Exhibit A ARTICLE 18.08 <u>DROUGHT CONTINGENCY AND WATER EMERGENCY PLAN</u> Sec. 18.08.001 Approval of the plan

The City Council hereby approves the addition of definitions, prohibiting water waste during all drought response stages, and revisions to drought response stages to the City's Drought Contingency and Water Emergency Plan (the "Plan"). The City commits to implement the program changes according to the procedures set forth in the revised Plan.

Sec. 18.08.002 Declaration of policy, purpose, and intent

- (a) It is hereby declared that, because of the water conditions prevailing in the City, the water resources available to the City shall be put to the maximum beneficial use and that the waste, unreasonable use, or unreasonable method of use of water be prevented, and the conservation of such water to be extended with a view to the reasonable and beneficial use thereof in the interests of the people of the City and for the public health and welfare.
- (b) Water uses regulated or prohibited under the Plan are considered to be nonessential and continuation of such uses during times of water shortage or other emergency water supply condition are deemed to constitute a waste of water which subjects the offender(s) to enforcement as defined in Section 18.08.014 of this Article.

Sec. 18.08.003 Quantitative goals of this plan

This Plan reflects the quantitative goals specified by the City's Water Conservation Plan (see Article 18.11), as required by Title 30, Texas Administrative Code, Chapter 288 (30 TAC §288). The City's annual average water use over the past five years is 166.7 gallons per capita per day (gpcd). The City's annual average water loss over the past five years is 13.6% of water delivered or 29.4 gpcd. Presented below are the City's five year and ten year goals for reducing the annual average water use and water loss.

- (a) Five Year Conservation Goals
- (1) Reduce the average per capita day water usage by 2.5% by 2014 with a goal of achieving 162.5 gpcd.
- (2) Reduce water loss by 2.5% by 2014 so that water loss is no more than 13.3% of delivered water or 26.1 gpcd.
- (b) Ten Year Conservation Goals
- (1) Reduce the average per capita day water usage by 2.5% between 2014 and 2019 with a goal of achieving 158.4 gpcd by 2019.

(2) Reduce water loss by 2.5% by 2019 so that water loss is no more than 13.0% of water delivered or 24.5 gpcd.

Sec. 18.08.004 Public education

The City will periodically provide the public with information about the Plan, including information about the conditions under which each stage of the Plan is to be initiated or terminated and the drought response measures to be implemented in each stage. This information will be distributed in an efficient and timely manner which may include, but not be limited to a press release or notice on the City's web site.

Sec. 18.08.005 Wholesale water customer education

The City will periodically provide wholesale water customers with information about the Plan, including information about the conditions under which each stage of the Plan is to be initiated or terminated and the drought response measures to be implemented in each stage.

Sec. 18.08.006 Coordination with regional planning groups

The service area of the City is located within the Lower Colorado Regional Water Planning Area (Region K) of the State, and the City has provided a copy of this Plan to the Lower Colorado Regional Water Planning Area.

Sec. 18.08.007 Authorization

The City Manager 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 City shall have the authority to initiate or terminate drought or other water supply emergency response measures as described in this Plan.

Sec. 18.08.008 Application

The provisions of this Plan shall apply to all persons, customers, and property utilizing water provided by the City. The terms "persons" and "customer" as used in the Plan include individuals, corporations, partnerships, associations, and all other legal entities.

Sec. 18.08.009 Definitions

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

Acre-feet. The amount of water required to cover an area of one acre to a depth of one foot. One acre-foot of water is equal to 325,851 gallons.

Auxiliary source. A source of water other than the City's public water system which may include reuse effluent, raw, ground or well water.

City. The City of Cedar Park, Texas.

City Manager. The City Manager or any designated person acting on the City Manager's behalf.

Combined storage. The amount of water stored in acre-feet in Lake Travis and Lake Buchanan according to records kept by the Lower Colorado River Authority (LCRA).

Commercial/Nonresidential customer. All other customers not classified as residential customer, including but not limited to businesses, schools, churches, large properties, athletic fields, municipally sponsored public gatherings, government entities, multifamily developments and property management associations (e.g. homeowners' associations). Conservation. 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.

Customer. Any person, company, organization, or legal entity receiving water supplied by the City.

Drip Irrigation. A method of irrigation which is typically installed below ground and consists of porous piping or emitters which allow the application of water at a slow and constant rate.

Efficient Irrigation Technology. Irrigation techniques that use the latest technology with variables such as but not limited to soil moisture sensors, rain shut off devices, and evapotranspiration based watering system controllers.

Landscape irrigation use. Water used for the irrigation and maintenance of landscaped areas, whether privately or publicly owned, including residential and commercial lawns, gardens, golf courses, parks, and rights-of-way and medians.

Nonessential water use. Water uses that are neither essential nor required for the protection of public health, safety, and welfare, including:

- (1) Irrigation of landscaped areas, including parks, athletic fields, and golf courses, except as otherwise provided by this Plan;
- (2) Use of water to wash any motor vehicle, motorbike, boat, trailer, airplane or other vehicle;
- (3) Use of water to wash down any sidewalks, walkways, driveways, parking lots, tennis courts, or other hard-surfaced areas;
- (4) Use of water to wash down buildings or structures for purposes other than immediate fire protection;
- (5) Flushing gutters or permitting water to run or accumulate in any gutter or street;
- (6) Use of water to fill, refill, or add to any swimming pools or jacuzzi-type pools;

- (7) Use of water in a fountain or pond for aesthetic or scenic purposes except where necessary to support aquatic life;
- (8) Failure to repair a controllable leak(s) within 10 (ten) business days after having been given notice directing the repair of such leak(s); and

Outdoor water use. Includes but is not limited to watering lawns, shrubs, vegetables, athletic fields, large properties, and other types of outdoor vegetation; washing vehicles, boats, and trailers; use of landscape irrigation systems; the refilling or adding water to swimming pools or wading pools or ponds the operation of aesthetic or recreational devices such as water slides; the operation of any ornamental fountain or other similar structure; the watering of patios, driveways, parking areas, streets, tennis courts, sidewalks or other paved areas; and the watering of ground foundations.

Residential customer. Any person, company, organization, or other legal type entity receiving water supplied by the City at a location where the principal use of the property is for single-family or duplex habitation.

Soaker Hose. A perforated or permeable garden-type hose or pipe that is laid above ground that provides irrigation at a slow and constant rate.

Xeriscape. A method of landscaping which conserves water through the use of specific principles of design, plant selection, installation, maintenance, and irrigation methods.

Sec. 18.08.010 Triggering and termination criteria for drought response stages

- (a) The City Manager shall monitor the water supply and/or production and shall determine when conditions warrant initiation or termination of each Stage of the Plan.
- (b) The triggering criteria described below are based on combined storage, customer water consumption and water treatment plant production/distribution system capacity.
- (1) **Stage 1**–Voluntary water conservation conditions.
- (A) Requirements for initiation. Customers shall be requested to voluntarily conserve water and adhere to the water restrictions on nonessential water use, defined in Section 18.08.009 of this plan at all times.
- (B) Target Reduction Goal. During this Stage, the target reduction goal is 5%.
- (C) Requirements for termination. Stage 1 of the plan may be rescinded at any time by the City Manager. The City will notify its wholesale water customers of the initiation and termination of Stage 1 of the Plan.
- (2) **Stage 2**–Moderate water shortage conditions.

- (A) Requirements for initiation. Customers shall be required to comply with the requirements and restrictions on nonessential water uses, defined in Section 18.08.009 of this Plan at all times when:
- (i) Daily water consumption for three consecutive days reaches 90% of production/distribution capacity and/or the combined storage reaches 900,000 acre-feet, which typically corresponds to an elevation in Lake Travis of 637 feet.
- (ii) Weather conditions are to be considered in drought classification determination. Predicted long, cold, or dry periods are to be considered in impact analysis.
- (B) Target Reduction Goal. During this Stage, the target reduction goal is 10%-20%.
- (C) Requirements for termination. Stage 2 of the plan may be rescinded by the City Manager when all of the conditions listed as triggering events have ceased to exist for a period of three (3) consecutive days. Upon termination of Stage 2, Stage 1 becomes operative. The City will notify its wholesale water customers of the initiation and termination of Stage 2 of the Plan.
- (3) Stage 3–Severe water shortage conditions.
- (A) Requirements for initiation. Customers shall be required to comply with the requirements and restrictions on nonessential water uses, defined in Section 18.08.009, for Stage 3 of this Plan when:
- (i) The combined storage reaches 600,000 acre-feet, which typically corresponds to an elevation in Lake Travis of 618 feet;
- (ii) Daily water consumption will not enable storage levels to be maintained;
- (iii) System demand exceeds available high service pump capacity;
- (iv) Water system is contaminated whether accidentally or intentionally. Severe condition is reached immediately upon detection;
- (v) Water system fails from acts of God (tornadoes, hurricanes) or man. Severe condition is reached immediately upon detection;
- (vi) Any mechanical failure of pumping equipment which will require more than 12 hours to repair which causes unprecedented loss of capability to provide water service.
- (B) Target Reduction Goal. During this Stage, the target reduction goal is a minimum of 20%.
- (C) Requirements for termination. Stage 3 of the Plan may be rescinded by the City Manager when all of the conditions listed as triggering events have ceased to exist for a period of three (3) consecutive days. Upon termination of Stage 3, Stage 2 becomes operative.

- (4) **Stage 4**–Extreme water shortage conditions.
- (A) Requirements for initiation. Customers shall be required to comply with the requirements and restrictions on nonessential water uses, defined in Section 18.08.009, for Stage 4 of this Plan when:
- (i) Daily water consumption reaches 95% of production/distribution capacity for three consecutive days; and/or the Lower Colorado River Authority Board determines that the river system is experiencing a drought more severe than the Drought of Record;
- (ii) Daily water consumption will not enable storage levels to be maintained;
- (iii) System demand exceeds available high service pump capacity;
- (iv) Water system is contaminated whether accidentally or intentionally. Severe condition is reached immediately upon detection;
- (v) Water system fails from acts of God (tornadoes, hurricanes) or man. Severe condition is reached immediately upon detection;
- (vi) Any mechanical failure of pumping equipment which will require more than 12 hours to repair which causes unprecedented loss of capability to provide water service.
- (vii) City Manager determines Stage 4 drought response is in the best interest of the City.
- (B) Target Reduction Goal. During this Stage, the target reduction goal will be determined by the LCRA Board.
- (C) Requirements for termination. Stage 4 of the plan may be rescinded by the City Manager when all of the conditions listed as triggering events have ceased to exist for a period of three (3) consecutive days. Upon termination of Stage 4, Stage 3 becomes operative. The City Manager may suspend all outdoor watering if in the best interest of the City.

Sec. 18.08.011 Drought response stages

The City shall monitor the water supply and/or production as needed and, in accordance with the triggering criteria set forth in Section 18.08.010 of the Plan, shall determine that a moderate, severe, or extreme condition exists and shall implement the following actions upon public notification:

- (1) **Stage 1**–Voluntary water conservation conditions. The goal for Stage 1 of the Plan is to raise public and customer awareness of water demand conditions.
- (A) Voluntary water use measures:

- (i) Water customers shall voluntarily limit outdoor water use by participating in the two-day per week watering schedule for outdoor water use. Outdoor water use shall only occur on a designated outdoor watering day, which shall be two days per week. The two-day per week watering schedule will be determined and distributed by the City.
- (aa) Residential customer watering days:
- 1. Last digit of their street address ending in a 0, 2, 4, 6, or 8: Thursday and Sunday.
- 2. Last digit of their street address ending in a 1, 3, 5, 7, 9: Wednesday and Saturday.
- (bb) Commercial customer watering days: Tuesday and Friday.
- (ii) Outdoor water use is discouraged between the hours of 10:00 a.m. and 7:00 p.m. except with handheld hoses equipped with a positive pistol grip nozzle or other device that automatically shuts off water flow when the hose is not being used, or handheld buckets. The time restrictions do not apply to:
- (aa) The irrigation of commercial plant nurseries;
- (bb) Irrigation using an auxiliary source;
- (cc) Irrigation using a soaker hose or drip irrigation;
- (dd) New landscape installation during installation and the first ten (10) days; and
- (ee) The testing of new irrigation systems or existing irrigation systems being tested or under repair.
- (iii) All operations of the City shall adhere to nonessential water use restrictions, defined in Section 18.08.009.
- (iv) Water customers are requested to practice water conservation and adhere to the restrictions on nonessential water uses, defined in Section 18.08.009. The following uses constitute a waste of water and are prohibited:
- (aa) Washing sidewalks, walkways, driveways, parking lots, tennis courts, patios or other hard-surfaced areas except to alleviate immediate health or safety hazards.
- (bb) Allowing water to run off a property, or allowing water to pond in the street or parking.
- (cc) Operating a permanently installed irrigation system with broken heads, with heads that are out of adjustment that spray more than 10% of the spray on street or parking lots, or that is misting.

- (dd) Failure to repair a controllable leak(s) within 10 (ten) business days after having been given notice directing the repair of such leak(s).
- (ee) Washing an automobile, truck, trailer, boat, airplane, or other mobile equipment with a handheld hose not equipped with a pistol grip nozzle or other device that automatically shuts off water flow when the hose is not being used.
- (B) Demand management measures. The City will contact wholesale water customers to discuss water supply and/or production conditions and will request that wholesale water customers initiate voluntary measures to reduce water use.
- (2) **Stage 2**–Moderate water shortage conditions. The goal for Stage 2 of the Plan is to reduce and maintain maximum daily water demand below eighty percent (80%) to ninety percent (90%) of system capacity.
- (A) Water use restrictions. Under threat of penalty for violation, the following water use restrictions shall apply to all persons:
- (i) Water customers shall be required to limit outdoor water use by participating in the two day per week watering schedule for outdoor water use. Outdoor water use shall only occur on a designated outdoor watering day. The two day per week watering schedule will be determined and distributed by the City.
- (aa) Residential customer watering days:
- 1. Last digit of their street address ending in a 0, 2, 4, 6, or 8: Thursday and Sunday.
- 2. Last digit of their street address ending in a 1, 3, 5, 7, 9: Wednesday and Saturday.
- (bb) Commercial customer watering days: Tuesday and Friday.
- (ii) Outdoor water use is prohibited between the hours of 10:00 a.m. and 7:00 p.m. except with handheld hoses equipped with a positive pistol grip nozzle or other device that automatically shuts off water flow when the hose is not being used, or handheld buckets. The time restrictions do not apply to:
- (aa) The irrigation of commercial plant nurseries;
- (bb) Irrigation using an auxiliary source;
- (cc) Irrigation using a soaker hose or drip irrigation;
- (dd) New landscape installation during installation and the first ten (10) days; and
- (ee) The testing of new irrigation systems or existing irrigation systems being tested or under repair.

- (iii) The washing of automobiles, trucks, motorbikes, boats, trailers, airplanes or other vehicle is prohibited except on designated watering days. This washing shall be done with a handheld bucket or a handheld hose equipped with a positive shutoff nozzle for quick rinses. The washing of individual vehicles may be done at any time on the immediate premises of a commercial carwash or commercial service station. Further, this restriction does not apply to the washing of vehicles or any other type of mobile equipment (such as garbage trucks and vehicles to transport food and perishables) when the health, safety, and welfare of the public is contingent upon frequent vehicle cleansing.
- (iv) Charity carwashes are prohibited unless they occur at a commercial carwash facility that recycles water.
- (v) Use of water to fill, refill, or add to any swimming pools, wading pools, or jacuzzi-type pools is prohibited except on designated watering days.
- (vi) Splash pads and other commercial recreational water devices are allowed to operate during this stage.
- (vii) Pressure washing is allowed on the customer's designated watering days. Pressure washing equipment must be fitted with a spray nozzle that does not use more than 3.5 gallons of water per minute and has a trigger shut-off.
- (viii) 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.
- (ix) Use of water from fire hydrants shall be limited to firefighting, flushing, construction purposes, or other activities necessary to maintain public health, safety, and welfare.
- (x) Use of water for the irrigation of golf course greens, tees, and fairways is prohibited except on designated watering days. Such irrigation may not take place between the hours of 10:00 a.m. and 7 p.m. These restrictions do not apply to the irrigation of any golf course which uses an auxiliary source.
- (B) Demand management measures.
- (i) The City will initiate contact with wholesale water customers to discuss water supply and/or production conditions and the possibility of pro rata curtailment of water diversions and/or deliveries.
- (ii) The City will request wholesale water customers to initiate mandatory measures to reduce nonessential water use (e.g., implement Stage 2 of the customer's drought contingency plan).
- (iii) The City will initiate preparations for the implementation of pro rata water curtailment of water diversions and/or deliveries by preparing a monthly water usage allocation baseline for the wholesale customer according to the procedures specified in Section 18.08.012 of the Plan.

- (iv) The City will provide a report to news media with information regarding current water supply and/or production conditions, projected water supply and demand conditions if drought conditions persist, and consumer information on water conservation measure and practices as needed.
- (3) **Stage 3**–Severe water shortage conditions. The goal for Stage 3 of the Plan is to reduce and maintain maximum daily water demand at or below eighty percent (80%) of system capacity.
- (A) Water use restrictions. Under threat of penalty for violation, the following water use restrictions shall apply to all persons:
- (i) All requirements of Stage 2 shall remain in effect during Stage 3 except:
- (ii) Water customers shall be required to participate in the one day per week watering schedule for outdoor water use. Outdoor water use, including handheld hoses equipped with a positive pistol grip nozzle, soaker hose, drip irrigation, and handheld buckets shall only occur on a designated outdoor watering day, which shall be one day every seven days. The one day per week watering schedule will be determined and distributed by the City Manager.
- (iii) Extended variances will not be granted for newly installed landscape plant material.
- (iv) The operation of decorative water features is prohibited except when aeration is necessary to preserve habitat for aquatic life.
- (v) Pressure washing is prohibited but variances may be granted on the one day per week watering day for health and safety purposes only. Pressure washing equipment must be fitted with a spray nozzle that does not use more than 3.5 gallons of water per minute and has a trigger shut-off.
- (vi) The filling, refilling, or adding of potable water to swimming or wading pools is prohibited.
- (vii.) The operation of residential aesthetic or recreational devices such as water slides is prohibited.
- (viii) All Charity car washes are prohibited.
- (ix) Water may only be served at restaurants upon request.
- (x) The washing of automobiles, trucks, trailers, boats, airplanes, and other types of mobile equipment not occurring on the immediate premises of a commercial carwash or a commercial service station and not in the immediate interest of the public health, safety, and welfare are prohibited. The washing of such vehicles under public safety and health situations may only occur between 6 a.m. and 10 a.m.

- (B) Demand management measures. The demand management measure for Stage 2 will apply.
- (4) **Stage 4**–Extreme water shortage conditions. The goal for Stage 4 of the Plan is to reduce and maintain maximum daily water demand at a pro-rata curtailment amount determined at the time by the Lower Colorado River Authority Board.
- (A) Supply management measures. The City will cease the flushing of water mains except when necessary for reasons of health or safety. All City departments will discontinue irrigating public landscaped areas except when such areas are irrigated with auxiliary water.
- (i) Water use restrictions. All requirements of Stage 3 shall remain in effect during Stage 4 except:
- (aa) All outdoor water use shall be limited to the use of handheld hoses equipped with a positive pistol grip nozzle or other device that automatically shuts off water flow when the hose is not being used, and may only occur between the hours of 6:00 a.m. to 10:00 a.m. and 7:00 p.m. and 10:00 p.m. on the designated outdoor water use day every other week.
- (bb) The watering of golf course tees is prohibited unless the golf course utilizes an auxiliary water source.
- (cc) Commercial plant nurseries may use only handheld hoses equipped with a positive pistol grip nozzle or other device that automatically shuts off water flow when the hose is not being used or handheld buckets.
- (dd) Commercial car washing facilities may operate for health and safety purposes only.
- (ee) No new landscapes of any type may be installed.
- (ff) Use of water from fire hydrants shall be limited under written permission from the City to firefighting, flushing, construction purposes, or other activities necessary to maintain public health, safety, and welfare.
- (B) Demand management measures.
- (i) The City Manager will contact wholesale water customers to discuss water supply and/or demand conditions and will request that wholesale water customers initiate additional mandatory measures to reduce nonessential water use (e.g., implement Stage 3 or 4 of the customer's drought contingency plan).
- (ii) The City Manager will initiate pro rata water curtailment of water diversions and/or deliveries for each wholesale customer according to the procedures specified in Section 18.08.012 of the Plan.
- (iii) The City Manager will provide a report to news media with information regarding current water supply and/or demand conditions, projected water supply and demand conditions if

drought conditions persist, and consumer information on water conservation measures and practices.

- (C) In the event that severe water shortage conditions persist (Stage 4) for an extended period of time, the City Manager may order water rationing and/or terminate service to selected users of the system in accordance with the following sequence:
- (i) Commercial yard meters.
- (ii) Commercial users.
- (iii) Residential users.
- (iv) Hospitals, public health and safety facilities.
- (v) Additional measures. Through a contractual agreement with the Lower Colorado River Authority (LCRA), the LCRA may interrupt or curtail the water supplied to the City in accordance with the LCRA's drought management plan.

Sec. 18.08.012 Pro rata water allocation

Every wholesale water contract entered into or renewed by the City after the effective date of this Plan, including contract extensions, shall provide that in case of a shortage of water resulting from drought, the water to be distributed shall be divided in accordance with Texas Water Code §11.309 and the provisions of this Plan.

Sec. 18.08.013 Variances

- (a) The City Manager may, in writing, grant temporary variance for existing water uses otherwise prohibited under this Plan if it is determined that failure to grant such variance would cause an emergency condition adversely affecting the health, sanitation, primary business, or fire protection for the public or the person requesting such variance and if one or more of the following conditions are met:
- (1) Compliance with this plan cannot be technically accomplished during the duration of the water supply shortage or other condition for which the Plan is in effect.
- (2) Alternative methods can be implemented which will achieve the same level of reduction in water use.
- (b) Persons requesting an exemption from the provisions of this Article shall file a petition for variance with the City Manager after the Plan or a particular drought response stage has been invoked. All petitions for variances shall be reviewed by the City Manager and shall include the following:
- (1) Name and address of the petitioner(s);

- (2) Purpose of water use;
- (3) Specific provision(s) of the plan from which the petitioner is requesting relief;
- (4) Detailed statement as to how the specific provision of the plan adversely affects the petitioner or what damage or harm will occur to the petitioner or others if petitioner complies with this Plan;
- (5) Description of the relief requested;
- (6) Period of time for which the variance is sought;
- (7) Alternative water use restrictions or other measures the petitioner is taking or proposes to take to meet the intent of this Plan and the compliance date; and
- (8) Other pertinent information.
- (c) Variances granted by the City Manager shall be subject to the following conditions, unless waived or modified by the City Manager:
- (1) Variances granted shall include a start and end date for compliance; and
- (2) Variances granted shall expire when the Plan is no longer in effect, unless the petitioner has failed to meet specified requirements.
- (d) No variance shall be retroactive or otherwise justify any violation of this Plan occurring prior to the issuance of the variance.

Additionally, variances may be granted when a customer is using efficient irrigation technology for outdoor irrigation purposes. In order to receive this variance the requestor must have a master valve or flow sensor, the irrigation controller must have a cycle and soak capability, and will be subject to annual random irrigation checks by the City Manager.

Sec. 18.08.014 Enforcement

- (a) No person or entity shall use or benefit from the use of water from the City 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 the City, in accordance with provisions of this Plan.
- (b) Any person or entity 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 or entity's property shall constitute a rebuttable presumption that the person or entity in apparent control of the property committed the violation, but any such person or entity shall have the right to show that he/she/it did not commit the violation. Parents shall be presumed to be responsible for violations of their minor children and proof that a violation, committed by a

child, occurred on property within the parents' control shall constitute a rebuttable presumption that the parent committed the violation, but any such parent may be excused if he/she proves that he/she had previously directed the child not to use the water as it was used in violation of this Plan and that the parent could not have reasonably known of the violation. Each day that one or more of the provisions in this Plan is violated shall constitute a separate violation/offense.

(c) <u>Administrative Violation.</u> Except as otherwise stated herein, each violation of this Plan may be enforced as an administrative violation, pursuant to the following:

Violation	Residential Customer	Commercial Customer
First Violation	Warning Letter	Warning Letter
Second Violation within 12-month	\$50.00	\$200.00
period from date of immediately		
preceding violation		
Third Violation within 12-month period	\$100.00	\$400.00
from date of immediately preceding		
<u>violation</u>		
Fourth & Subsequent Violations within	\$200.00	\$1,000.00
12-month period from date of		
immediately preceding violation		

- (1) First Violation. If the City Manager reasonably believes that a person or entity has violated this Plan, he/she may forward to the person or entity alleged to be in violation of this Plan a Notice of First Violation. The Notice of First Violation shall be in writing, contain the name and address of the alleged violator (if known), provide a location and brief description of the alleged violation, provide a warning for this first violation and inform him/her of the administrative fees and consequences for subsequent violations, and be forwarded to the alleged violator's utility billing address via first class mail.
- (2) Second (and/or Subsequent) Violation. If the City Manager reasonably believes that a person or entity has violated this Plan again subsequent to and within the 12-month period immediately following the date of the preceding violation, he/she shall forward to the person or entity alleged to be in violation of this Plan a Notice of Second Violation. The Notice of Second Violation shall be in writing, contain the name and address of the alleged violator (if known), provide a location and brief description of the alleged violation, inform him/her of the administrative fee that will be added to the alleged violator's next monthly utility bill and the administrative fees and consequences for subsequent violations, and be forwarded to the alleged violator's utility billing address via first class mail.
- (d) Appeal of Administrative Violation; Effect on Payment, Hearing Procedure. Any alleged violator shall be entitled to appeal an administrative violation under this Article as set forth in this Subsection. The request or pendency of an appeal under this Subsection shall not suspend or delay an alleged violator's obligation to pay current outstanding utility fees and/or administrative fines assessed under this Article. Upon successful appeal of an alleged administrative violation,

the City shall refund all administrative fines paid by or on behalf of an alleged violator pursuant to this Article.

At the alleged violator's discretion, any appeal or final review hearing hereunder this Subsection may be conducted via scheduled telephone conference involving the alleged offender, hearing officer(s), City Manager, and any testifying witnesses. Prior to the commencement of any telephone conference under this Subsection, each testifying witness' name, address, telephone number, and relationship to the alleged violator shall be submitted to the City Manager prior to commencement of such telephone conference, along with any documentary or physical evidence to be presented in such telephone conference. No unidentified witness or un-submitted evidence shall be considered at the hearing.

If the alleged violator shall fail to attend a scheduled appeal or final review hearing for any reason, it shall be the alleged violator's responsibility to contact the City Manager to reschedule within three (3) working days of the unattended hearing; failure to do so, or failure to attend the rescheduled hearing for any reason shall constitute a default, render final the pending administrative violation and any assessed administrative fines, and waive the alleged violator's right to appeal.

- (1) Within fifteen (15) business days of the date of a Notice of Violation, an alleged violator may appeal the administrative violation and fee by submitting a written request to the City Manager. Within ten (10) business days of the City Manager's receipt of such request, the City Manager shall appoint one or more hearing officers and an appeal hearing ("Appeal Hearing") shall be held. At the Appeal Hearing, the alleged violator shall present relevant evidence and bear the burden of proof to show by the majority of the evidence why he/she should not be held in violation of the Plan or the administrative fee should not be assessed. The hearing officer(s) shall consider all relevant evidence presented and render a decision in writing within five (5) business days of the conclusion of the appeal hearing ("Appeal Hearing Decision"). A copy of the Appeal Hearing Decision shall be forwarded to the alleged violator's utility billing address via first class mail and email.
- (2) A customer may appeal the Appeal Hearing Decision by submitting a written request to the City Manager within five (5) business days of forwarding the Appeal Hearing Decision. Within five (5) business days of receipt of the alleged violator's timely appeal of the Appeal Hearing Decision, the City Manager or their designee shall conduct a final review hearing ("Final Review Hearing"). At the Final Review Hearing, the alleged violator shall present relevant evidence and bear the burden of proof to show by the majority of the evidence why he/she should not be held in violation of the Plan or the administrative fee should not be assessed. The City Manager shall consider all relevant evidence presented and render a decision in writing within five (5) business days of the conclusion of the Final Review Hearing ("Final Review Hearing Decision"). A copy of the Final Review Hearing Decision shall be forwarded to the alleged violator's utility billing address via first class mail and email. The Final Review Hearing Decision by the City Manager is final and binding.
- (e) <u>Notices.</u> All notices regarding alleged administrative violations under this Article, including without limitation Notices of Violation, Appeal Hearing Decisions, and Final Review

Hearing Decisions, shall be in writing and forwarded to the alleged violator via first class mail and/or certified mail, return receipt requested, to the alleged violator's current billing address. All notices forwarded in such manner shall be deemed received by the alleged violator within three (3) days of the mailing's postmark. At an Appeal Hearing and/or Final Review Hearing under this Article, an alleged violator may present evidence that a required notice was not received.

- (f) <u>Class C Misdemeanor.</u> Alternatively, and at the City Manager's discretion, third and subsequent violations within the 12-month period from the date of the alleged violator's immediately preceding violation may be treated as Class C Misdemeanor offenses. Any person or entity alleged to have violated this Plan may be cited to appear in Municipal Court for such offense, and, upon conviction, shall be punished by a fine in accordance with the general penalty provision found in Section 1.01.009 of this Code.
- (g) Termination of Service. Upon a person or entity's second or subsequent violation within the 12-month period immediately following the date of the preceding violation and upon due notice to the person or entity as set forth herein, the City shall be authorized to discontinue water service to the premises where such violations occur. The City shall be so authorized regardless of whether such violation is being simultaneously enforced administratively, under Subsection (c), or criminally, under Subsection (f). Services discontinued under such circumstances shall be restored only upon payment of a reconnection charge, hereby established at fifty dollars (\$50.00), and all other costs incurred by the City in discontinuing service. In addition, suitable assurance must be given to the City that the same action shall not be repeated while the Plan is in effect. Compliance with this Plan may also be sought through injunctive relief in a court of proper jurisdiction. This Subsection shall not be construed to reduce, diminish, or in any manner restrict the City's right to terminate utility service for nonpayment of fees and fines.

Sec. 18.08.015 Severability

It is hereby declared to be the intention of the City that the Sections, paragraphs, sentences, clauses, and phrases of this Article are severable and, if any phrase, clause, sentence, paragraph, or Section of this Plan shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and Sections of this Plan, since the same would not have been enacted by the City without the incorporation into this Plan of any such unconstitutional phrase, clause, sentence, paragraph, or Section.