants and provisions herein affecting the CORPORATION shall, upon the delivery of the Note, become unconditionally valid and binding covenants and obligations of the CORPORATION so long as the Note and the interest thereon are outstanding and unpaid. The obligation of the CORPORATION to make promptly, when due, all Loan Payments specified herein shall be absolute and unconditional, and said obligation may be enforced as provided in this Agreement, regardless of any other provisions of this Agreement or any other contract or agreement to the contrary.

Section 3.03. INTEREST. The interest to be paid on the unpaid principal balance of the Note will be payable as shown on the Repayment Schedule attached to the Note, such Repayment Schedule of interest and principal will be computed on the basis of a 360-day year of twelve 30-day months.

Section 3.04. LOAN PAYMENTS. (a) Payment of all Loan Payments shall be made from the Revenue Fund and deposited as required by this Agreement and the Note including all such payments which may come due because of the acceleration of the maturity of the Note upon default, or otherwise, under the provisions of this Agreement. Loan payments related to each Installment shall be structured for payment related to the Installment closed such that payment shall be made more than 30 days after closing the first Installment and no more than 60 days after closing the first Installment.

If the date for the payment of the principal of or interest on this loan shall be a Saturday, Sunday, legal holiday or day on which banking institutions where the depository bank is located are required or authorized by law or executive order to close, the date for such payment shall be the next succeeding day which is not a Saturday, Sunday, legal holiday or day on which banking institutions are required or authorized to close and payment on such date shall for all purposes be deemed to have been made on the original date payment was due.

(b) Recognizing that the Loan Payments will be the sole source for the payment of the Note, the CORPORATION shall be unconditionally obligated to make and pay, or cause to be made and paid, each Loan Payment regardless of whether or not the CORPORATION actually acquires or completes the Project, or whether or not the CORPORATION actually approves, purchases, receives, accepts, or uses the Project; and such payments shall not be subject to any abatement, set-off, recoupment, or counterclaim; and the holders of the Note shall be entitled to rely on this Agreement and representation, notwithstanding any provisions of this Agreement or any other contract or agreement to the contrary, and regardless of the validity of, or the performance of, the remainder of this Agreement or any other contract or agreement. In consideration of its obligation to make or pay, or cause to be made or paid, the Loan Payments, the CORPORATION hereby pledges and grants a lien to the BOARD of the Gross Revenues of the System, as provided in Section 6.02 hereof.

Section 3.05. PAYMENTS TO THE CORPORATION. From the proceeds of the Note, each Installment shall be wired by the BOARD directly into the Construction Fund maintained in the depository bank of the CORPORATION and the Construction Fund shall only be used for payment of Project Costs.

Section 3.06. RESERVE FUND. Simultaneously with the transfer by the BOARD of the first Installment of Note proceeds, the CORPORATION shall initiate monthly deposits in the Reserve Fund from available funds of the CORPORATION, on or before the first, 10th or 15th day or other date in order to correspond with dates for other parity debt, commencing on or before the first day of the month next following the transfer of the first Installment (from operating revenues and/or from earnings on investments in the Reserve Fund) an amount not less than 1/60th of the average Annual Debt Service Requirements on the Note until the Reserve Fund contains an amount at least equal to 100% of the average Annual Debt Service Requirements of the Note (the "Required Reserve").

As and when Additional Notes, issued in accordance with the provisions of Section 3.07, are delivered, the Required Reserve shall be increased to an amount specified in the resolution authorizing the issuance of such additional notes, but in no event shall the Required Reserve ever be less than 100% of the average annual Debt Service Requirements of all outstanding Notes. Any additional amount required shall be so accumulated by the deposit in the Reserve Fund of all or any part of said required additional amount in cash immediately after the delivery of the Note, or by the deposit of said required additional amount (or any balance of said required additional amount not deposited in cash as permitted above) in monthly installments, made on or

before the 1st day of each month following the delivery of the then proposed Note, of not less than 1/60th of said required additional amount (or 1/60 of the balance of said required additional amount not deposited in cash as permitted above). The Reserve Fund shall be used to pay the principal of or interest on the Note at any time when there is not sufficient money available for such purpose, or to pay the debt service on the last maturing Note to pay Loan Payments.

For the purpose of determining the amount on deposit to the credit of the Reserve Fund, investments in which money in such account shall have been invested shall be computed at the market value of such investment. The amount on deposit to the credit of the Reserve Fund shall be computed by the CORPORATION at least annually, and shall be computed immediately upon any withdrawal from the Reserve Fund.

When and so long as the money and investments in the Reserve Fund total not less than the Required Reserve, no deposits need be made to the credit of the Reserve Fund; but when and if the Reserve Fund at any time contains less than the Required Reserve (other than during the initial build-up period permitted in the first paragraph of this Section or as the result of the issuance of Additional Notes as provided in the second paragraph of this Section), the CORPORATION covenants and agrees to cure the deficiency in the required Reserve Fund within twelve (12) months from the date the deficiency in funds occurred.

Section 3.07. ADDITIONAL NOTES. (a) Subject to the provisions of subparagraph (b) hereof, the CORPORATION reserves the right to issue additional parity debt to the BOARD, to be known as Additional Notes, which, when issued and delivered, shall be payable from and secured by this Agreement and shall be covered by the Deed of Trust in the same manner and to the same extent as the current Note.

(b) No Additional Notes shall be issued unless:

- (i) The written consent of the BOARD is obtained.
- (ii) A certificate is executed by the President or the chief administrative officer of the CORPORATION to the effect that no default exists in connection with any of the covenants or requirements of the Agreement and the Contingency Fund and the Reserve Fund each contains the amount then required to be on deposit therein;
- (iii) An independent certified public accountant, or independent firm of certified public accountants, acting by and through a certified public accountant, signs a written certificate to the effect that, in his or its opinion, during either the next preceding fiscal year, or any twelve consecutive calendar month period ending not later than 90 days preceding the month in which the then proposed Additional Notes is authorized, the Net Revenues were at least 1.25 times the average Annual Debt Service Requirements of all Notes and Additional Notes which are scheduled to be outstanding after the delivery of the then proposed Additional Notes. It is specifically provided, however, that in calculating the amount of Net Revenues for the purposes of this subparagraph (iii), if

there has been any increase in the rates or charges for services of the Waterworks System which is then in effect and which has been in effect for at least 60 days prior to the month in which the resolution authorizing the issuance of the proposed Additional Notes is authorized, but which was not in effect during all of the entire period for which the Net Revenues are being calculated (hereinafter referred to as the "entire period") then the certified public accountant, or in lieu of the certified public accountant a firm of consulting engineers, shall determine and certify the amount of Net Revenues as being the total (i) the actual Net Revenues for the entire period, plus (ii) a sum equal to the aggregate amount by which the actual billings to customers of the Waterworks System during the entire period would have been increased if such increased rates or charges had been in effect during the entire period.

(c) All certifications must be delivered to the BOARD at least 30 days prior to any Additional Notes being issued.

(d) The CORPORATION further reserves the right to issue notes, or other obligations of inferior liens and notes, or other obligations payable from sources other than Net Revenues pledged herein.

(e) All Notes of all series from time-to-time issued and delivered under this Agreement shall be equally and ratably secured together.

ARTICLE IV. REPAYMENT

Section 4.01. REPAYMENT OF LOAN. (a) The CORPORATION unconditionally agrees that it shall make Loan Payments to the BOARD in lawful money of the United States, and in such amounts and at such times as shall be necessary to make full and prompt payment of the principal and interest on the Note when due, and all fees and expenses for the Note, and of all other amounts required to be paid by this Agreement. Upon the issuance and delivery of the Note to the BOARD and the transfer of the first Installment into the Construction Fund, the CORPORATION shall have received, and the BOARD shall have given full and complete consideration for the CORPORATION's obligation hereunder to make Loan Payments. The obligations of the CORPORATION to make the payments required by this Agreement shall be absolute and unconditional and shall not be subject to diminution by set-off, recoupment, counterclaim, abatement, or otherwise, and until such time as all Loan Payments shall have been made or provision therefor shall have been made in accordance with the Agreement, the CORPORATION: (i) will not suspend or discontinue, or permit the suspension or discontinuance of, any payments provided for in this Agreement; (ii) will perform and observe all of its other agreements contained in this Agreement; and (iii) will not terminate this Agreement for any cause including failure of the Project to comply with the plans and specifications therefor, any acts or circumstances that may constitute failure of consideration, destruction of, or damage to the Project, frustration of commercial purpose, any change in the tax or other laws or administrative rulings of or administrative actions by the United States or the State, or any

political subdivision of either, or any failure of the BOARD to perform and observe any agreement, whether expressed or implied, or any duty, liability, or obligation arising out of or in connection with this Agreement. Nothing contained in this Section shall be construed to release the BOARD from the performance of any of the agreements on its part contained herein.

(b) All interest paid or agreed to be paid on the Loan shall, to the extent permitted by applicable law, be allocated and spread throughout the full term of the Note until payment in full of the principal of the Note (including the period of any renewal or extension thereof) so that interest thereon for such full period shall not exceed the maximum amount permitted by applicable law.

(c) The Loan Payments shall be made monthly on the first, 10th or 15th of each month or other date in order to correspond with dates for parity in accordance with the Repayment Schedule as stated and supplemented in Exhibit D attached hereto and at the interest rates specified in the Note. It is the intent of the parties hereto that the obligation of the CORPORATION to pay interest on the Note shall commence, with respect to each Installment deposited to the credit of the Construction Fund, on the date such Installment is so deposited, and an amended Repayment Schedule shall be filed with the BOARD upon the receipt of each Installment and/or prepayments made by the CORPORATION.

Section 4.02. MONTHLY REPAYMENTS. Principal and interest will be paid in monthly amortized payments according to the repayment schedule, which is subject to change based on additional Installments being closed.

Section 4.03. APPLICATION OF LOAN REPAYMENTS. Each repayment shall be applied first to the payment of the accrued interest and second to the payment of the principal.

Section 4.04. LATE CHARGES. The CORPORATION shall pay a late charge of \$25.00 if repayment for any of the Installments is not received within 15 days following the due date. The late charges shall be considered unpaid if not received within 30 calendar days of the missed due date for which it is imposed. Acceptance of the late charges by the BOARD does not constitute a waiver of default.

Section 4.05. WIRE TRANSFER. On or before the date that the BOARD delivers an Installment to the CORPORATION, the BOARD shall provide the CORPORATION with a Repayment Schedule for the Installment. With each subsequent Installment, the BOARD shall provide the CORPORATION with a revised Repayment Schedule which shall reflect the amount of the Installment. The CORPORATION agrees to make monthly principal and interest payments on the first, 10th or 15th of each month according to the Repayment Schedule, as revised. For purposes of this Agreement, the date the BOARD delivers each Installment to the CORPORATION shall be considered the date that the BOARD wires funds to the CORPORATION's bank account. On the repayment dates, the CORPORATION shall wire all principal and/or interest payments due according to instructions provided by the BOARD.

ARTICLE V. THE PROJECT

Section 5.01. APPROVALS AND PERMITS. The CORPORATION agrees to obtain the necessary approvals and permits for this construction, improvements and extensions of the Project.

Section 5.02. CONSTRUCTION. (a) The Project shall be Constructed in accordance with plans and specifications submitted to and approved by the BOARD.

(b) The Project shall be Constructed with all reasonable dispatch, and the CORPORATION will use its best efforts to cause the Construction of the Project to be completed as soon as practicable, delays incident to strikes, riots, acts of God, or the public enemy, or other causes beyond the reasonable control of the CORPORATION only excepted; but if for any reason there should be delays in such Construction there shall be no diminution Loan Payments to be made by the CORPORATION hereunder, and no resulting liability on the part of the BOARD.

(c) The CORPORATION shall Construct the Project or cause the Project to be Constructed and the BOARD shall have no responsibility or liability whatsoever with respect to the Project and the Construction thereof. It is agreed and understood that the CORPORATION has entered or will enter into and execute all agreements and contracts necessary to assure and accomplish the actual Construction of the Project and that the CORPORATION will carry out, pay, supervise, and enforce all such agreements and contracts, and will provide for such insurance on and in connection with the Construction of the Project as is required by law and this Agreement. The CORPORATION shall pay, from proceeds from the Loan, and from any available income or earnings derived therefrom, and from other funds of the CORPORATION to the extent necessary, the entire Cost of the Project. The CORPORATION shall promptly pay all taxes, including specifically all sales taxes and ad valorem taxes, in connection with the Project and the Construction thereof. The BOARD shall make the Loan to the CORPORATION by depositing to the Construction Fund the Installments, which shall be used by the CORPORATION to pay all or part of the Cost of the Project, in accordance with procedures established herein and in accordance with BOARD rules.

Section 5.03. TITLE. The BOARD shall have no right, title, or interest in and to the Project except as created by the Deed of Trust. Except for making the Loan to the CORPORATION in the manner provided in this Agreement, the BOARD shall not be responsible or liable in any manner for any claims, losses, damages, penalties, costs, taxes, or fines with respect to the Construction, operation, maintenance, or ownership of the Project.

Section 5.04. OPERATION. The CORPORATION represents and covenants that it will operate and maintain the Project, or cause the Project to be operated and maintained, and will pay, or cause to be paid, all costs and expenses of operation and maintenance of the Project,

including all applicable taxes, and that it will keep or cause to be kept in force adequate insurance on the Project as is prudent customarily carried by persons engaged in the same business and operating systems like the Project. It is understood and agreed that the BOARD shall have no duties or responsibilities whatsoever with respect to the operation or maintenance of the Project, or the performance of the Project for its designed purposes.

ARTICLE VI. FINANCING THE PROJECT

Section 6.01. **THE CONSTRUCTION FUND.** The BOARD shall make the Loan to the CORPORATION by depositing from time to time into the Construction Fund the Installments. The amounts so deposited into the Construction Fund shall be transferred by wire from the BOARD pursuant to duly executed Requisitions filed with the BOARD, in the form attached hereto as Exhibit E, and the CORPORATION shall repay the Note by making the Loan Payments as provided in this Agreement.

Section 6.02. **SECURITY FOR THE LOAN.** The obligations of the CORPORATION under this Agreement shall be a direct general obligation to the CORPORATION. As additional security for the payment of the Loan Payments and as further consideration for the Loan made hereunder, there is attached to this Agreement, and made a part hereof as additional security for the payment of Loan Payments, a Deed of Trust for the benefit of the holders of the Note, and to further secure the prompt payment of the Loan Payments and the performance by the CORPORATION of its other obligations hereunder, the CORPORATION hereby pledges and assigns to the BOARD, and grants a security interest in, all Gross Revenues of the Waterworks System.

Section 6.03. **INDEMNITIES.** The CORPORATION releases the BOARD, its officers, employees and agents, and the members of its governing body (collectively the "Indemnified Parties") from any and all liability, cost, expense, damage or loss of whatever nature (including, but not limited to, attorneys' fees, litigation and court costs, amounts paid in settlement, and amounts paid to discharge judgments) directly or indirectly resulting from, arising out of, in connection with, or related to (i) the issuance, offering, sale, delivery or payment of the Note and this Agreement and the obligations imposed on the BOARD hereby and thereby; or the construction, operation, use, occupancy, maintenance, or ownership of the Project; (ii) any written statements or representations made or given by the CORPORATION or any of its officers or employees to the Indemnified Parties, or any purchasers of the Note, with respect to the BOARD, the CORPORATION, the Project, or the Note, including, but not limited to, statements or representations of facts, financial information, or corporate affairs; (iii) damage to property or any injury to or death of any person that may be occasioned by any cause whatsoever pertaining to the Project. The provisions of the preceding sentence shall remain and be in full force and effect even if any such liability, cost, expense, damage or loss or claim therefor by any person, directly or indirectly results from, arises out of, or relates to or is asserted to have resulted from, arisen out of, or related to, in whole or in part one or more negligent acts or

omissions of the Indemnified Parties or any other party acting for or on behalf of the Indemnified Parties in connection with the matters set forth in clauses (i) through (iii) of said sentence.

Section 6.04. CONTINGENCY FUND. The CORPORATION agrees to maintain at its depository bank a fund separate from all other funds and accounts established pursuant to this Agreement the Contingency Fund. The required balance is to be accumulated through System revenues collected over a period of five (5) years in sixty (60) equal monthly installments to be deposited into the Contingency Fund. The CORPORATION, upon receiving the prior written approval of the Development Fund Manager of the BOARD, may withdraw moneys from the Contingency Fund and use such moneys for the purpose submitted to and approved by the Development Fund Manager. When and so long as the amount in the Contingency Fund is not less than the required amount, no deposits shall be made to the credit of the Contingency Fund, but if the Contingency Fund at any time contains less than the required amount, the CORPORATION shall begin within sixty days of notice by the BOARD to deposit a monthly sum equal to 1/60th of the required amount, until the Contingency Fund is restored to the required amount.

ARTICLE VII. REPORTING REQUIREMENTS

Section 7.01 RECORDS AND ACCOUNTS. The CORPORATION shall keep and maintain complete records and accounts pertaining to the operation of the System including, without limitation, reports regarding the Construction Fund, the Contingency Fund and the Reserve Fund, in accordance with generally accepted accounting principles for water utilities and shall provide the BOARD with the following reports and any other report as the BOARD shall from time to time reasonably require.

Section 7.02. ANNUAL AUDIT. While the loan is outstanding, the CORPORATION will submit an annual audit of the general purpose financial statements prepared in accordance with generally accepted auditing standards by a certified public accountant or licensed public accountant. Audits shall be submitted to the BOARD no later than ninety (90) days following the close of the CORPORATION'S fiscal year.

Section 7.03. QUARTERLY REPORTS. Quarterly reports for periods ending March 31, June 30, September 30 and December 31 are due 30 days after the end of the period and shall consist of the following:

- (A) Statement of monthly revenues and expenses
- (B) Balance sheet
- (C) Deposits to and withdrawals from the Construction Fund, the Contingency Fund, the Revenue Fund and the Reserve Fund

Section 7.04. BUDGET. The CORPORATION shall deliver a copy of its adopted budget to the BOARD no later than (thirty) 30 days prior to the start of each Fiscal Year of the CORPORATION.

Section 7.05. PROGRESS REPORTS. Not more than ninety (90) days following the end of each Fiscal Year, the CORPORATION will provide the BOARD with a full and complete report on the use of the proceeds of the Loan, setting forth the progress made by the CORPORATION during the preceding Fiscal Year in achieving the purposes set forth in Section 1 and a statement, certified by the board of the CORPORATION, that the CORPORATION is in compliance with the terms of the Resolution and this Agreement.

Section 7.06. ADDITIONAL REPORTING. The CORPORATION will provide the BOARD with such additional information, reports, statements and certificates with respect to the Loan that the BOARD may from time to time reasonably request.

Section 7.07. FINAL ACCOUNTING. Upon completion of the Project and after the CORPORATION submits the final funds requisition, and a copy of the construction plans for the Project as built and completed, a final accounting will be made to the Development Fund Manager of the BOARD. The final accounting will account for all sources, amounts and uses of funds in completion of the Project. Any surplus loan funds shall be used in accordance with Section 9.03. The CORPORATION will retain all construction records for three (3) full Fiscal Years following the submission of the final funds requisition.

ARTICLE VIII. DEFAULT

Section 8.01. An Event of Default means the occurrence and/or continuance of any one of the following:

(a) the failure of the CORPORATION to make payment of any Loan Payment within ten (10) business days of the date such Loan Payment is due and payable; or

(b) the failure, inability or unwillingness of the CORPORATION to carry out or comply with the specific activities in the Application or with any of the terms or conditions of this Agreement, the Note, the Deed of Trust, or any applicable State or Federal laws or rules of the BOARD, and the continuation of said failure inability or unwillingness for a period of fifteen (15) days following written notice from the BOARD to the CORPORATION; or

(c) the failure, inability or unwillingness of the CORPORATION to carry out or comply with the specific activities of any other instrument evidencing a debt or other obligations of the CORPORATION to the BOARD or securing such a debt or other obligation, and default under any such other instrument; or

(d) the CORPORATION becomes insolvent, or ceases or is unable to, or admits in writing its inability to pay its debts as they mature, or makes a general assignment for the benefit of or entering into any composition or arrangement with creditors; or (2) the CORPORATION is the debtor in proceedings for the appointment of a receiver, trustee, or liquidator of the

CORPORATION or of a substantial part of its assets, being authorized or instituted by or against the CORPORATION; or

(e) the event in which the CORPORATION were to be adjudicated bankrupt or insolvent or commencing a voluntary case under the federal bankruptcy laws of the United States or filing a voluntary petition or answer seeking reorganization, an arrangement with creditors or an order for relief or seeking to take advantage of any insolvency law or file an answer admitting the material allegations of a petition files against it in any bankruptcy, organization or insolvency proceeding, or action taken by the CORPORATION for the purpose of effecting any of the foregoing; or

(f) if, without the application, approval or consent of either of the parties to this Agreement, a proceeding shall be instituted in any court of competent jurisdiction under any law relating to bankruptcy, insolvency, reorganization, dissolution, winding up, liquidation, a composition or arrangement with creditors, a readjustment of debts, the appointment of a trustee, receiver, liquidator, custodian or the like of the CORPORATION of all or any substantial part of its assets or other like relief under bankruptcy or insolvency law, and the same shall (A) result in the entry of an order for relief or any such appointment or (B) continue undismissed, or pending and unstayed, for a period of thirty (30) calendar days from the commencement of such proceeding; or

(g) the submission or making of any reports, statement, warranty, or representation by the CORPORATION or its agent on its behalf to the BOARD in connection with the financial assistance awarded hereunder which is false, incomplete or incorrect in any material respect, or

(h) the failure of the CORPORATION to remedy any material, adverse change in its financial or other condition arising since the date of the Resolution approving the Loan, and the continuation thereof for a period of fifteen (15) days following written notice thereof by the BOARD to the CORPORATION; or

(i) the occurrence of an Event of Default under the Deed of Trust.

Section 8.02. ACCELERATION. If an Event of Default shall have occurred and be continued, the BOARD, by written notice to the CORPORATION, may declare the principal of the Note and the interest accrued thereon immediately due and payable. On the day on which such notice is given by the BOARD, subject to the provisions of the BOARD, the Note shall be due and payable.

Section 8.03. VENUE. In the event of a default in payment of the principal of or interest on the Note or any other default as provided for in this Agreement or any other contested matter arising as a result of the provisions of this Agreement, proceedings shall be brought and venue shall be in a district court of Travis County.

ARTICLE IX. SPECIAL COVENANTS

Section 9.01. **APPLICABLE LAW.** Interpretation of this Agreement shall be governed and enforced in accordance with the laws of the State and the United States.

Section 9.02. **RULES, REGULATIONS AND POLICIES OF THE BOARD.** The CORPORATION agrees and covenants to comply with all applicable laws of the State and the United States and with the rules, regulations and policies of the BOARD with respect to the Loan and performance of this Agreement as evidenced by the Resolution and this Agreement and all exhibits.

Section 9.03 **USE OF PROCEEDS.** The proceeds of the Note may be used only for the purpose of (1) paying the Cost of the Construction of the Project and (2) the payment of the costs incident to the issuance of the Note, including but not limited to the fees and expenses of attorneys. Any surplus loan funds remaining after satisfaction and completion of such purposes shall be applied to the Project or the debt service that is payable to the BOARD. Said application of surplus loan funds shall have the prior approval of the BOARD.

Section 9.04. **INCONSISTENT PROVISIONS.** All resolutions or agreements or parts thereof which are in conflict or inconsistent with any provision of this Agreement are hereby repealed to the extent that such conflict and the provisions of this Agreement shall be and remain controlling as to the matters contained herein.

Section 9.05. **ADDITIONAL DEBT.** The CORPORATION will not borrow any money from any source or enter into any contract or agreement or incur any other liabilities in connection with making extensions or improvements to the System, exclusive of normal maintenance, without obtaining the prior written consent of the BOARD.

Section 9.06. **TITLE AND ASSETS.** The CORPORATION will not dispose of or transfer title in whole or in part to any portion of the property or assets of the System by sale, security instrument, lease or other encumbrance, without obtaining the prior written consent of the BOARD. Revenues, in excess of the amount required to operate and maintain the System to pay the debt service to the BOARD, or to fund the Contingency Fund or the Reserve Fund, will not be distributed or transferred to any other person or entity.

Section 9.07. **REFINANCING.** The CORPORATION may not refinance the amount of indebtedness outstanding to the BOARD for the first ten years after the date on which the last Installment is closed.

Section 9.08. **WATER SERVICE.** The CORPORATION will maintain the System in good condition; will operate the System in an efficient manner and at reasonable cost; will provide adequate service to all persons within the service area who can feasibly and legally be served; and will obtain the BOARD'S concurrence prior to refusing new or adequate service to

such persons. No free services of the System shall be allowed, and all customers or users of the System shall be billed and amounts collected in a prompt and timely manner.

Section 9.09. INSURANCE. While the Note remains outstanding, the CORPORATION agrees to acquire and maintain casualty insurance, liability insurance and other kinds of insurance customarily and commonly carried by entities similarly situated and owning and operating similar properties with insurance companies licensed to do business and in good standing with the Texas Department of Insurance and the State and in such amounts to afford adequate protection to the CORPORATION against the insured risk, loss or damage and will enable the CORPORATION to provide for the continued operation of the System.

Section 9.10. RATES AND CHARGES. The CORPORATION covenants and agrees that so long as indebtedness pursuant to the Note is outstanding, the CORPORATION will fix, establish, maintain and collect such rates, charges and fees for the use and availability of the Waterworks System as are necessary to produce Gross Revenues sufficient (a) to pay all operation and maintenance expenses of the Waterworks System; (b) to make all payments and deposits required to be made into the Revenue Fund and to maintain the balances of the various funds herein created; and (c) to pay all other legal obligations of the CORPORATION whether secured or unsecured.

Section 9.11. COVENANTS REGARDING TAX-EXEMPTION. The CORPORATION understands that the Loan has been made with the proceeds of tax-exempt bonds issued by the Board (the "Bonds"). The CORPORATION covenants to refrain from any action which would adversely affect, or to take such action to assure, the treatment of the Bonds as obligations described in section 103 of the Internal Revenue Code of 1986 (the "Code"), the interest on which is not includable in the "gross income" of the holder for purposes of federal income taxation. In particular, but not by way of limitation the CORPORATION agrees to take action to satisfy the requirements set forth in this subsection (the "Eligibility Requirements"). A Loan satisfying the Eligibility Requirements is referred to in this section as a "Qualified Investment."

(a) The CORPORATION agrees to provide to the BOARD a legal opinion from the counsel to the CORPORATION that the Loan constitutes a Qualified Investment.

(b) The CORPORATION represents and covenants that the proceeds of the Loan, other than proceeds used for costs of issuing the Loan, are used to finance or refinance "water facilities" within the meaning of section 142(a)(4) of the Code as authorized by the BOARD.

(c) The CORPORATION covenants to refrain from any action that would result in the Bonds being directly or indirectly "federally guaranteed" within the meaning of section 149(b) of the Code.

(d) The CORPORATION covenants to comply with the limitations imposed by section 147(c) of the Code (relating to the limitation on the use of proceeds to acquire land) and section

147(d) of the Code (relating to restrictions on the use of bond proceeds to acquire existing buildings, structures or other property).

(e) The CORPORATION covenants not to use any portion of the proceeds of the Loan to provide an airplane, sky-box or other private luxury box, health club facility, facility primarily used for gambling or store the principal business of which is the sale of alcoholic beverages for consumption off-premises.

(f) The CORPORATION covenants and represents that the Loan will be used in accordance with the provisions of the constitutional amendment approved by the voters of the State of Texas at a referendum held on November 4, 1997, in accordance with section 147(f) of the Code.

(g) The CORPORATION covenants to refrain from using any portion of the proceeds of the Loan, directly or indirectly, to acquire or to replace funds which were used, directly or indirectly, to acquire investment property (as defined in section 148(b)(2) of the Code) which produces a materially higher yield over the term of the Bonds, other than investment property acquired with --

(i) proceeds of the Loan invested for a reasonable temporary period of three years from the date of issue of the bonds by the BOARD, until such proceeds are needed for the facilities,

(ii) amounts invested in a bona fide debt service fund, within the meaning of section 1.148-1(b) of the Regulations, and

(iii) amounts deposited in any reasonably required reserve or replacement fund to the extent such amounts do not exceed 10 percent of the stated principal amount (or, in the case of a discount, the issue price) of the Loan.

(h) The CORPORATION covenants to otherwise restrict the use of the proceeds of the Loan (or amounts within the control of the CORPORATION that are treated as proceeds of the Bonds) or to pay rebate to the United States in order to satisfy the requirements of section 148 of the Code (relating to arbitrage).

(i) The CORPORATION covenants to pay to the BOARD excess investment earnings required to be rebated to the United States of America at such times and in such amounts as will afford the Board the reasonable ability to make such payments as required by section 148(f) of the Code.

(j) The CORPORATION covenants to assure that the property financed with the proceeds of the Loan is described within Asset Class Lives category 49.3 for water utilities or Asset Class Lives category 50 for municipal waste water treatment plants as set forth in Rev. Proc. 87-56, 1987-2 C.B. 674 published by the Internal Revenue Service. Such lives are 50 years and 24 years, respectively.

(i) It is the understanding of the BOARD and the CORPORATION that the covenants contained herein are intended to assure compliance with the Code and any final, temporary or proposed regulations or rulings promulgated by the U.S. Department of the Treasury pursuant thereto (collectively, the "Regulations"). In the event that regulations or rulings are hereafter promulgated which modify or expand provisions of the Code, as applicable to the Bonds, the BOARD and the CORPORATION will not be required to comply with any covenant contained herein to the extent that such failure to comply, in the opinion of nationally-recognized bond counsel, will not adversely affect the exemption from federal income taxation of interest on the tax-exempt bonds issued by the BOARD under section 103 of the Code. In the event that regulations or rulings are hereafter promulgated which impose additional requirements which are applicable to the tax-exempt bonds issued by the BOARD, the BOARD and the CORPORATION agree to comply with the additional requirements to the extent necessary, in the opinion of nationally-recognized bond counsel, to preserve the exemption from federal income taxation of interest on the tax-exempt bonds issued by the BOARD under section 103 of the Code.

Section 9.12. ENVIRONMENTAL COMPLIANCE. The CORPORATION will comply with the terms and conditions identified in the environmental impact determination as necessary for a finding of No Significant Impact or Record of Decision for the System for the purpose of avoiding or reducing the adverse environmental impact of the System.

Section 9.13. CONVERSION. In the event the CORPORATION (i) converts to a conservation or reclamation district and (ii) desires to sell its obligations to the district, the CORPORATION covenants that no such conveyance and assumption of the Loan shall occur or be effective without the prior approval of the BOARD.

Section 9.14. WATER CONSERVATION PLAN. The CORPORATION will adopt and implement any water conservation program required by the BOARD until all financial obligations to the BOARD have been discharged.

Section 9.15. SEVERABILITY. If any provision of the Agreement or the application thereof to any circumstance shall be held to be invalid, the remainder of this Agreement and the application thereof to other circumstances shall nevertheless be valid, and the Parties hereby declare that this Agreement would have been enacted without such invalid provision.

Section 9.16. CONSTRUCTION OF TERMS. If appropriate in the context of this Agreement, words of the singular number shall be considered to include the plural, and words of the plural number shall be considered to include the singular.

In WITNESS WHEREOF, the BOARD and the CORPORATION have executed this Agreement as of the date below.

WATER SUPPLY CORPORATION

TEXAS WATER DEVELOPMENT BOARD

By: _____
Signature of Corporation Official

By: _____
Signature of Executive Administrator

Date: _____

Date: _____

Sample

SAMPLE PROMISSORY NOTE (WRD-260)

(This example Promissory Note is provided for illustrative purposes only. The actual Promissory Note will be tailored to the project.)

FOR VALUE RECEIVED, _____ Water Supply Corporation (Corporation) promises to pay to the order of Texas Water Development Board (Board), at its offices at 1700 N. Congress Avenue, Austin, Texas 78701, or at such other place as Board may hereafter designate in writing, the principal amount of \$ _____ plus interest on the unpaid principal balance at the rate of _____ percent per annum. The said principal and interest shall be paid from the Revenue Fund in monthly payments according to the Repayment Schedule, attached hereto, which may be revised as needed.

Repayment from the Corporation is due on the _____ day of each month until the principal and interest are fully paid, except that the final repayment of the entire indebtedness if not sooner paid, shall be due and payable _____ months from the date of this note. The consideration hereof shall support any agreement modifying the foregoing schedule of payments.

The loan shall be paid by the Board in Installments to the Corporation as requested by the Corporation and approved by the Board, and interest shall accrue on the amount of each Installment from the actual date of the release of the Installment as shown on the Repayment Schedule.

Every payment made on any indebtedness evidenced by this Note shall be applied first to interest computed to the effective date of payment and then to principal.

For the first ten (10) years after the date of the last installment to Corporation, prepayments of scheduled payments, or any portion thereof, may not be made.

If the Board at any time assigns this Note, Corporation shall continue to make payments to the Board as collection agent for the holder of the Note until such time as notice of the assignment is received from the Board. Upon said notice, the Corporation shall thereupon duly note in Corporation's records the occurrence of such assignment, together with the name and address of the assignee, and Corporation shall make payments as directed in the notice by the Board.

Any amount advanced or expended by the Board for the collection hereof or to preserve or protect any security hereto, or otherwise under the terms of any security or other instruments executed in connection with the Loan evidenced hereby, at the option of the Board shall become a part of and bear interest at the same rate as the principal of the debt evidenced hereby and be immediately due and payable by Corporation to the Board upon demand. The Corporation agrees to use the Loan evidenced hereby solely for the purpose authorized by the Board.

This note is secured by a Deed of Trust and Security Agreement.

Default hereunder and as described in the Loan Agreement between the Corporation and the Board (Loan Agreement) shall constitute default under any other instrument evidencing a debt or other obligations of the Corporation to the Board or securing such a debt or other obligations and default under any such other instrument shall constitute default hereunder. Upon any such default, the Board, at its option, may declare all or any part of any such indebtedness immediately due and payable.

This Note shall be subject to the terms of the Loan Agreement and to the present rules, regulations, and policies of the Board and to its future rules, regulations, and policies not inconsistent with the express provisions hereof.

If any provision of this Note or the application thereof to any circumstance shall be held to be invalid, the remainder of this Note and the application thereof to other circumstances shall nevertheless be valid, and the Board hereby declares that this Note would have been enacted without such invalid provision.

(SEAL)

(Name of Corporation)

(Signature of Corporation Officer)

(Title of Corporation Officer)

ATTEST:

DATE:

(Signature of Attesting Official)

(Title of Attesting Official)

SAMPLE
DEED OF TRUST AND SECURITY AGREEMENT (WRD-261)

THIS INSTRUMENT GRANTS A SECURITY INTEREST BY A UTILITY
THIS INSTRUMENT CONTAINS AFTER-ACQUIRED PROPERTY PROVISIONS

THE STATE OF TEXAS
COUNTY OF _____

This Deed of Trust and Security Agreement (Deed of Trust) is made and entered into by and between the undersigned

residing in

County, Texas, whose post office address is _____,

Texas, as the borrower (Borrower), and the Development Fund Manager of the Texas Water

Development Board and/or any successor in office, as trustee, (Trustee), whose mailing

address is _____ and the Texas Water

Development Board, as beneficiary, (Beneficiary).

WHEREAS, the Borrower has all the rights, powers, privileges, authority, and functions given by the general laws of the State of Texas to non-profit corporations created and operating pursuant to article 1434(a) Vernon's Texas Civil Statutes Annotated (now, Chapter 67, Texas Water Code) and is authorized to issue bonds and notes to carry out its corporate purposes and to refund such obligations; and

WHEREAS, the Borrower, through its Board of Directors, has duly adopted a resolution authorizing a request for financial assistance from the Texas Water Development Board and authorizing the execution of a certain promissory note, loan agreement, and other documents as necessary for completion of the loan transaction; and

WHEREAS, Borrower is indebted to the Beneficiary as evidenced by a Loan Agreement ("Loan Agreement") and Promissory Note ("Note"), executed by Borrower and payable to the order of the Beneficiary, which authorizes acceleration of the entire indebtedness at the option of the Beneficiary upon any default by the Borrower, and is described as follows:

Date of Instrument	Principal Amount	Annual Rate of Interest
--------------------	------------------	-------------------------

WHEREAS, the Note evidences a loan to Borrower, and the Beneficiary at any time may assign the Note and insure payment thereof pursuant to the terms of the Loan Agreement between Borrower and Beneficiary which contains the terms and conditions pursuant to which Beneficiary provides monies to Borrower to finance the Construction (as defined in the Loan Agreement) of Borrower's water system (Water System); and

WHEREAS, this conveyance is made in trust to further secure payment of a debt in the principal sum of \$ _____ with interest thereon ("Debt") becoming due and payable to the Beneficiary under the terms of the Note or this Deed of Trust, including (but not limited to) any extension, renewal or re-amortization of said Debt, any increase or addition thereto and any future debt owing by Borrower to the Beneficiary, the payment thereof being secured or intended to be secured hereby; and to further secure performance and discharge of each and every promise, obligation, covenant and agreement of Borrower contained in the Note, this Deed of Trust or any other instrument executed by Borrower pertaining to said Debt;

WHEREAS, pursuant to the Loan Agreement and subject to the terms and provisions thereof, principal and interest on the Note shall be payable from and secured by a first lien on and pledge of the revenues of the Water System (Pledged Revenues).

NOW, THEREFORE, the Borrower, does hereby bargain, sell, grant, convey, transfer, mortgage, pledge and assign to the Trustee and its successors and substitutes in trust hereunder for the benefit of the Beneficiary or the holders of the Note, the following described real and personal property, rights, titles, interests and estates (herein collectively called the (Mortgaged Properties) to wit:

ARTICLE I SECURED OBLIGATIONS

1.1. This Deed of Trust and Security Agreement (Deed of Trust) is executed and

delivered by Borrower to secure the payment and performance of certain indebtedness, liabilities and obligations owing to or in favor of Beneficiary, as follows:

- (a) the payment by Borrower of all indebtedness evidenced by the Note;
- (b) any and all amounts, liabilities, and obligations for which or for the performance of which Borrower may become indebted or obligated under the terms of this Deed of Trust;
- (c) any and all renewals, rearrangements, and extensions of the foregoing items of indebtedness and obligations; and
- (d) additional parity debt issued to the Board and known as Additional Notes, subject to the provisions of Article III of the Loan Agreement, which are payable from and secured by a Loan Agreement and shall be covered by this Deed of Trust in the same manner and to the same extent as the current Note.

Provided, however, that the enumeration of items of indebtedness set forth in paragraph 1.1(c) above shall not include and is expressly excepted from any items of indebtedness owing or to become owing to the Beneficiary for which applicable law prohibits the taking of a lien upon real estate as security, including, but not limited to, items of indebtedness incurred pursuant to Chapter 4 or 15 of the Texas Credit Code.

1.2. As set out in the Loan Agreement and the Note, said Loan Agreement and Note are and shall be secured on an equal and ratable basis with the liens and security instruments securing such obligations being of equal dignity and priority.

1.3. Each and every item of indebtedness described and included in Section 1.1 above is intended to be fully secured by the liens, assignments, and security interests created under and by virtue of this Deed of Trust; and all such items so secured (now or hereafter existing) are hereinafter collectively called "Deed of Trust Secured Obligations".

ARTICLE II GRANT OF MORTGAGED PROPERTIES

2.1. For the purposes and trusts hereinafter set forth, and for TEN AND NO/100 DOLLARS (\$10.00) and other valuable consideration paid to Borrower, the receipt and sufficiency of which are hereby acknowledged, Borrower has GRANTED, SOLD, and CONVEYED, and by these presents does GRANT, SELL, and CONVEY, unto Trustee, all the following described property, to wit:

- (a) all those certain tract(s) or parcel(s) of land being situated in County, Texas, being more fully described as set forth on Attachment A, attached

hereto and hereby referred to and incorporated herein for all purposes;

- (b) all improvements upon the real property hereinabove described and hereafter placed thereon, and all fixtures, materials, equipment, apparatus, furniture, furnishings, building materials, supplies, and other property, real and personal, now or hereafter installed or used thereon or upon the improvements thereon, including, but not limited to, all heating, lighting, refrigerating, plumbing, ventilating, incinerating, water heating, cooling and air-conditioning equipment, fixtures and appurtenances, all engines and machinery, elevators, pumps, motors, window screens, window shades, venetian blinds, awnings, floor coverings, and shrubbery and other chattels and personal property used or furnished in connection with the operation, use, and enjoyment of such real property and the improvements thereon, all renewals, replacements, and substitutions therefor and additions thereto, all of which said property and fixtures shall be deemed to be a part of and affixed to the above described real property;
- (c) all rents, revenues, profits, income, damages, awards, and proceeds from or attributable to all or any portion of the real property hereinabove described, the improvements hereinabove described, and any other property, both real and personal, hereinafter described;
- (d) all documents, instruments, general intangibles, chattel paper, and accounts, whether now or hereafter existing, arising out of the sale or use of the hereinabove described properties, both real and personal, and all guarantees and suretyship agreements relating thereto and all security for payment thereof, now or hereafter existing or arising, and all proceeds from any such items enumerated in this clause (d);
- (e) each and every right, privilege, hereditament, and appurtenance in anywise incident or appertaining to the properties, both real and personal, described in this Section 2.1; and
- (f) all licenses, preliminary or final plat approvals, permits, warranties, and wastewater discharge capacity attributable or allocable to all or any portion of the real property hereinabove described, the improvements hereinabove described, and any other property, both real and personal, hereinabove described.

TO HAVE AND TO HOLD the hereinabove described properties together with the rights, privileges, and appurtenances thereto belonging (all of which properties, rights, privileges, and appurtenances are hereinafter collectively called the "Mortgaged Properties"), unto the Trustee and to his substitutes or successors forever, and Borrower does hereby bind itself, its successors and assigns to warrant and forever defend all and singular the Mortgaged Properties unto Trustee, his successors and assigns, against every person whomsoever lawfully claiming or to claim the same, or any part thereof, subject only to the specific matters, if any, set forth in

Attachment B.

2.2. Without in any way limiting the above conveyance and the warranty herein contained, Borrower represents itself to be the owner of all the Mortgaged Properties as hereinabove conveyed and, should any ambiguity exist in regard to the description of said properties, reference may be had to Borrower's ownership of properties held by it in the survey(s), subdivision(s) or section(s) described in Attachment A for further description of the properties herein conveyed. Borrower agrees that it will, upon request by the Beneficiary execute any further instruments, amendments, or supplements desired to more adequately describe the Mortgaged Properties which it has agreed to make subject to this Deed of Trust.

2.3. This conveyance, however, is intended as a deed of trust and security agreement and is made upon the following trusts, terms, and conditions, to wit: In the event Borrower shall well and truly perform and pay the Deed of Trust Secured Obligations (including payment of all principal and all interest and attorneys' fees, if any, owing or to become owing thereon) to the legal holder thereof when the same shall become due or make provision for such payment, then this Deed of Trust and all herein contained shall be null and void and shall be released at Borrower's expense, as provided in the Indenture, otherwise this Deed of Trust shall continue in full force and effect; provided, however, that the Borrower's obligation to indemnify and hold harmless the Beneficiary and Trustee pursuant to the provisions hereof shall survive any such payment or release.

ARTICLE III
ASSIGNMENT OF RENTS

3.1. The transfer of rents, revenues, profits, and income as a portion of the conveyance of the Mortgaged Properties hereinabove made to Trustee is specific in nature and irrevocable. So long as no Event of Default (hereinafter defined) exists, but not otherwise, Borrower may collect and retain the currently accruing rents, revenues, profits, and income, but may not collect in excess of one (1) month's rental in advance or two (2) months' rental in advance where one such month's rental is attributable to the next ensuing month and one such month's rental is attributable to the last month in the lease term and is collected as security under the provisions of a written lease or rental agreement. In the event, however, any Event of Default shall occur and be continuing, thereupon or any time thereafter, while such or any subsequent Event of Default continues, Beneficiary may, personally or through an agent selected by such holder, take, or have Trustee take, possession and control of the Mortgaged Properties, or any part thereof, and receive and collect all rents, revenues, profits, and income theretofore accrued or thereafter accruing therefrom so long as any of the Deed of Trust Secured Obligations remain outstanding or until the foreclosure of the lien hereof, applying so much thereof as may be collected prior to the sale of such property under foreclosure, first to the expenses incident to such possession, control, and collection and second to the payment of the Deed of Trust Secured Obligations in such order as the Beneficiary may elect, irrespective of whether then matured, paying the balance, if any to Borrower. Notwithstanding the foregoing, in the event of any conflict between the provisions of

this Article III and the terms of the Loan Agreement, the terms of the Loan Agreement shall control for all purposes.

3.2. In exercise of the rights and powers created under Section 3.1 above, Borrower specifically agrees that Beneficiary, Beneficiary's agent, or Trustee, as such party may see fit, may use against Borrower or any other persons lawful or peaceful means to enforce the collection of any such rents, revenues, profits, and income, and to secure possession of the Mortgaged Properties, or any part thereof; settle or compromise on any terms the liability of any person or persons for any such rents, revenues, profits, or income; institute and prosecute to final conclusion actions of forcible entry and detainer, or actions of trespass to try title, or actions for damages, or any other appropriate actions, in the name of such person or in the name of Borrower; and settle, compromise, or abandon any such actions. In furtherance of the foregoing and not by way of limitation, Borrower binds itself to take whatever lawful or peaceful steps Beneficiary may ask it to take for such purposes, including the institution and prosecution of actions of the character above stated, provided, however, Borrower recognizes that neither Trustee, Beneficiary, or any person acting on behalf of Beneficiary shall ever be required to collect any such rents or income or be liable or chargeable for failure so to do.

ARTICLE IV SECURITY AGREEMENT

4.1. Without limiting any of the other provisions of this Deed of Trust, Borrower, as Debtor (referred to in this Article IV as "Debtor"), expressly grants unto the Trustee for the benefit of the Beneficiary or the holders of the Note, as Secured Party (referred to in this Article IV as "Secured Party", whether one or more), a security interest in all the Mortgaged Properties (including both those now and those hereafter existing) to the full extent that the Mortgaged Properties may be subject to the Uniform Commercial Code of the State of Texas. The security interest granted hereby covers and includes all equipment, accounts, general intangibles, fixtures and other personal property used or acquired for us on or in connection with the use or operation of the Mortgaged Properties Secured Transactions (chapter 9, Business and Commerce Code of Texas, as amended) (hereinafter called the "Uniform Commercial Code").

4.2. Debtor covenants and agrees with Secured Party that

- (a) In addition to any other remedies granted in this Deed of Trust to Secured Party or Trustee (including specifically, but not limited to, the right to proceed against all the Mortgaged Properties in accordance with the rights and remedies in respect of those Mortgaged Properties which are real property pursuant to section 9.501(d) of the Uniform Commercial Code), Secured Party may, should an Event of Default occur, proceed under the Uniform Commercial Code as to all or any part of the personal property (tangible or intangible) and fixtures included in the Mortgaged Properties (such portion of the Mortgaged Properties being referred to in this Article IV as the "Collateral"), and shall have any may exercise with

respect to the Collateral all the rights, remedies, and powers of a secured party under the Uniform Commercial Code, including, without limitation, the right and power to sell, at one or more public or private sales, or otherwise dispose of, lease, or utilize the Collateral and any part of parts thereof in any manner authorized or permitted under the Uniform Commercial Code after default by a debtor, and to apply the proceeds thereof toward payment of any costs and expenses and attorneys' fees and legal expenses thereby incurred by Secured Party, and toward payment of the Deed of Trust Secured Obligations in such order or manner as Secured Party may elect.

- (b) Among the rights of Secured Party upon occurrence of an Event of Default and without limitation, Secured Party shall have the right, by any lawful means, to take possession of the Collateral or any part thereof and to enter, in any lawful manner, upon any premises where same may be situated for such purpose without being deemed guilty of trespass and without liability for damages thereby occasioned, and to take any lawful action deemed necessary or appropriate or desirable by Secured Party, at its option and in its discretion, to repair, refurbish, or otherwise prepare the Collateral for sale, lease, or other use or disposition as herein authorized.
- (c) To the extent permitted by law, Debtor expressly waives any notice of sale or other disposition of the Collateral and any other rights or remedies of a debtor or formalities prescribed by law relative to sale or disposition of the Collateral or exercise of any other right or remedy of Secured Party existing after default hereunder; and, to the extent any such notice is required and cannot be waived, Debtor agrees that, if such notice is mailed, postage prepaid, to Debtor at the address shown opposite Debtor's signature below at least five (5) days before the time of the sale or disposition, such notice shall be deemed reasonable and shall fully satisfy any requirement for giving of said notice.
- (d) Upon occurrence of an Event of Default or upon the occurrence of any event or condition which after either or both the passage of time and the giving of notice would constitute an Event of Default, Secured Party is hereby granted the express right, at its option, to transfer to itself or to its nominee the Collateral, or any part thereof, to notify any obligor or account debtor in the case of any Collateral to make payment directly to Secured Party, and to receive the money, income, proceeds or benefits attributable or accruing thereto and to hold the same as security for the Deed of Trust Secured Obligations or to apply the same on the principal and interest or other amounts owing on any of the Deed of Trust Secured Obligations, whether or not then due, in such order or manner as Secured Party may elect. With respect to the Collateral, Debtor, for itself, its successors and assigns, hereby expressly and specifically waives all rights to a marshaling of the assets of Debtor, including the Collateral, or to a sale in inverse order of alienation.

- (e) All recitals in any instrument of assignment or any other instrument executed by Secured Party or by Trustee incident to sale, transfer, assignment, lease, or other disposition or utilization of the Collateral or any part thereof hereunder shall be full proof of the matters stated therein, no other proof shall be requisite to establish full legal propriety of the sale or other action or of any fact, condition or thing incident thereto, and all prerequisites of such sale or other action and of any fact, condition or thing incident thereto shall be presumed conclusively to have been performed or to have occurred.
- (f) Secured Party may require Debtor to assemble the Collateral and make it available to Secured Party at a place to be designated by Secured Party that is reasonably convenient to both parties. Debtor shall be fully liable for all expenses of retaking, holding, preparing for sale, lease or other use or disposition, selling, leasing or otherwise using or disposing of the Collateral which are incurred or paid by Secured Party as authorized or permitted hereunder, including also all attorneys' fees, legal expenses, and costs, all of which expenses and costs shall constitute a part of the Deed of Trust Secured Obligations.
- (g) Certain of the Collateral is or will become "fixtures" (as that term is defined in the Uniform Commercial Code) on the real estate hereinabove described, and this Deed of Trust upon being filed for record in the real estate records shall operate also as a financing statement upon such of the Collateral which is or may become fixtures. Debtor has an interest of record in the real estate.
- (h) Any copy of this Deed of Trust which is signed by Debtor or any carbon, photographic, or other reproduction of this Deed of Trust may also serve as a financing statement under the Uniform Commercial Code by Debtor, whose address is set opposite its signature below, in favor of Secured Party, whose address is set out above.
- (i) So long as any Deed of Trust Secured Obligations remain unpaid, unless the prior written specific consent and approval of Secured Party shall have first been obtained, Debtor will not execute and there will not be filed in any public office any financing statement or statements affecting the Collateral other than financing statements in favor of Secured Party hereunder and the owner and holder of the Note.

4.3. Debtor warrants and represents to Secured Party that, except for the security interest granted hereby in the Collateral and those securing the Note, Debtor is the owner and holder of the Collateral, free of any adverse claim, security interest or encumbrance, and Debtor agrees to defend the Collateral against all claims and demands of any person at any time claiming the same or any interest therein. Debtor further warrants and represents that it has not heretofore signed any financing statement and that no financing statements signed by Debtor are

now on file in any public office except those statements true and correct copies of which have been delivered to Secured Party.

ARTICLE V
CERTAIN COVENANTS AND WARRANTIES OF BORROWER

5.1. As further assurances with regard to the Deed of Trust Secured Obligations, Borrower hereby covenants, warrants, and agrees in favor of Beneficiary, as follows:

- (a) Borrower covenants and agrees that, should it be discovered after the execution and delivery hereof there is a lien or encumbrance of any nature whatsoever upon the Mortgaged Properties or any part thereof, equal or superior in rank to the lien of this Deed of Trust or in case of an error or defect herein, or the execution or acknowledgment hereof, Borrower shall, upon demand from Beneficiary, correct such defects in such title, or remove said liens or encumbrances or homestead claim, or correct such error or defect in this Deed of Trust or its execution or any acknowledgment hereof.
- (b) From and after the date hereof, Borrower agrees that it shall not voluntarily grant any liens that might be argued to have priority over the Note. Borrower further agrees not to suffer or permit there to exist any lien against the Mortgaged Properties involuntarily imposed by operation of constitution, statute, ordinance, judgment or decree and, if such lien is imposed, to immediately obtain the release and discharge of record of such lien, whether by payment or bonding and to take such other and further action as Beneficiary may reasonably request you protect the intended lien priority.
- (c) Borrower covenants and agrees that, after any sale under this Deed of Trust, it, or its successors or assigns, shall be mere tenants at sufferance of the purchaser of the property at such sale, and that such purchaser shall be entitled to immediate possession thereof, and that, if Borrower fails to vacate such property immediately, such purchaser may and shall have the right to go into any court having venue, or in any other court hereafter having jurisdiction of forcible detainer actions, and file an action in forcible detainer, which action shall lie against Borrower or its successors or assigns as tenants at sufferance.
- (d) Borrower expressly agrees that Beneficiary shall be fully subrogated to the rights of all holders of any vendor's liens or other liens whose indebtedness is paid in whole or in part with the proceeds of the Deed of Trust Secured Obligations. To the extent that the Deed of Trust Secured Obligations represent funds advanced for the acquisition of any of the Mortgaged Properties, Borrower acknowledges and agrees that Beneficiary is entitled to a vendor's lien securing the payment of said indebtedness, and Borrower further specifically covenants, stipulates, and agrees that foreclosure under the power of sale contained in this Deed of Trust

shall operate to fully foreclose such vendor's lien.

5.2. Borrower shall keep all insurable Mortgaged Properties insured for the protection of the Beneficiary against loss by fire, hazards in such manner, in such amounts, and in such companies as the Beneficiary may approve, and shall keep and maintain the policies therefore, properly endorsed, on deposit for inspection by the Beneficiary. Borrower assigns to Beneficiary all right and interest in all such policies of insurance and authorizes the Borrower to collect for, adjust or compromise any losses under any insurance policy on the Mortgaged Properties and apply said loss proceeds on the debt, whether due or not or to the restoration of the Mortgaged Properties, or to be released to Borrower, but such application or release shall not cure or waive any default.

5.3. Borrowers will not commit or permit any waste on the Mortgaged Properties and will keep all buildings, fences and all other improvements now or hereafter erected on the Mortgaged Properties in sound condition and in good repair and will neither do nor permit to be done anything to the Mortgaged properties that may impair the value thereof, and the Beneficiary shall have the right of entry upon the Mortgaged Properties at all reasonable times for the purpose of inspecting the same.

5.4. Borrowers will pay (prior to delinquency) all taxes and assessments levied or assessed upon the Mortgaged Properties or the interest created therein by this Deed of Trust, and exhibit the receipts therefor to the Beneficiary and will defend the title and possession of the Mortgaged Properties to the end that this Deed of Trust shall be and remain a first lien on the Mortgaged Properties until the debt is paid.

5.5. As additional security for the payment of said Debt, Borrower hereby transfers and assigns unto the Beneficiary all judgments, awards of damages and settlements hereinafter made resulting from condemnation proceedings or the taking of all or any part of the Mortgaged Properties under the power of eminent domain or for any damage to all or any part of the Mortgaged Properties.

ARTICLE VI DEFAULT

6.1. For purposes of this Deed of Trust, "Event of Default" means any Event of Default under the Note and any failure by Borrower to keep and perform Borrower's covenants and obligations under this Deed of Trust; any Event of Default under the Note or any document evidencing or securing the Note; and any breach of the Loan Agreement.

6.2. Upon the occurrence of an Event of Default, subject to the terms of the Consent Agreement (if then in effect) so long as such default remains uncured, Beneficiary shall have the option and right to take any one or more of the following actions: (i) proceed to enforce the lien of this Deed of Trust, and (ii) pursue any and all other remedies available to Beneficiary whether

set forth herein, in the Indenture, or otherwise available at law or in equity.

6.3. Each of the rights and remedies set forth in this Deed of Trust or available at law or in equity shall be cumulative and concurrent, may be pursued jointly or severally against Borrower or any of the Mortgaged Properties, and shall be nonexclusive. The election to pursue any such right or remedy shall not be deemed a waiver, then or thereafter, to pursue any other such right or remedy.

6.4. The acceptance of payment of any portion of the Deed of Trust Secured Obligations after its due date or after the giving of notice of an Event of Default and of election to accelerate the maturity of the Deed of Trust Secured Obligations shall not waive any right of Beneficiary to require prompt payment when due of all other sums constituting Deed of Trust Secured Obligations or to declare an Event of Default for failure to pay the entire unpaid balance of the Deed of Trust Secured Obligations, or any right of Beneficiary to proceed with foreclosure sale pursuant to any such notice and acceleration for any unpaid balance of the Deed of Trust Secured Obligations. Waiver of a right granted to Beneficiary as to one transaction or occurrence shall not be deemed a waiver of such right as to any subsequent transaction or occurrence.

ARTICLE VII CERTAIN REMEDIES; POWER OF SALE

7.1. In the event that Borrower fails or refuses to pay any taxes or assessments upon the Mortgaged Properties before the same become delinquent, fails to take out or procure or maintain such insurance as is required by this Deed of Trust or the Indenture, or fails to perform any other covenant or to pay any other obligation of Borrower set forth in this Deed of Trust or set forth in the Loan Agreement or in any other agreement or instrument evidencing or securing the Deed of Trust Secured Obligations, then in any such case Beneficiary, at its option and without any obligation to do so, may pay any such taxes or assessments (without being required to examine the legality or justice of same), take out or procure such insurance, or tender such performance or payment. All amounts advanced by Beneficiary as aforesaid shall be due and payable upon demand, shall become a part of the Deed of Trust Secured Obligations, shall bear interest from the date such payments are advanced until the repayment thereof at the lesser of eighteen percent (18%) per annum or the highest nonusurious rate of interest set forth in the instruments evidencing the Deed of Trust Secured Obligations, and shall be fully secured by the liens, assignments, and security interest of this Deed of Trust. Any amounts so paid, as well as the time of payment thereof, shall be deemed fully established by the affidavit or certificate of Trustee or Beneficiary. Borrower agrees that the payment of such taxes or assessments, the procuring and maintaining of such insurance, or the tendering of any such performance or payment by Beneficiary shall not prevent Beneficiary from declaring the Deed of Trust Secured Obligations to be due and payable under the provisions hereof by reason of such Event of Default and pursuing any other remedies available to Beneficiary should Beneficiary so elect.

7.2. Upon the occurrence of an Event of Default, and at the request of Beneficiary, Trustee, or Trustee's successors, (a) may foreclose this instrument either by court action pursuant to law or by advertisement and sale of the property as provided by law, for cash or secured credit at the option of the Beneficiary, personal notices of which sale need not be served on Borrower; (b) such sale may be adjourned from time to time without other notice than oral proclamation at the time and place appointed for such sale and correction made on the posted notices, and at such sale the Beneficiary and its agents may bid and purchase as a stranger; (c) Trustee at Trustee's option may conduct such sale, without being personally present, through Trustee's delegate authorized by Trustee for such purpose orally or in writing and without notice to Borrower of such authorization; and (d) if the property is situated in two or more counties, the sale may be held in any of such counties selected by the Beneficiary in its sole discretion, as an entirety or in parcels, by one sale or by several sales, held at one time or at different times, all as Trustee acting may elect consistent with such written direction of the Beneficiary.

7.3. Posting, serving, filing, and giving notices of sale will comply with the provisions of section 51.002 of the Texas Property Code. The manner herein prescribed for posting, serving, filing, or giving any notice, other than that to be posted and filed or caused to be posted and filed by Trustee, shall not be deemed exclusive but such notice or notices may be posted, served, filed, or given in any other manner which may be permitted by applicable law.

7.4. At any sale conducted under this Deed of Trust, credit upon all or any part of the Deed of Trust Secured Obligations shall be deemed cash paid, but shall vest title in Beneficiary to the extent provided in the Loan Agreement; and Beneficiary or the holder of all or any part of the Deed of Trust Secured Obligations may purchase at any such sale. All proceeds of such sale shall be paid to the Beneficiary and the holder of the Note as provided under the Loan Agreement.

7.5. Without limiting any of the powers or remedies provided elsewhere, Borrower agrees that, in the event the Deed of Trust Secured Obligations are payable in installments or include, at any time, items of matured as well as unmatured indebtedness, the Beneficiary or the holder of the matured installments or items of indebtedness, as the case may be, shall have the right to have the Mortgaged Properties sold, subject to the part of the Deed of Trust Secured Obligations which is unmatured at the time Trustee is requested to make such sale, at Trustee's sale to satisfy the lien and security interest hereof securing the then matured portion of said indebtedness, and Trustee is expressly authorized and empowered to conduct such sale which is called in this Section "Installment Foreclosure". Any Installment Foreclosure made under this Section shall not affect the liens, assignments, and security interest of this Deed of Trust existing to secure that portion of the Deed of Trust Secured Obligations to which the sale is to be made subject. No Installment Foreclosure shall exhaust the power of Trustee to conduct future Installment Foreclosures nor in anywise limit the powers of sale provided elsewhere in this Deed of Trust. The provisions elsewhere in this Deed of Trust relating to manner of conducting Trustee's sales, including the posting, filing, and giving of notices thereof, shall also apply to any Installment Foreclosure and the same presumptions shall be applicable to any Trustee's deed or recital therein contained in connection with an Installment Foreclosure and to any other affidavit

as hereinabove provided.

7.6 In the case of the absence of Trustee from the state, or of his death, refusal, or failure to act, or in the event the Beneficiary or the holder or holders of not less than a majority in amount of the Deed of Trust Secured Obligations should elect at any time (with or without cause) to remove Trustee then acting, a successor or substitute may be named, constituted, and appointed by the Beneficiary or the holder or holders of not less than a majority of the amount of the Deed of Trust Secured Obligations, without further formality than an appointment and designation in writing, which appointment and designation shall be full evidence of the right and authority to make the same and of all facts therein recited; and this conveyance shall vest in the Successor or Substitute Trustee the title, powers, and duties conferred on Trustee named herein and the conveyance by the Successor or Substitute Trustee to the purchaser at any sale made pursuant hereto shall be valid and effective as fully as hereinabove provided in the case of a conveyance by Trustee. Such right to appoint a Successor or Substitute Trustee shall exist as often as and whenever Trustee, original, successor, substitute, cannot or will not act or has been removed. Borrower specifically covenants and stipulates that the recitals in the conveyance made to the purchaser, either by Trustee or any Successor or Substitute Trustee, shall be full proof and evidence of the matters therein stated; no other proof shall be requisite of the request by the holder of the Deed of Trust Secured Obligations on Trustee or on any Successor or Substitute Trustee to enforce this trust, or of the due, timely, and proper posting, filing, and giving of all notices and making of the sale, or any particulars thereof, or of the inability, refusal, or failure of Trustee or any Successor or Substitute Trustee to act, or of the removal of Trustee or any Successor or Substitute Trustee, or of the appointment of a Successor or Substitute Trustee, as herein provided, either as to the legality of his appointment or otherwise, or of the contingencies which brought about the failure or inability of Trustee or any Successor or Substitute Trustee to act, or of his removal, as the case may be; all prerequisites of said sale shall be presumed to have been performed; and any sale made under the powers herein granted shall be a perpetual bar against Borrower, its successors and assigns.

7.7. The right of sale hereunder shall not be exhausted by one or any sale, but, so long as any of the Deed of Trust Secured Obligations remain undischarged, Trustee or Successor or Substitute Trustee may make other and successive sales until all the Mortgaged Properties shall be legally sold.

7.8. In the event Borrower or any owner of the Mortgaged Properties, without first obtaining approval of Beneficiary (which approval shall not be unreasonably withheld), should sell or otherwise dispose of the Mortgaged Properties, or any part thereof, at any time before this Deed of Trust is fully released and discharged, Beneficiary shall have the option to declare the indebtedness hereby secured due and payable and if the same is not paid within ten (10) days after the same is declared due and payable, Beneficiary may request the Trustee to commence foreclosure proceedings or other action authorized by this Deed of Trust to enforce the liens herein given. Failure to exercise this option shall not be considered as a waiver of the rights conferred in this Deed of Trust, but said option may be exercised at any time.

ARTICLE VIII
ENVIRONMENTAL MATTERS

Borrower covenants that:

- (a) the location, construction, occupancy, operation, and use of the Mortgaged Properties do not violate any applicable law (including, without limitation, applicable provisions of the Occupational Safety and Health Act of 1970, the Employee Retirement Income Security Act of 1974, the Americans with Disabilities Act of 1990, and corresponding rules and regulations), statute, ordinance, rule, regulation, order, or determination of any governmental authority or any board of fire underwriters (or other body exercising similar functions), or any restrictive covenant or deed restriction (recorded or otherwise) affecting the Mortgaged Properties, including, without limitation, all applicable zoning ordinances and building codes, flood disaster laws, and health and environmental laws and regulations (hereinafter sometimes collectively called "Applicable Regulations");
- (b) neither the Mortgaged Properties nor the Borrower is in violation of or subject to any existing, pending, or, to the best of Borrower's knowledge, after due inquiry, threatened investigation or inquiry by any governmental authority or to any remedial obligations under any Application Regulations pertaining to health or the environment (hereinafter sometimes collectively called "Applicable Environmental Law"), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C.; 9601 et seq., as amended ("CERCLA"), the Hazardous Materials Transportation Act, 49 U.S.C.; 1801 et seq., as amended, the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C.; 6901 et seq., as amended, the Toxic Substance Control Act of 1976, 14 U.S.C.; 2601 et seq., as amended, the Clean Water Act, 33 U.S.C.; 466 et seq., as amended, the Clean Air Act, 42 U.S.C.; 7401, et seq., as amended, and any other federal, state, or local law similar to those set forth in this definition, and, to the best of the Borrower's knowledge, after due inquiry, this representation an warranty would continue to be true and correct following disclosure to the applicable governmental authorities of all relevant facts, conditions, and circumstances, if any pertaining to the Mortgaged Properties. If any such investigation or inquiry is subsequently initiated, the Borrower will promptly notify the Trustee and the Beneficiary;
- (c) the Borrower has not obtained and, to the best of the Borrower's knowledge, after due inquiry, is not required to obtain any permits, licenses, or similar authorizations to construct, occupy, operate, or use any buildings, improvements, fixtures, and equipment forming a part of the Mortgaged Properties by reason of any Applicable Environmental Law.
- (d) the Mortgaged Properties have not previously been used as a landfill or as a dump

for garbage or refuse; and the Mortgaged Properties do not lie within a flood plain or in an area that has been identified by the Secretary of the United States Department of Housing and Urban Development as an area having special flood hazards, or, to the extent a portion of the Mortgaged Property may fall within such flood plain, the Borrower shall provide sufficient insurance coverage against such hazard. The Borrower has not illegally or improperly manufactured, used, generated, stored, found, released, or disposed of any Hazardous Substance (as herein defined) on, under, or about the Site in violation of applicable federal, state, or local law, statute, ordinance, or regulation ("LAW"). The Borrower has no knowledge that any hazardous substance or solid wastes have been illegally or improperly disposed of or otherwise illegally or improperly released on or about the Mortgaged Properties;

- (e) the Mortgaged Properties do not contain asbestos, ureaformaldehyde foam insulation, or any other chemical, material, or substance exposure to which may or could pose a health hazard whether or not the substance is prohibited limited, or regulated by any governmental authority; and
- (f) the use which the Borrower makes or intends to make of the Mortgaged Properties will not result in the illegal or improper manufacturing, treatment, refining, transportation, generation, storage, disposal, or other release or presence of any Hazardous Substance or solid waste on or to the Mortgaged Properties. For purposes of this Indenture, the terms "Hazardous Substance" and "release" shall have the meanings specified in CERCLA, and the terms "solid waste" and "disposal" (or "disposed") shall have the meanings specified in RCRA, provided, in the event either CERCLA or RCRA is amended so as to broaden any meaning of any term defined thereby, such broader meaning shall apply subsequent to the effective date of such amendment, and provided, further, to the extent that the laws of the State of Texas establish a meaning for "solid waste", "disposal" and "disposed" which is broader than that specified in either CERCLA or RCRA, such broader meaning shall apply; provided, further, that the term "Hazardous Substance" shall also include those listed in the U.S. Department of Transportation Table (49 C.F.R. 172.101) and amendments thereto from time to time.

The foregoing representations, covenants, and warranties are in addition to, and in no way limit the representations, covenants, and warranties of the Borrower to the Trustee and the Beneficiary under the Loan Agreement and Note.

The Borrower shall immediately advise the Beneficiary in writing of (a) any governmental or regulatory actions instituted or threatened under any Hazardous Material Law affecting all or any part of or any interest in the Mortgaged Properties, (b) all claims made or threatened by any third party against the Borrower or the Mortgaged Properties relating to damage, contribution, cost recovery, compensation, or loss or injury resulting from any Hazardous Material, (c) the discovery of any occurrence or condition on any real property

adjoining or in the vicinity of the Mortgaged Properties that could cause the Mortgaged Properties to be classified in a manner which may support a claim under any Hazardous Material Law, and (d) the discovery of any occurrence or condition on any part of the Mortgaged Properties or any real property adjoining or in the vicinity of the Mortgaged Properties which could subject the Borrower or any part of the Mortgaged Properties to any limitations or restrictions on the ownership, occupancy, transferability or use thereof. At its sole cost and expense, the Borrower agrees to promptly and completely cure and remedy every existing and future violation of a Hazardous Material Law occurring on or with respect to any part of the Mortgaged Properties and to promptly remove all Hazardous Materials now or hereafter in, on or under all or any part of the Mortgaged Properties and to dispose of the same as required by Hazardous Material Law(s).

To the extent permitted by law, the Borrower shall indemnify, defend, and hold harmless the Trustee and the Beneficiary, their directors, officers, employees, agents, successors and assigns from and against (a) any loss, liability, demand, damage, cost, expense, claim, action or cause of action arising from the imposition or recording of a lien, the incurring of costs of required repairs, remediation, clean up or detoxification and removal under any Hazardous Material Law (including other associated costs, interest, fees, and penalties) with respect to all or any part of the Mortgaged Properties or liability to any third party in connection with any violation of a Hazardous Material Law; (b) any other loss, liability, damage, cost, expense, or claim (including, without limitation, reasonable attorneys' fees and disbursements and expenses, and costs and expenses reasonably incurred in investigation, preparing, settling or defending against any litigation or claim, action, suite, proceeding or demand of any kind of character, including, without limitation, those arising by reason of any action taken by each of the Trustee and the Beneficiary under the Deed of Trust, which is not caused by its own negligence or willful misconduct), which may be incurred by or asserted against the Trustee and the Beneficiary, its directors, officers, employees, successors or assigns, directly or indirectly, arising from the presence on or under, or the discharge, emission or release from any of the Mortgaged Properties into or upon the land, atmosphere, or any watercourse, body of surface or subsurface water or wetland, arising from the installation, use, generation, manufacture, treatment, handling, refining, production, processing, storage, removal, remediation clean up or disposal of any Hazardous Material whether or not caused by the Borrower; (c) loss of value of any of the Mortgaged Properties as a result of any such lien, remediation clean up, detoxification, loss, liability, damage, expense or claim or a failure or defect in title occasioned by any Hazardous Material or Hazardous Material Law; and (d) all foreseeable and unforeseeable incidental and consequential damages. The Borrower shall defend such claim, and the Trustee and the Beneficiary, as the case may be, shall cooperate in the defense. The Trustee and the Beneficiary may have separate counsel and Borrower shall pay the fees and expenses of such counsel.

ARTICLE IX MISCELLANEOUS

9.1. If in construing this Deed of Trust and the Loan Agreement there exists any

conflict with respect to the rights, duties, obligations, privileges, or responsibilities of Borrower or the security, priority, rights, privileges, duties, or remedies of Beneficiary, the terms and provisions of the Loan Agreement shall control and be binding on Borrower, Trustee, and Beneficiary, and the terms and provisions of this Deed of Trust that are in conflict with the Loan Agreement shall be of no force or effect.

9.2. In the event any item, term, or provision contained in this Deed of Trust is in conflict or may be held hereafter to be in conflict with any applicable laws, this Deed of Trust shall be affected only as to its application to such item, term, or provision and shall in all other respects remain in full force and effect.

9.3. Nothing herein contained shall be construed to operate as to require Borrower to pay interest on the Note or Notes or any other liability or debt now existing or hereafter to exist at a rate greater than that allowed by the laws of the State of Texas, and if any provisions contained here do or would operate to make this Deed of Trust any part thereof void, voidable or ineffective, then such provisions only shall be held as though they were not herein contained and shall be without effect to the remaining provisions, which shall remain operative. Any of said contracts for interest shall be held subject to reduction to the highest amount allowed under the Usury Laws of the State of Texas as now or hereafter construed by courts having jurisdiction.

9.4. Borrower covenants that no other security, now existing or hereafter taken, for the Deed of Trust Secured Obligations shall be impaired or affected in any manner by the execution hereof; no security subsequently taken by any holder of the Deed of Trust Secured Obligations shall impair or affect in any manner the security given by this Deed of Trust; all security for the payment of the Deed of Trust Secured Obligations shall be taken, considered, and held as cumulative; and the taking of additional security shall at no time release or impair any security by endorsement or otherwise previously given. Borrower further agrees that any part of the security herein described may be released without in anywise altering, varying, or diminishing the force, effect, or lien of this Deed of Trust, or of any renewal or extension of said lien, and that this Deed of Trust shall continue as a first lien, assignment, and security interest on all the Mortgaged Properties not expressly released until all Deed of Trust Secured Obligations are fully discharged and paid.

9.5. The filing of a suit to foreclose any lien, assignment, or security interest under this Deed of Trust either on any matured portions of the Deed of Trust Secured Obligations shall never be considered an election so as to preclude foreclosure under any power of sale herein contained after dismissal of the suit.

9.6. The term "Borrower" as used herein shall include not only the party who is designated as Borrower and who executes this Deed of Trust but also the respective successors and assigns of such party. Whenever the context requires, the gender of words used herein shall include the masculine, feminine, and neuter, and number of words used herein shall include the singular and the plural.

9.7. All article and section titles or captions contained in this Deed of Trust or in any schedule or exhibit hereto are for convenience only and shall not be deemed a part of this Deed of Trust and shall not affect the meaning or interpretation of this Deed of Trust.

IN WITNESS WHEREOF, Borrower has executed this Deed of Trust as of the first day of _____, 20__ A.D.

ADDRESS OF BORROWER:

BORROWER:

_____ WATER SUPPLY CORPORATION

By: _____
President

Sample

THE STATE OF TEXAS .

COUNTY OF _____ .

This instrument was acknowledged before me on the _____ day of _____, 20____,
by _____, President of _____ Water Supply Corporation, on behalf of
said Corporation.

Notary Public, State of Texas

Sample

ATTACHMENT A

Description of Real Property

ATTACHMENT B

Permitted Exceptions

Sample

SAMPLE ATTORNEY'S OPINION (WRD-262)

Loan Agreement between the Texas Water Development Board and

Water Supply Corporation
dated _____, 20____, in the amount of \$_____.

As its legal counsel, _____ Water Supply Corporation (the "CORPORATION") has asked me to render this opinion to the Texas Water Development Board (the "BOARD"). All references in this opinion to instruments and other defined terms shall mean the instruments and other terms as defined in or incorporated into the Loan Agreement ("Agreement") between the CORPORATION and the BOARD.

I have reviewed the instruments referred to in this opinion and the proceedings of the CORPORATION in connection with this transaction. I have also examined such public records and other documents and materials as I have deemed necessary under the circumstances in connection with this opinion. On the basis of such examination, I am of the opinion that:

1. The CORPORATION is a non-profit corporation duly organized, validly existing and in good standing under the laws of the State of Texas, including particularly Article 1434a, Vernon's Annotated Texas Civil Statutes (now, Chapter 67, Texas Water Code).
2. The CORPORATION has full legal right, power and authority to (i) adopt the Resolution authorizing the CORPORATION and its representatives to enter into the Agreement and to execute and deliver documents related to the Agreement, including the Promissory Note and the Deed of Trust and Security Agreement, (collectively, the "Documents"), and (ii) to carry out and consummate the transactions contemplated by the Agreement.
3. The CORPORATION has duly adopted a Resolution authorizing the CORPORATION, through its representatives to enter into the Agreement and has duly authorized and approved (i) the execution delivery and performance of the Documents and (ii) the taking of any and all such actions as may be required on the part of the CORPORATION to carry out, give effect to and consummate the transactions contemplated by the Documents. Each of the Documents that are duly executed and delivered by the CORPORATION in support of the Agreement constitutes a valid and binding obligation of the CORPORATION, enforceable in accordance with its terms

assuming that each Document is a valid, binding and enforceable obligation of the BOARD.

4. The CORPORATION is not in breach of or in default under any applicable law or administrative regulations of the State of Texas, or any department, division, agency or instrumentality thereof, of the United States or any applicable judgment or decree or any resolution, certificate, agreement or other instrument, to which the CORPORATION is a party or is otherwise subject, which breach or default is material to the transactions contemplated by the Documents.

5. The adoption of the Resolution authorizing the Agreement, the execution and delivery of the Documents and all documents contemplated thereby, and the compliance with the provisions thereof, do not and will not conflict or constitute on the part of the CORPORATION a violation of, breach of or default under the CORPORATION'S Articles of Incorporation or Bylaws, any statute, indenture, mortgage, deed of trust, resolution, or other agreement or instrument to which the CORPORATION is a party or by which the CORPORATION is bound, or, to the knowledge of the CORPORATION after reasonable inquiry, any order, rule or regulation of any regulatory body or court having jurisdiction over the CORPORATION or any of its activities or properties.

6. There is no action, suit, proceeding, inquiry or investigation at law or in equity, or before or by any court, public board or body, known to be pending or threatened against or affecting the CORPORATION, nor to the best of my knowledge is there any basis therefor, wherein an unfavorable decision, ruling or finding would materially adversely affect the validity or enforceability of the Documents or any other document, agreement or instrument to which the CORPORATION is a party, and which is to be used or contemplated for use in consummation of transactions contemplated by the Documents.

The opinion expressed above is qualified to the extent that the enforceability of any provision in the Documents may be subject to and affected by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the right of creditors generally.

The foregoing opinion has been expressed solely for the benefit of the parties to the above-referenced financing and their respective counsel and not otherwise, and no other person shall, in the absence of the written consent thereto by me, be entitled to reply thereon in any respect.

I have assumed for the purposes of this opinion: (a) the genuineness of all documents, and the signatures thereon, not signed in my presence; (b) the authenticity of all documents submitted to me as originals and the conformity with originals of all documents submitted to me as copies.

This opinion is as of the date hereof, and I have undertaken no, and hereby disclaim any, obligation to advise the BOARD of any change in any matter set forth herein. Further, my willingness to render this opinion neither implies nor should it be viewed to imply, an approval or recommendation of the proposed transaction.

Attorney

Date

Sample