

AGREEMENT FOR THE SALE OF TREATED EMERGENCY WATER

This Agreement ("Agreement") is entered into by and between **CENTRAL TEXAS WATER SUPPLY CORPORATION ("CTWSC")** and the **CITY OF KILLEEN, TEXAS ("City")**. The purpose of this Agreement is to set forth the terms under which the parties will deliver and sell emergency water to one another.

WHEREAS, the parties desire to have a supply of emergency water to assure, as best as possible, availability of water to their customers and citizens; and

WHEREAS, each party has facilities that may be available to deliver treated drinking water to each other; and

WHEREAS, each party recognizes that the other has invested significant sums of money in systems to obtain, transport, treat and deliver treated water; and

WHEREAS, each party is willing to provide an emergency supply of water to the other under the terms and conditions set forth in this Agreement.

NOW, THEREFORE, CTWSC and the City agree as follows:

Section 1. Definitions. In this Agreement, the following definitions shall apply:

(A) "Purchaser" means the party to this Agreement that is purchasing emergency water from the other party.

(B) "Supplier" means the party under this Agreement that is supplying emergency water to the other party.

(C) "Delivery", "Delivery Point" means the point at which the Supplier agrees to deliver and the Purchaser agrees to receive treated drinking water pursuant to the terms of this Agreement. For purposes of this Agreement, the Delivery Point shall be the Mag Meter at the point of connection between the CTWSC system and the City system at the CTWSC Chaparral Road/FM 195 pump station.

(D) "Emergency Water Supply" means a temporary supply of treated drinking water required by the Purchaser due to some event outside of the control of the Purchaser.

(E) "Meter" means the Mag Meter at the point of connection between the CTWSC system and the City system at the CTWSC Chaparral Road/FM 195 pump station. The Meter shall measure the amount of Emergency Water provided by Supplier to the Purchaser.

(F) "Treated Water" means treated, potable water meeting the minimum quality requirements for human consumption as proscribed by the Texas Commission on Environmental Quality or other appropriate regulatory agency.

Section 2. Agreement to sell Emergency Water. Subject to the conditions set forth herein, each party, as Supplier, agrees to deliver Emergency Water to the other party, as Purchaser, at the Delivery Point. Supplier shall own and be responsible for the Emergency Water Supply up to the Delivery Point. After the Emergency Water has passed through the Delivery Point, the same shall become the property and responsibility of the Purchaser. To obtain Emergency Water, the Purchaser shall contact the Supplier in accordance with Section 9(J) of this Agreement and request that the valve be opened at the Delivery Point and that the Delivery of Emergency Water commence. Upon a request for the commencement of Delivery of Emergency Water and subject to Supplier's confirmation that Delivery of Emergency Water will not limit or restrict the supply of water to its own customers, representatives of the parties will meet at the Delivery Point to open the valve and commence the Delivery of Emergency Water. Either party may request the Delivery of Emergency Water in the event of equipment failure or damage, electrical outage, water supply shortage, terrorist event, damage by third persons to equipment or facilities, pump malfunction, treatment plant failure, emergency preparedness plan needs, water supply contamination, scheduled line or pump work requiring water supply interruption or any unforeseen act or cause which interrupts or interferes with the treatment of water by the Purchaser. Supplier shall be required to deliver no more than one million (1,000,000) gallons a day of Emergency Water pursuant to this Agreement. The Purchaser may obtain Emergency Water for a period of up to one hundred twenty (120) days without obtaining approval from the Board or City Council of the Supplier. If it appears that the event which is causing the need for Emergency Water cannot be resolved within one hundred twenty (120) days, the burden will be on the Purchaser to advise the Supplier of that fact. In order to extend the provision of Emergency Water for more than one hundred twenty (120) days, the consent of the City's City Council or CTWSC's Board is required.

Each party shall in good faith endeavor to deliver Emergency Water to the other upon request; however, in the event the party that has been requested to supply the Emergency Water is experiencing a water shortage or cannot deliver Emergency Water to the requesting party without limiting or restricting the supply of water to its own customers, the party being requested to supply Emergency Water may decline to supply such water. If, within ten (10) days after a party has declined to provide Emergency Water such party is again able to provide Emergency Water without limiting or restricting the supply of water to its own customers, the party that has been requested to supply the Emergency Water will give notice of water availability to the party requesting the Emergency Water.

Section 3. Water rate. The cost of water supplied by either party to the other under this Agreement shall be two hundred percent (200%) of the current O&M water rate charged to the City by Bell County Water Control & Improvement District No. 1 ("WCID") per one thousand (1,000) gallons of treated water under the City's contract with WCID. The water rate as described herein is a reasonable approximation of expenses incurred to provide water under this Agreement.

Section 4. Construction of necessary waterline and facilities. If necessary, the Purchaser, at its expense, will extend as necessary all waterlines from the nearest point of the Purchaser's system to the Delivery Point. The size, material and construction method for such line extension shall comply with all requirements of the Texas State Health Department, Texas Commission on Environmental Quality and the Supplier.

Section 5. Metering, billing and payment. In the event it is necessary to install any equipment to accomplish the Delivery of Emergency Water, the party seeking to purchase the water shall pay the cost of the installation of the equipment.

The parties shall jointly observe any calibration test and adjustments that are made to the Meter in case any adjustment is found to be necessary. If, for any reason, the Meter is out of service or inoperable or if, when tested, the Meter fails to perform to American Waterworks Association Water Metering Standards, registration thereof shall be corrected for a period of time extending back to the time that such inaccuracy began, if such time period is ascertainable. If the time of inaccuracy is not ascertainable, then the registration of the Meter shall be corrected for a period extending back no further than six (6) months from the date of correction. The unit of measurement for Emergency Water delivered pursuant to this Agreement shall be one thousand (1,000) gallons, US Standard Liquid Measure.

The Supplier shall read the Meter monthly and prepare and deliver to Purchaser a bill for said month. Purchaser shall pay said bill within thirty (30) days of receipt. If any bill remains unpaid for the expiration of thirty (30) days past the due date, the Purchaser shall be deemed to be in default under this Agreement and the Supplier may terminate the Emergency Water Supply of water to the Purchaser.

If Purchaser has a protest or dispute concerning a bill, Purchaser shall notify Supplier in writing within ten (10) days of receipt of the bill. Purchaser may pay the portion of the bill that is not in dispute. Upon written notification, the portion of the bill under dispute, if made in good faith, will be set aside until resolved by mutual effort of the parties. In the event the parties cannot mutually resolve a dispute regarding a billing question, the parties may agree to a mediator and submit the matter to mediation.

Section 6. Operation and Maintenance. The Supplier shall be responsible for operating and maintaining in good working order the Supplier's water treatment and delivery system. All costs incurred in connection therewith shall be the cost of the Supplier. Purchaser shall be responsible for assuring its ability to receive Emergency Water supply at the Delivery Point. Purchaser shall be responsible for paying for all Emergency Water metered at the Delivery Point. Purchaser will notify Supplier via the contact designated in this Agreement, when an Emergency Water Supply is required. In the event Emergency Water Supply is required because of an equipment failure, power outage or damage to the system or plant of the Purchaser's water system, Purchaser will give Supplier daily reports regarding progress being made to correct and restore water service through Purchaser's water system.

Section 7. Permits. Each party shall actively support and assist the other obtaining any permit or approval from governmental agencies that may be required in connection with the performance of this Agreement.

Section 8. Rationing and Conservation Measures or Restrictions. If Emergency Water is provided by the Supplier during the time in which the Supplier is rationing the use of water to its own customers, then, a pro rata rationing of Emergency Water supplied to Purchaser by Supplier

may be instituted. The parties agree to consult with one another in the development of any rationing plans that may be necessary or appropriate. Supplier may implement any measures considered appropriate by it to alleviate a water emergency to its own water customers.

Section 9. General Provisions.

A. Each party, as Supplier, shall use all reasonable efforts to commence making Emergency Water available to the other party, as Purchaser, when the Purchaser certifies that all connections are complete and operational for water supply purposes.

B. Force Majeure. In the event, by reason of force majeure, any party hereto shall be unable, in whole or in part, to carry out its obligations under this Agreement, such party shall give notice in writing to the other party of the particulars of such force majeure event or cause. Upon giving such notice, the obligation of the party giving the notice, so far as it is affected by such force majeure, shall be suspended during the continuance of the inability then claimed and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term force majeure as used herein shall mean a cause or causes beyond the reasonable control of the party claiming the force majeure and shall include but not be limited to natural disasters, strikes, lockouts, industrial disturbances, acts of an enemy, acts of any civil or military authority, insurrections, riots, epidemics, pandemics, lightening, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government, civil disturbances, judicial acts, acts of governmental agencies, explosions, breakage of water delivery facilities or supply chain disruptions. The obligation of Purchaser to pay for services actually received from the Supplier shall not be delayed on account of an event of force majeure.

C. Ownership and Liability. No provision of this Agreement shall be construed to create an ownership interest by either party in the water system or property of the other. No provision of this Agreement shall be construed to create a partnership or joint venture between the parties.

D. Responsibility for damages arising from improper water treatment, transportation or delivery shall remain in the Supplier up to the Delivery Point. After the Emergency Water has passed through the Meter, liability for damages arising out of improper treatment, transportation or Delivery of Emergency Water shall pass to the Purchaser. The Supplier's sole responsibility is to provide to the Purchaser at the Delivery Point an Emergency Water Supply pursuant to this Agreement.

E. Indemnity. To the extent allowed by law, each party agrees to indemnify and hold harmless the other of and from any and all claims, losses, damages, causes of action, suits or liability of every kind, including expenses of litigation, court costs and attorney's fees, for injury to or death of any person, or for damage to any property, arising out of or relating to the performance of this Agreement by either party, except where such injuries, death or damages are caused by the claimant's own negligence or the negligence of its officers, agents, or employees.

F. Assignment. This Agreement is not assignable by either party without the express written consent of the other.

G. Governing Law. This Agreement shall be governed by the law of the State of Texas and is performable in Bell County, Texas.

H. Entire Agreement. This Agreement constitutes the entire agreement between the parties relative to the subject matter hereof. There are no oral or written agreements, representations or warranties between the parties other than those expressly stated herein.

I. Term. Unless earlier terminated as provided herein, the term of this Agreement is five (5) years.

J. Notice. Any notice, communication, request, reply or advice herein provided or permitted to be given, made or accepted by either party, must be in writing and may be given or be served by depositing the same in the United States mail, postage paid, by registered or certified mail, addressed to the party to be notified with a return receipt requested, by hand delivery or by overnight delivery through a recognized service such as Federal Express or UPS. Any matter deposited in the manner required by this Agreement shall be conclusively deemed to be effective unless otherwise stated in the Agreement from and after the earlier of the actual receipt of the notice or expiration of five (5) days after it is so deposited. Any notice given in any other matter shall be effective if and when received by the party to be notified. For purposes of notice, the contact for each of the entities, and contact information is as follows:

If to Central Texas Water
Supply Corporation:

Lee Kelley
Central Texas Water Supply Corporation
4020 Lakecliff Dr.
Harker Heights, Texas 76548
Telephone: (254) 698-2779
Email: ctwscgm@embarqmail.com

If to the City of
Killeen, Texas:

City of Killeen
Attention: Steve Kana
805 West Jasper drive
Killeen, Texas 76542
Telephone: (254) 501-7623
Email: skana@killeentexas.gov

To initiate Emergency Water Service under this Agreement, the purchasing party may contact the supplying party by telephone with a confirming email.

IN WITNESS WHEREOF, the parties hereto acting under the authority of their respective governing bodies, have caused this Agreement to be duly executed in several counterparts, each of which shall constitute an original as of this the _____ day of _____, 2022.

[signature pages follow]

**CENTRAL TEXAS WATER
SUPPLY CORPORATION**

By: John R Whitson
Print Name: John R Whitson
Title: President

ATTEST:

Marianna Stelling
Secretary

CITY OF KILLEEN

By: _____
Print Name: _____
Title: _____

ATTEST:

City Secretary