

**DROUGHT CONTINGENCY PLAN
FOR
FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 35,
OF FORT BEND COUNTY, TEXAS**

**Section I
Adoption, Declaration of Policy, Purpose, and Intent**

In order to conserve the available water supply and protect the integrity of water supply facilities, with particular regard for domestic water use, sanitation, and fire protection, and to protect and preserve public health, welfare, and safety and minimize the adverse impacts of water supply shortage or other water supply emergency conditions, be it ordered by the Board of Directors of FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 35, OF FORT BEND COUNTY, TEXAS (the "District") that the following regulations and restrictions on the delivery and consumption of water are hereby adopted effective this 6th day of November, 2013.

This Plan shall be effective from and after the date of its adoption and all prior drought contingency plans, including any such plan related to Customers, as herein defined, adopted by the District shall be revoked and no longer in force and effect as of said date.

Water uses regulated or prohibited under this Drought Contingency Plan (the "Plan") are considered to be non-essential and continuation of such uses during times of water shortage or other emergency water supply conditions are deemed to constitute a waste of water which subjects the offender(s) to surcharges as defined in Section XI of this Plan.

**Section II
Public Involvement**

Opportunity for the public to provide input into the preparation of this Plan was provided by the District by means of holding a public meeting, for which proper notice was given, to accept input on this Plan.

**Section III
Public Education**

The District will periodically provide or make available to the public information about this Plan, including information about the conditions under which each stage of this Plan is to be initiated or terminated and the drought response measures to be implemented in each stage. This information will be provided by various methods, as the Board of Directors deems appropriate from time to time, including, but not limited to, utility bill inserts.

Section IV
Coordination with Regional Water Planning Groups
and the Texas Commission on Environmental Quality

The service area of the District is located within the Houston Region H Regional Water Planning Group and the District will provide a copy of this Plan to such regional water planning group within ninety (90) days following its adoption. Further, to the extent required by 30 TAC §288.30, the District shall submit this Plan to, or make available for inspection by, the executive director of the Commission (as hereinafter defined) within ninety (90) days of its adoption, or sooner if required by 30 TAC §288.30. The District shall notify the executive director of the Commission within five (5) business days of the implementation of any stage of this Plan, other than Stage 1.

Section V
Authorization

The District's Operator is hereby authorized and directed to implement the applicable provisions of this Plan upon determination that such implementation is necessary to protect public health, safety, and welfare. The District's Operator shall have the authority to initiate or terminate drought or other water supply emergency response measures as described in this Plan.

Section VI
Application

To the extent that the District is a Retail Public Water Supplier, as that term is defined in 30 TAC §288.1(16), as amended from time to time, the applicable provisions of this Plan shall apply to all Retail Water Customers of the District. Additionally, to the extent that the District is a Wholesale Public Water Supplier, as that term is defined in 30 TAC §288.1(19), as amended from time to time, the applicable provisions of this Plan shall also apply to all Wholesale Water Customers of the District.

Section VII
Definitions

For the purposes of this Plan, the following definitions shall apply:

The term "Aesthetic Water Use" shall mean water use for ornamental, decorative or recreational purposes such as fountains, amenity lakes, reflecting pools, swimming pools, hot tubs, and water gardens.

The term "Authority" shall mean the North Fort Bend Water Authority, or its successor.

The term "Average Run Time for the District's Well(s)" shall mean the average of the well run times at all of the District's operational water wells over a 24-hour period.

The term "Commercial and Institutional Water Use" shall mean water use which is integral to the operations of commercial and non-profit establishments and governmental entities such as retail establishments, medical facilities, hotels and motels, restaurants, and office buildings, schools and homeowner's associations.

The term "Commission" shall mean the Texas Commission on Environmental Quality, or its successor.

The term "Conservation" shall mean those practices, techniques, and technologies that reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water or increase the recycling and reuse of water so that a supply is conserved and made available for future or alternative uses.

The term "Customers" shall mean all Retail Water Customers, if any, and all Wholesale Water Customers, if any.

The term "Domestic Water Use" shall mean water use for personal needs or for household or sanitary purposes such as drinking, bathing, heating, cooking, sanitation, or for cleaning a residence, business, industry, or institution.

The term "Drought of Record" shall mean the historic period of record for the watershed in which the District is located, in which the lowest flows were known to have occurred based on naturalized stream flow.

The term "Engineer" shall mean Brown & Gay Engineers, Inc. or such other qualified Person engaged from time to time by the District as its engineer.

The term "Even Numbered Address" shall mean street addresses, box numbers, or rural postal route numbers ending in 0, 2, 4, 6, or 8 and locations without addresses.

The term "Household" shall mean the residential premises served by the Retail Water Customer's meter.

The term "Industrial Water Use" shall mean the use of water in processes designed to convert materials of lower value into forms having greater usability and value.

The term "Landscape Irrigation Use" shall mean potable water used for the irrigation and maintenance of landscaped areas, whether publicly or privately owned, including residential and commercial lawns, gardens, golf courses, parks, and rights-of-way and medians.

The term "Monthly Non-Residential Allocation" shall mean one hundred fifty percent (150%) of a particular non-residential Retail Water Customer's average monthly usage for the twelve (12) months prior to the initiation of the applicable drought stage, all as established by the

District's Operator and/or Engineer. If the billing history for a particular non-residential Retail Water Customer is shorter than twelve (12) months, the monthly average for which there is a record shall be used.

The term "Monthly Residential Allocation" shall mean one hundred fifty percent (150%) of the average monthly usage for a residence in the District for the twelve (12) months prior to the initiation of the applicable drought stage, all as established by the District's Operator and/or Engineer.

The term "Monthly Wholesale Allocation" shall have the meaning given to such term in Section X (B) of this Plan.

The term "Non-essential Water Use" shall mean water uses that are not essential nor required for the protection of public, health, safety, and welfare, including, but not limited to, (a) Landscape Irrigation Use, except as otherwise provided under this Plan, (b) use of water to wash any motor vehicle, motorbike, boat, trailer, airplane or other vehicle, (c) use of water to wash down any sidewalks, walkways, driveways, parking lots, tennis courts, or other hard-surfaced areas, (d) use of water to wash down buildings or structures for purposes other than immediate fire protection, (e) flushing gutters or permitting water to run or accumulate in any gutter or street, (f) Aesthetic Water Use, including, without limitation, use of water to fill, refill, or add to any indoor or outdoor swimming pools or hot tubs and use of water in a fountain, lake or pond for aesthetic or scenic purposes except where necessary to support aquatic life, (g) failure to repair a controllable leak(s) within a reasonable period after having actual knowledge of or having been given notice by the District directing the repair of such leak(s), and (h) use of water from hydrants for construction purposes or any other purposes other than firefighting.

The term "Odd Numbered Address" shall mean street addresses, box numbers, or rural postal route numbers ending in 1, 3, 5, 7, or 9.

The term "Odd Numbered Dates" shall mean calendar dates ending in 1, 3, 5, 7 or 9.

The term "Operator" shall mean Severn Trent Environmental Services, Inc. or such other qualified Person engaged from time to time by the District as its operator.

The term "Person" shall include individuals, corporations, partnerships, associations, and all other legal entities.

The term "PSI" shall mean pounds per square inch.

The term "Rate Order" shall mean the District's Rate Order as adopted and amended by the District's Board of Directors from time to time.

The term "Retail Water Customers" shall mean any Person using water supplied by the District except for Wholesale Water Customers.

The term "Water System Failure" shall mean a water line break, pump failure, well failure, extended power failure, or other water plant or water system failure which causes pressure to drop below twenty-five (25) PSI.

The term "Wholesale Contract" shall mean a contract between a particular Wholesale Water Customer and the District for water diversions or deliveries from the District to such Wholesale Water Customer.

The term "Wholesale Water Customers" shall mean any Person receiving water from the District for resale to the public, except said term shall not apply when the water is received through an emergency water interconnect between the District and another district which normally remains closed.

Section VIII
Triggering Criteria for Initiation
and Termination of Drought Response Stages

The District's Operator shall monitor water supply and/or demand conditions on a daily basis and shall determine, in consultation with the District's Engineer and Board of Directors, when conditions warrant initiation or termination of each stage of this Plan as set forth below. Public notification of the initiation or termination of drought response stages shall be by means of either publication in a newspaper of general circulation within the District, direct mail to each Customer, signs posted within the District or such other method as the District shall determine to be appropriate under the then existing circumstances.

The triggering criteria described below are based on an analysis performed by the District's Operator and Engineer concerning the vulnerability of the District's water source under Drought of Record conditions.

A. STAGE 1 WATER SHORTAGE CONDITIONS.

1. Requirements for Initiation - The District will initiate Stage 1 when (a) before the District begins receiving surface water from the Authority, the Average Run Time for the District's Well(s) is at or above 18 hours for three (3) consecutive days or (b) after the District begins receiving surface water from the Authority, the District utilizes an equivalent amount of surface water (or combination of surface water and groundwater) for three (3) consecutive days.

2. Requirements for Termination - Stage 1 may be rescinded when the condition listed as the triggering event has ceased to exist for a period of seven (7) consecutive days. The District will notify its Customers of the termination of Stage 1 in any of the manners as authorized for the notification of the initiation of Stage 1. Upon the termination of Stage 1, District operations shall return to normal.

B. STAGE 2 WATER SHORTAGE CONDITIONS.

1. Requirements for Initiation - The District will initiate Stage 2 when (a) before the District begins receiving surface water from the Authority, the Average Run Time for the District's Well(s) is at or above 20 hours for three (3) consecutive days or (b) after the District begins receiving surface water from the Authority, the District utilizes an equivalent amount of surface water (or combination of surface water and groundwater) for three (3) consecutive days.

2. Requirements for Termination - Stage 2 may be rescinded when the condition listed as the triggering event has ceased to exist for a period of seven (7) consecutive days. The District will notify its Customers of the termination of Stage 2 in any of the manners as authorized for the notification of the initiation of Stage 2. Upon the termination of Stage 2, Stage 1 becomes operative if the condition listed as the triggering event exists for Stage 1.

C. STAGE 3 WATER SHORTAGE CONDITIONS.

1. Requirements for Initiation - The District will initiate Stage 3 when (a) before the District begins receiving surface water from the Authority, the Average Run Time for the District's Well(s) is at or above 21 hours for three (3) consecutive days or (b) after the District begins receiving surface water from the Authority, the District utilizes an equivalent amount of surface water (or combination of surface water and groundwater) for three (3) consecutive days.

2. Requirements for Termination - Stage 3 may be rescinded when the condition listed as the triggering event has ceased to exist for a period of seven (7) consecutive days. The District will notify its Customers of the termination of Stage 3 in any of the same manners as authorized for the notification of the initiation of Stage 3. Upon the termination of Stage 3, Stage 2 or Stage 1 becomes operative, as applicable, if the condition listed as the triggering event exists for such stage.

D. STAGE 4 WATER SHORTAGE CONDITIONS.

1. Requirements for Initiation - The District will initiate Stage 4 when (a) before the District begins receiving surface water from the Authority, the Average Run Time for the District's Well(s) is at or above 22 hours for three (3) consecutive days or (b) after the District begins receiving surface water from the Authority, the District utilizes an equivalent amount of surface water (or combination of surface water and groundwater) for three (3) consecutive days.

2. Requirements for Termination - Stage 4 may be rescinded when the condition listed as the triggering event has ceased to exist for a period of seven (7) consecutive days. The District will notify its Customers of the termination of Stage 4 in any of the

same manners as authorized for the notification of the initiation of Stage 4. Upon the termination of Stage 4, Stage 3, Stage 2 or Stage 1 becomes operative, as applicable, if the condition listed as the triggering event exists for such stage.

E. ADDITIONAL TRIGGERING EVENTS.

Further, to the extent that a stage of this Plan is not otherwise triggered, then the appropriate stage, as determined by the District's Operator and Engineer, shall be triggered upon (a) the District having received notice from the county in which the District is located, in accordance with Texas Water Code Section 16.055(g)(2)(B), as amended, that a state of disaster in such county has been declared, (b) the District having received notice from the Authority that restrictions under its drought contingency plan have been triggered, (c) the District experiencing a Water System Failure, or (d) a determination by the District's Board of Directors that initiation of the Plan is in the best interests of the District. In the event of (b) above, the District will initiate the appropriate stage of this Plan that is necessary to comply with any directive issued by the Authority in connection with its drought contingency plan, notwithstanding that such stage would not otherwise be triggered hereunder.

**Section IX
Drought Response Stages**

The District's Operator shall, in accordance with the triggering criteria set forth in Section VIII of this Plan above, implement the following actions upon the giving of notice as set forth in Section VIII.

A. STAGE 1 WATER SHORTAGE CONDITIONS.

1. Target. Achieve a ten percent (10%) reduction in daily water delivery.
2. Supply Management Measures. The District's Operator shall undertake any actions that it deems necessary, including reducing system pressure to fifty-five (55) PSI and/or reducing interconnection with another water system.
3. Demand Management Measures Applicable to Wholesale Water Customers. The District's Operator shall (a) initiate weekly contact with Wholesale Water Customers to discuss water supply and/or demand conditions and the possibility of pro rata curtailment of water diversions and/or deliveries, (b) request Wholesale Water Customers to initiate mandatory measures to reduce Non-essential Water Uses, (c) at the discretion of and upon authorization by the District's Board of Directors, prepare a Monthly Wholesale Allocation for each Wholesale Water Customer in preparation for the implementation of the water allocation provisions of Section X of this Plan, and (d) provide a weekly report to the Wholesale Water Customers regarding current water supply and/or demand conditions, projected water supply and demand conditions if drought conditions persist, and information on water conservation measures and practices.

4. Water Use Restrictions Applicable to Retail Water Customers. At the discretion of and upon authorization by the District's Board of Directors, the Operator shall prepare a monthly Non-Residential Allocation or Monthly Residential Allocation, as applicable, for each Retail Water Customer in preparation for the implementation of the water allocation provisions of Section X of this Plan. Additionally, the irrigation of landscaped and other areas shall be voluntarily limited to (a) Mondays and Wednesdays for Retail Water Customers with an Even Numbered Address, (b) Tuesdays and Thursdays for Retail Water Customers with an Odd Numbered Address, and (c) Mondays and Wednesdays for Retail Water Customers responsible for watering common areas. Irrigation of landscaped areas is further voluntarily limited to between the hours of 8:00 p.m. on the designated watering day(s) and 3:00 a.m. on the following day(s). Retail Water Customers are requested to practice water conservation and to minimize or discontinue Non-essential water uses.

B. STAGE 2 WATER SHORTAGE CONDITIONS.

1. Target. Achieve a ten percent (10%) reduction in daily water delivery.

2. Supply Management Measures. The District's Operator shall undertake any actions that it deems necessary, including reducing system pressure to fifty (50) PSI and/or reducing interconnection with another water system.

3. Demand Management Measures Applicable to Wholesale Water Customers. The District's Operator shall (a) assess the severity of the problem and identify the actions needed and time required to solve the problem, (b) inform the operator or other responsible official of each Wholesale Water Customer by telephone, in person or by other means and suggest and/or require actions, as appropriate or deemed necessary by the District's Operator, to alleviate problems, including the implementation of the water allocation provisions of Section X of this Plan, which shall be done at the discretion of and upon the authorization by the District's Board of Directors, (c) if appropriate, notify city, county, and/or state emergency response officials for assistance, (d) undertake actions, including repairs and/or clean-up as needed, and/or (e) prepare a post-event assessment report on the incident and critique of emergency procedures and response actions.

4. Water Use Restrictions Applicable to Retail Water Customers. At the discretion of and upon the authorization by the District's Board of Directors, the Operator shall implement the water allocation provisions of Section X of this Plan. Additionally, the following water use restrictions shall apply to all Retail Water Customers and violators shall be subject to the surcharges set forth in Section XI of this Plan:

- (a) Irrigation of landscaped areas with hose-end sprinklers or automatic irrigation systems shall be limited to (a) Mondays and Wednesdays for Retail Water Customers with an Even Numbered Address, (b) Tuesdays and Thursdays for Retail Water Customers with an Odd Numbered Address, and (c) Mondays and Wednesdays for Retail Water Customers responsible for

watering common areas. Irrigation of landscaped areas is further limited to between the hours of 8:00 p.m. on the designated watering day(s) and 3:00 a.m. on the following day(s). However, irrigation of landscaped areas is permitted at any time if it is by means of a hand-held hose equipped with a functioning positive shut-off device, a faucet filled bucket or watering can of five (5) gallons or less, or drip irrigation system.

- (b) Use of water to wash any motor vehicle, motorbike, boat, trailer, airplane or other vehicle is prohibited except between the hours of 8:00 p.m. on the designated watering day(s) and 3:00 a.m. on the following day(s). Such washing, when allowed, shall be done with a hand-held bucket or a hand-held hose equipped with a functioning positive shut-off device. Vehicle washing may be done at any time on the immediate premises of a commercial car wash or commercial service station. Further, such washing may be granted a variance from this restriction in accordance with Section XII of this Plan if the health, safety, or welfare of the public is contingent upon frequent vehicle cleansing, such as garbage trucks and vehicles used to transport food and perishables.
- (c) Use of water to fill, refill, or add to any Aesthetic Water Use is prohibited except between the hours of 8:00 p.m. on the designated watering day(s) and 3:00 a.m. on the following day(s).
- (d) Operation of any ornamental fountain or pond for aesthetic or scenic purposes is prohibited except where necessary to support aquatic life or where such fountains or ponds are equipped with a recirculation system.
- (e) Use of water from hydrants shall be limited to firefighting, related activities, or other activities necessary to maintain public health, safety, and welfare, except that use of water from designated fire hydrants for construction purposes may be allowed under special permit from the District.
- (f) Use of water for the irrigation of golf course greens, tees, and fairways is prohibited except between the hours of 8:00 p.m. on the designated watering day(s) and 3:00 a.m. on the following day(s). However, if the golf course utilizes a water source for irrigation other than that provided by the District's potable water supply system, the golf course shall not be subject to this restriction.
- (g) All restaurants are prohibited from serving water to their patrons except when requested.
- (h) To the extent not otherwise provided or otherwise in conflict with any of the above, all other Non-essential Water Uses are prohibited.

C. STAGE 3 WATER SHORTAGE CONDITIONS.

1. Target. Achieve a fifteen percent (15%) reduction in daily water delivery.
2. Supply Management Measures. The District's Operator shall undertake any actions that it deems necessary, including reducing system pressure to forty-five (45) PSI and/or reducing interconnection with another water system.
3. Demand Management Measures Applicable to Wholesale Water Customers. The demand management measures described in Stage 2 shall remain in effect during Stage 3. Unless previously implemented during Stage 2, the District's Operator shall, at the discretion of and upon the authorization by the District's Board of Directors, implement the water allocation provisions of Section X of this Plan for each Wholesale Water Customer. In addition, the District's Operator shall provide a weekly report to the Wholesale Water Customers with information regarding current water supply and/or demand conditions, projected water supply and demand conditions if drought conditions persist, and information on water conservation measures and practices.
4. Water Use Restrictions Applicable to Retail Water Customers. At the discretion of and upon the authorization by the District's Board of Directors, the Operator shall implement the water allocation provisions of Section X of this Plan if such provisions were not previously implemented during Stage 2. Additionally, all Residential Water Customer water use restrictions for Stage 2 shall remain in effect during Stage 3, except as further restricted below, and violators shall be subject to the surcharges set forth in Section XI of this Plan:
 - (a) Irrigation of landscaped areas shall be prohibited.
 - (b) Use of water to wash any motor vehicle, motorbike, boat, trailer, airplane or other vehicle not occurring on the premises of a commercial car wash or commercial service station is prohibited. Further, such washing may be granted a variance from this restriction in accordance with Section XII of this Plan if the health, safety, and welfare of the public is contingent upon frequent vehicle cleansing, such as garbage trucks and vehicles used to transport food and perishables. Such vehicle washing at commercial car washes and commercial service stations shall be allowed only between the hours of 9:00 a.m. and 2:00 p.m. and between 8:00 p.m. and 5:00 a.m.
 - (c) The filling, refilling, or adding of water to any Aesthetic Water Use is prohibited.
 - (d) No applications for new, additional, expanded, or increased-in-size water service connections, meters, service lines, pipeline extensions, mains, or water service facilities of any kind shall be approved if the District's

Operator and Engineer determine that such approval(s) would have a substantial negative impact on existing Customers.

D. STAGE 4 WATER SHORTAGE CONDITIONS.

1. Target. Achieve a twenty percent (20%) reduction in daily water delivery.
2. Supply Management Measures. The District's Operator shall undertake any actions that it deems necessary, including reducing system pressure to forty-five (45) PSI and/or reducing interconnection with another water system.
3. Demand Management Measures Applicable to Wholesale Water Customers. The demand management measures described in Stage 3 shall remain in effect during Stage 4. Unless previously implemented during Stage 2 or Stage 3, the District's Operator shall, at the discretion of and upon the authorization by the District's Board of Directors, implement the water allocation provisions of Section X of this Plan for each Wholesale Water Customer. In addition, the District's Operator shall provide a weekly report to the Wholesale Water Customers with information regarding current water supply and/or demand conditions, projected water supply and demand conditions if drought conditions persist, and information on water conservation measures and practices.
4. Water Use Restrictions Applicable to Retail Water Customers. At the discretion of and upon the authorization by the District's Board of Directors, the Operator shall implement the water allocation provisions of Section X of this Plan if such provisions were not previously implemented during Stage 2 or Stage 3. Additionally, all Residential Water Customer water use restrictions for Stage 3 shall remain in effect during Stage 4, except as further restricted below, and violators shall be subject to the surcharges set forth in Section XI of this Plan:
 - (a) Irrigation of landscaped areas shall be prohibited.
 - (b) Use of water to wash any motor vehicle, motorbike, boat, trailer, airplane or other vehicle not occurring on the premises of a commercial car wash or commercial service station is prohibited. Further, such washing may be granted a variance from this restriction in accordance with Section XII of this Plan if the health, safety, and welfare of the public is contingent upon frequent vehicle cleansing, such as garbage trucks and vehicles used to transport food and perishables. Such vehicle washing at commercial car washes and commercial service stations shall be allowed only between the hours of 9:00 a.m. and 2:00 p.m. and between 8:00 p.m. and 5:00 a.m.
 - (c) The filling, refilling, or adding of water to any Aesthetic Water Use is prohibited.

- (d) No applications for new, additional, expanded, or increased-in-size water service connections, meters, service lines, pipeline extensions, mains, or water service facilities of any kind shall be approved if the District's Operator and Engineer determine that such approval(s) would have a substantial negative impact on existing Customers.

**Section X
Water Allocation**

A. RETAIL WATER CUSTOMERS. In the event that any of the triggering criteria specified in Section VIII of this Plan for Stage 2, Stage 3 or Stage 4 have been met, the District's Operator may, with prior authorization of the Board of Directors, initiate water rates according to the following plan:

1. Stage 2 Water Shortage Conditions. The following water rates shall be charged per month:

(a) Residential (for single-family Domestic Water Use):

<u>Usage</u>	<u>Rate</u>
i. Zero through the Monthly Residential Allocation	The water charge per 1,000 gallons as set forth in the Rate Order
ii. Above the Monthly Residential Allocation	The water charge per 1,000 gallons as set forth in the Rate Order times two (2)

(b) Non-Residential (including Commercial and Institutional Water Use and multi-family Domestic Water Use):

<u>Usage</u>	<u>Rate</u>
i. Zero through the Monthly Non-Residential Allocation	The water charge per 1,000 gallons as set forth in the Rate Order
ii. Above the Monthly Non-Residential Allocation	The water charge per 1,000 gallons as set forth in the Rate Order times two (2)

2. Stage 3 Water Shortage Conditions. The following water rates shall be charged per month:

(a) Residential (for single-family Domestic Water Use):

<u>Usage</u>	<u>Rate</u>
i. Zero through the Monthly Residential Allocation	The water charge per 1,000 gallons as set forth in the Rate Order
ii. Above the Monthly Residential Allocation	The water charge per 1,000 gallons as set forth in the Rate Order times three (3)

(b) Non-Residential (including Commercial and Institutional Water Use and multi-family Domestic Water Use):

<u>Usage</u>	<u>Rate</u>
i. Zero through the Monthly Non-Residential Allocation	The water charge per 1,000 gallons as set forth in the Rate Order
ii. Above the Monthly Non-Residential Allocation	The water charge per 1,000 gallons as set forth in the Rate Order times three (3)

3. Stage 4 Water Shortage Conditions. The following water rates per month shall be charged:

(a) Residential (for single-family Domestic Water Use):

<u>Usage</u>	<u>Rate</u>
i. Zero through the Monthly Residential Allocation	The water charge per 1,000 gallons as set forth in the Rate Order
ii. Above the Monthly Residential Allocation	The water charge per 1,000 gallons as set forth in the Rate Order times five (5)

(b) Non-Residential (including Commercial and Institutional Water Use and multi-family Domestic Water Use):

<u>Usage</u>	<u>Rate</u>
i. Zero through the Monthly Non-Residential Allocation	The water charge per 1,000 gallons as set forth in the Rate Order
ii. Above the Monthly Non-Residential Allocation	The water charge per 1,000 gallons as set forth in the Rate Order times five (5)

A Retail Customer may appeal an allocation established hereunder to the District's Board of Directors in the same manner as for an appeal of District charges as set forth in the Rate Order. Unless a different time is designated by the District's Board of Directors, the water rates described herein shall commence on the first day and shall terminate on the last day of the billing cycle during the calendar month that Stage 2, Stage 3 or Stage 4, as appropriate, has been initiated or terminated, as applicable.

B. WHOLESALE WATER CUSTOMERS. In the event that any of the triggering criteria specified in Section VIII of this Plan for Stage 2, Stage 3 or Stage 4 have been met, the Operator may, with the prior authorization of the District's Board of Directors, initiate allocation of water supplied to its Wholesale Water Customers on a pro rata basis in accordance with Texas Water Code, Section 11.039, as amended, and according to the following water allocation policies and procedures. A Wholesale Water Customer may appeal the Monthly Wholesale Allocation (as defined below) established hereunder to the Board of Directors of the District in the same manner as for an appeal of District charges as set forth in the Rate Order.

1. A Wholesale Water Customer's monthly allocation shall be a percentage of such Wholesale Water Customer's water usage baseline as established pursuant to subsection (2) below (the "Monthly Wholesale Allocation"). The percentage will be set by the District based upon the Operator's assessment of the severity of the water shortage condition and the need to curtail water diversions and/or deliveries and may be adjusted periodically by the District's Operator as conditions warrant. Once the pro rata allocation is in effect, water diversions by or deliveries to each Wholesale Water Customer shall be limited to the allocation established for each month.
2. The Wholesale Water Customer's water usage baseline will be computed on the average monthly water usage for the preceding twelve (12) month period. If the Wholesale Water Customer's usage history is less than twelve (12) months, the monthly average for the period for which there is a record shall be used.
3. The District's Operator shall provide notice, by certified mail, to each Wholesale Water Customer informing it of its monthly water usage allocations and shall notify the executive director of the Commission upon initiation of pro rata water allocations.

During any period when the water allocation provisions of this Section X(B) are in effect, Wholesale Water Customers shall pay the surcharges set forth in Section XI(B) for excess water diversions and/or deliveries.

Upon request of any Wholesale Water Customer or at the initiative of the District's Operator, the allocation may be reduced or increased if (a) objective evidence demonstrates, in the sole determination of the District, that the designated period does not accurately reflect the Wholesale Water Customer's normal water usage, (b) the Wholesale Water Customer agrees to transfer part of its allocation to another Wholesale Water Customer, or (c) other objective evidence demonstrates, in the sole determination of the District, that the designated allocation is inaccurate under present conditions.

Every wholesale water supply contract entered into, amended, or renewed by the District after the adoption of this Plan, including contract extensions, shall include a provision stating that, in case of a shortage of water resulting from drought, the water to be distributed pursuant to the contract shall be divided in accordance with Texas Water Code § 11.039, as amended.

Section XI

Enforcement and Surcharges

A. RETAIL WATER CUSTOMERS. The following shall apply to Retail Water Customers.

1. No Retail Water Customer shall knowingly or intentionally allow the use of water supplied by the District through the Retail Water Customer's meter for any purpose in a manner contrary to any provision of this Plan, or in an amount in excess of that permitted by the drought response stage in effect at the time pursuant to action taken by District's Operator, in accordance with provisions of this Plan.

2. Any Person who violates this Plan (which violation shall constitute an unauthorized use of District services and/or facilities) shall be subject to a surcharge of not less than one hundred dollars (\$100.00) and not more than two hundred fifty dollars (\$250.00) for each violation. Any Person who violates any provision of this Plan shall receive written notification of such violation, which notice shall set forth (a) the date of the violation, (b) the nature of the violation, (c) the drought response stage and restrictions then in effect, (d) the applicable surcharges for the violation, and (e) notice of the surcharges applicable for any further violations of this Plan. Each day that one or more of the provisions in this Plan is violated shall constitute a separate violation. If three or more violations of the Plan occur at a premises to which the District supplies water while Stage 2, Stage 3 or Stage 4 is in effect, the District's Operator shall, upon twenty-four (24) hours notice to the Retail Water Customer at said premises as set forth for termination of service in the Rate Order, be authorized to discontinue water service to the premises where such violations occurred. If one or more violations of this Plan occur at a premises to which the District supplies water while Stage 4 is in effect, the District's Operator shall, upon twenty-four (24) hours notice to the Retail Water Customer at said premises as set forth for termination of services in the Rate Order, be authorized to discontinue water service to the premises where such

violation(s) occurred. Services discontinued under this Plan shall be restored only upon payment of a re-connection charge, as established by the District's Rate Order, plus all outstanding water and sewer service charges pursuant to the Rate Order and surcharges pursuant to this Plan, and any other costs incurred by the District in discontinuing service. If an additional violation of any stage of this Plan occurs at said premises, the District's Operator shall immediately and without further notice remove the meter and discontinue water service to the premises. The meter will be reinstalled only after payment is made in accordance with the requirements of the District's Rate Order. Compliance with this Plan may also be sought through injunctive relief or any other legal or equitable remedies.

3. For the purposes of imposing the surcharges set forth in Section XI (A)(2) above, any Person, including a person classified as a Retail Water Customer of the District, in apparent control of the property where a violation occurs or originates shall be presumed to be the violator, and proof that the violation occurred on the Person's property shall constitute a rebuttable presumption that the Person in apparent control of the property committed the violation, but any such Person shall have the right to show that he/she/it did not commit the violation by the presentation of objective evidence to the satisfaction of the Board of Directors of the District.

4. Any appeal of surcharges and/or termination of service imposed pursuant to this Plan shall be implemented in accordance with the procedure for appeals of District charges as set forth in the Rate Order.

B. WHOLESALE WATER CUSTOMERS. During any period when the water allocation provisions of Section X(B) of this Plan are in effect, Wholesale Water Customers shall pay the following surcharges on excess water diversions and/or deliveries:

1. Stage 2 Water Shortage Conditions. The following rates and surcharges per month shall be charged:

<u>Usage</u>	<u>Rate</u>
i. Zero through the Monthly Wholesale Allocation	The water charge per 1,000 gallons as set forth in the Wholesale Contract
ii. Above the Monthly Wholesale Allocation	The water charge per 1,000 gallons as set forth in the Wholesale Contract times two (2)

2. Stage 3 Water Shortage Conditions. The following rates and surcharges per month shall be charged:

<u>Usage</u>	<u>Rate</u>
i. Zero through the Monthly Wholesale Allocation	The water charge per 1,000 gallons as set forth in the Wholesale Contract

- | | |
|--|---|
| ii. Above the Monthly Wholesale Allocation | The water charge per 1,000 gallons as set forth in the Wholesale Contract times three (3) |
|--|---|

3. Stage 4 Water Shortage Conditions. The following rates and surcharges per month shall be charged:

<u>Usage</u>	<u>Rate</u>
i. Zero through the Monthly Wholesale Allocation	The water charge per 1,000 gallons as set forth in the Wholesale Contract
ii. Above the Monthly Wholesale Allocation	The water charge per 1,000 gallons as set forth in the Wholesale Contract times five (5)

Unless a different time is designated by the District's Board of Directors, the surcharges described herein shall commence on the first day and shall terminate on the last day of the billing cycle during the calendar month Stage 2, Stage 3 or Stage 4, as appropriate, has been initiated or terminated, as applicable.

Failure of any Wholesale Water Customer to adhere to the Plan may result in discontinuation of water service to such Wholesale Water Customer. Any appeal of the foregoing surcharges shall be implemented in accordance with the procedure for appeals of District charges as set forth in the Rate Order.

Section XII Variances

The Operator may, in writing, grant a temporary variance for a period not to exceed ten (10) days for a specific existing water use otherwise prohibited under this Plan if it is determined by objective evidence, to the satisfaction of the Operator, that failure to grant such variance would cause an emergency condition adversely affecting the health, safety, sanitation, fire protection or welfare of the public or the Customer requesting such variance and if one or both of the following conditions are met:

- (a) Compliance with this Plan cannot, in the Board of Directors determination, reasonably be accomplished during the duration of the applicable stage for which this Plan is in effect or would violate applicable laws or regulations related to the health, safety or welfare of the public; and
- (b) Alternative methods can be implemented which will achieve the same level of reduction in water use.

Customers requesting a variance from this Plan, including Customers to which a temporary variance has been granted as set forth above, shall file a petition for the variance with the District's Board of Directors at the District's administrative offices within five (5) days after this Plan or a particular drought response stage (as applicable to the variance requested) has been invoked. All

petitions for variances shall be reviewed by the District's Board of Directors as set forth below, and shall include the following:

- (a) Name and address of the petitioner(s);
- (b) Purpose of water use;
- (c) Specific provision(s) of this Plan from which the petitioner is requesting relief;
- (d) Detailed statement as to why this Plan cannot be technically accomplished or how the specific provision of this Plan adversely affects the petitioner or what damage or harm will occur to the petitioner or others if petitioner complies with this Plan, including, if applicable, the specific law or regulation which may be violated by compliance with this Plan;
- (e) Description of the relief requested;
- (f) Period of time for which the variance is sought;
- (g) Alternative water use restrictions or other measures the petitioner is taking or proposes to take to meet the requirements of this Plan and the compliance date; and
- (h) Other pertinent information and other information specifically requested by the District's Board of Directors.

The District's Board of Directors shall consider the petition at the first meeting held following receipt of the petition and shall provide the petitioner with notice of the date, time and place of the meeting and an opportunity to address the Board of Directors at said meeting. The District's Board of Directors may elect, in its sole and absolute discretion, not to impose any surcharges for violations of this Plan which occur following the date the petition is filed and before the date a final determination is made by the District's Board of Directors with respect to the granting or denial of the variance.

Variances granted by the District's Board of Directors shall be subject to the following conditions, unless waived or modified by the District:

- (a) Variances granted shall include a timetable for compliance; and
- (b) Variances granted shall expire at the earlier of their specified termination date or when this Plan is no longer in effect unless the District's Board of Directors determines, in its sole discretion, to continue a variance under a new or amended Plan; provided, however, if the petitioner has failed to meet requirements specified in the variance, the variance may be immediately revoked by the Board of Directors of the District.

No variance shall be retroactive or otherwise justify any violation of this Plan occurring prior to the issuance of the variance, unless specifically agreed to by the District's Board of Directors, in its sole discretion.

Section XIII Severability, Amendment

It is hereby declared to be the intention of the District that the sections, paragraphs, sentences, clauses, and phrases of this Plan are severable and, if any phrase, clause, sentence,

paragraph, or section of this Plan shall be declared invalid, unenforceable or unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such invalidity, unenforceability, or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Plan, which shall be enforceable as if the same had been enacted by the District without the incorporation into this Plan of any such invalid, unenforceable or unconstitutional phrase, clause, sentence, paragraph, or section.

The District has and specifically reserves the right to change, alter or amend any provision of this Plan at any time. The District shall renew and update, as appropriate, this Plan at least every five (5) years, based on new or updated information, such as adoption or revision of any applicable regional water plan, or as may otherwise be required by applicable statutes or rules of the Commission.

[SIGNATURES COMMENCE ON THE FOLLOWING PAGE]

Passed and adopted as of the date first set forth herein.

FORT BEND COUNTY MUNICIPAL
UTILITY DISTRICT NO. 35, OF FORT
BEND COUNTY, TEXAS

ATTEST:

By: *Battistini*
Secretary, Board of Directors

By: *Susan Rucke*
President, Board of Directors



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