

DROUGHT CONTINGENCY PLAN
FOR
MONTGOMERY COUNTY UTILITY DISTRICT NO. 4

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 MONTGOMERY COUNTY UTILITY DISTRICT NO. 4 (the "District") that the following regulations and restrictions on the delivery and consumption of water are hereby adopted effective this 25th day of September, 2008.

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 Wholesale Water Customers, as herein defined, or water conservation plans adopted by the District shall be revoked and no longer in force and effect as of said date.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 condition are deemed to constitute a waste of water which subjects the offender(s) to penalties 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 ten (10) 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) days of the implementation of any stage of this Plan which requires a mandatory response from the District's Customers or any stage of this Plan where the water allocation provisions of Section X are implemented.

**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 Texas Administrative Code Title 30, Section 288.1(17), 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 Texas Administrative Code Title 30, Section 288.1(20), 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 "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.

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 Bleyl & Associates 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 "Even Numbered Dates" shall mean Calendar dates ending in 0, 2, 4, 6 or 8.

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 (150%) percent of a particular non-residential 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 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 (150%) percent of all residential Customers' 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 residential Customer is shorter than twelve (12) months, the monthly average for which there is a record shall be used.

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 fire fighting.

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 Hays Utility North 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 "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 "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 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 in the place or places within the District designated for posting notices of public meetings of 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 - MODERATE WATER SHORTAGE CONDITIONS.

1. Requirements for Initiation - The District will recognize that a moderate water shortage condition exists when the Average Run Time for the District's Well(s) is at or above 18 hours for three (3) consecutive days.

2. Requirements for Termination - Stage 1 of this Plan 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 initiation of Stage 1 of this Plan. Upon

the termination of Stage 1, District operations shall return to normal.

B. STAGE 2 - SEVERE WATER SHORTAGE CONDITIONS.

1. Requirements for Initiation - The District will recognize that a severe water shortage condition exists when the Average Run Time for the District's Well(s) is at or above 20 hours for three (3) consecutive days.

2. Requirements for Termination - Stage 2 of this Plan 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 same manners as authorized for the notification of initiation of Stage 2 of this Plan. Upon the termination of Stage 2, Stage 1 becomes operative, if the condition listed as the triggering event exists for such stage.

C. STAGE 3 - CRITICAL/EMERGENCY WATER SHORTAGE CONDITIONS.

1. Requirements for Initiation - The District will recognize that a critical/emergency water shortage condition exists when the Average Run Time for the District's Well(s) is at or above 22 hours for three (3) consecutive days or when any of the District's water supply facilities can not meet the water supply demand.

2. Requirements for Termination - Stage 3 of this Plan may be rescinded when all of the conditions listed as the triggering events have ceased to exist for a period of seven (7) consecutive days; provided, however, if the triggering

event was attributable to the District's water supply facilities not meeting the water supply demand due to a major water line break, pump failure, well failure, power failure or other water plant or water system failure, Stage 3 of this Plan shall be rescinded upon the completion of the required facility repairs and/or restoration of power. 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 termination of Stage 3, Stage 2 or Stage 1, as applicable, becomes operative if the condition listed as the triggering event exists for any such stage.

D. ADDITIONAL TRIGGERING EVENTS.

Further, to the extent that at least Stage 1 of this Plan is not otherwise triggered, then the appropriate stage, as determined by the District's Operator, shall be triggered upon 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.

**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 - MODERATE WATER SHORTAGE CONDITIONS.

1. Target. Achieve a voluntary 10 percent reduction in daily water usage.

2. Supply Management Measures. The District's Operator shall undertake any actions which he deems necessary, including reducing system pressure to 55 psi and/or reducing interconnection with another water system.

3. Demand Management Measures Applicable to Wholesale Water Customers. The District's Operator will (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, initiate 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 implement the water allocation provisions of Section X of this Plan. Additionally, Retail Water Customers with an Even Numbered Address and those responsible for watering common areas such as esplanades and sports fields, are requested to voluntarily limit the irrigation of landscaped and other areas to Even Numbered Dates, and to Odd Numbered Dates for Retail Water Customers with an Odd Numbered Address, and to irrigate said areas only between the hours of 8:00 p.m. on the designated

watering day(s) and 6:00 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 - SEVERE WATER SHORTAGE CONDITIONS.

1. Target. Achieve a 20 percent reduction in daily water usage.

2. Supply Management Measures. The District's Operator shall undertake any actions that it deems necessary, including reducing system pressure to 50 psi and 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, if not previously initiated in Stage 1, 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 penalties 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 Even Numbered Dates for Retail Water Customers with an Even Numbered Address and Retail Water Customers responsible for watering common areas such as esplanades and sports fields, and to Odd Numbered Dates for Retail Water Customers with an Odd Numbered Address, and irrigation of said areas is further limited to between the hours of 8:00 p.m. on the designated watering day(s) and 6:00 a.m. on the following day(s). However, irrigation of landscaped areas is permitted at anytime if it is by means of a hand-held hose, 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 6:00 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 positive shutoff nozzle for quick rises. 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 6:00 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 fire fighting, 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 6:00 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 - CRITICAL/EMERGENCY WATER SHORTAGE CONDITIONS.

1. Target. Achieve a 30 percent reduction in daily water usage.

2. Supply Management Measures. The District's Operator shall undertake any actions which he deems necessary, including reducing system pressure to 45 psi, reducing interconnection with another water system and implementation of the water allocation provisions of Section X.

3. Demand Management Measures Applicable to Wholesale Water Customers. In addition to the demand management measure described in Stage 2, the District's Operator shall (a) if not previously initiated in Stage 2, initiate the water allocation provisions of Section X of this Plan for each Wholesale Water Customer, and (b) 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. Unless previously initiated during Stage 2, the District's Operator shall initiate the water allocation provisions of Section X for each Retail Water Customer. All water use restrictions for Stage 2 shall remain in effect during Stage 3 except as further restricted below. Violators shall be subject to the penalties 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 allowed or approved.

**Section X
Water Allocation and Surcharges**

A. Retail Water Customers. In the event that the triggering criteria specified in Section VIII of this Plan for Stage 1 or Stage 2 have been met, the District's Operator may, with prior authorization of the Board of Directors, initiate water rates according to the following plan. In the event that the triggering criteria specified in Section VIII of this Plan for Stage 3 have been met, the District's Operator shall initiate water rates according to the following plan:

- 1. **Moderate Stage Water Rates and Surcharges** - The following rates per month shall be charged:

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

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

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

<u>Usage</u>	<u>Rate</u>
a. Zero through the Monthly Non-	As set forth in the

Residential Allocation

Rate Order

b. Above the Monthly Non-Residential Allocation

The water charge per 1,000 gallons as set forth in the Rate Order times (2)

2. **Severe Stage Water Rates and Surcharges** - The following rates per month shall be charged:

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

Usage

Rate

a. Zero through the Monthly Residential Allocation

As set forth in the Rate Order

b. Above the Monthly Residential Allocation

The water charge per 1,000 gallons as set forth in the Rate Order times three (3)

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

Usage

Rate

a. Zero through the Monthly Non-Residential Allocation

As set forth in the Rate Order

b. Above the Monthly Non-Residential Allocation

The water charge per 1,000 gallons as set forth in the Rate Order times three (3)

3. **Critical/Emergency Stage Water Rates and Surcharges** - The following rates per month shall be charged:

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

Usage

Rate

a. Zero through the Monthly Residential Allocation

As set forth in the Rate Order

b. Above the Monthly Residential

The water charge per

Allocation	1,000 gallons as set forth in the Rate Order times five (5)
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ii) Non-Residential (including Commercial and Institutional Water Use and multi-family Domestic Water Use):

<u>Usage</u>	<u>Rate</u>
a. Zero through the Monthly Non-Residential Allocation	As set forth in the Rate Order
b. 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 surcharges described herein shall commence on the first day and shall terminate on the last day of the billing cycle during the calendar month that the surcharges have been initiated or terminated, as applicable.

B. Wholesale Water Customers. In the event that the triggering criteria specified in Section VIII of this Plan for Stage 1 or Stage 2 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. In the event that the triggering criteria specified in Section VIII of this Plan for Stage 3 have been met, the Operator shall 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.

- (a) A Wholesale Water Customer's monthly allocation shall be a percentage of such Wholesale Water Customer's water usage baseline as established pursuant to (b) below (the "Monthly Wholesale Allocation"). The percentage will be set by the District based on 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.
- (b) The Wholesale Water Customer's water usage baseline will be computed on the average monthly water usage during 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.
- (c) 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 Texas Commission on Environmental Quality 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 Operator, the allocation may be reduced or increased if (i) 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; (ii) the Wholesale Water Customer agrees to transfer part of its allocation to another Wholesale Water Customer; or (iii) other objective evidence demonstrates, in the sole determination of the District, that the designated allocation is inaccurate under present conditions.

Section XI
Enforcement and Penalties

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 shall be punishable by a fine of not less than fifty dollars (\$50.00) and not more than five thousand dollars (\$5,000.00) for each offense. Each day that one or more of the provisions in this Plan is violated shall constitute a separate offense. If three or more violations of the Plan occur at premises to which the District supplies water, the District's Operator shall, upon due 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. Services discontinued under such circumstances 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, any other costs incurred by the District in discontinuing service, and all fines imposed hereunder. In addition, suitable assurance must be given to the District's Operator that no further violations of this Plan will occur at said premises while any stage of this Plan is in effect. 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 fines and penalties 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. For the purposes of imposing the fines and penalties set forth in Section XI (A)(2) above, 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/it proves to the satisfaction of the Board of Directors of the District, that

he/she/it 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 or prevented the violation.

4. Any appeal of fines, surcharges, penalties 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. **Moderate Stage Water Rates and Surcharges** - The following rates per month shall be charged:

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

2. **Severe Stage Water Rates and Surcharges** - The following rates per month shall be charged:

<u>Usage</u>	<u>Rate</u>
a. Zero through the Monthly Wholesale Allocation	As set forth in the Wholesale Contract
b. Above the Monthly Wholesale Allocation	The water charge per 1,000 gallons as set forth in the Wholesale Contract times three (3)

3. **Critical/Emergency Stage Water Rates and Surcharges** - The following rates per month shall be charged:

<u>Usage</u>	<u>Rate</u>
a. Zero through the Monthly Wholesale Allocation	As set forth in the Wholesale Contract
b. 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 1, Stage 2 or Stage 3, 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.
- (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.
- (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 penalties 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.
- (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.

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

MONTGOMERY COUNTY UTILITY
DISTRICT NO. 4

ATTEST:

/s/ Gary North
By: _____
Secretary, Board of Directors

/s/ Frederick Stow
By: _____
President, Board of Directors

(SEAL)

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