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Schedule A - Contract between the Canadian River Municipal Water Authority
and the City of Lubbock, Texas for providing a Municipal Water
Supply

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**AGREEMENT BETWEEN THE CANADIAN RIVER MUNICIPAL
WATER AUTHORITY AND THE CITY OF LUBBOCK,
TEXAS FOR THE PREPAYMENT OF THE OBLIGATIONS
TO THE UNITED STATES OF AMERICA INCURRED IN
CONNECTION WITH THE CONSTRUCTION OF THE
CANADIAN RIVER PROJECT**

This Agreement is made as of February 2, 1999, between the **CANADIAN RIVER MUNICIPAL WATER AUTHORITY**, a conservation and reclamation district duly created and existing under the laws of the State of Texas (the "**Authority**") and the **CITY OF LUBBOCK**, a Home Rule city and municipal corporation in the State of Texas acting by virtue of authority of its city charter and the laws of the State of Texas (the "**City**").

RECITALS:

1. The Authority provides the City all or a portion of its municipal water supply through the operation and maintenance of the Sanford Dam and Lake Meredith (the "**Canadian River Project**").
2. The Authority was created in 1953 by chapter 243, Acts of the 53rd Legislature, Regular Session, as amended, and such enabling legislation was formerly codified as article 8280-154 of Vernon's Texas Civil Statutes.
3. The Canadian River Project was authorized by an Act of Congress dated December 29, 1950 (64 Stat. 1124), and constructed pursuant to the Repayment Contract, Contract No. 14-06-500-485, between the United States of America and the Canadian River Municipal Water Authority, Texas, dated November 28, 1960, and as subsequently amended (the "**Repayment Contract**").
4. The prepayment of the obligations under the Repayment Contract was authorized by an Act of Congress dated October 30, 1998, Public Law No. 105-316, the Canadian River Project Prepayment Act (the "**Prepayment Legislation**"), whereby the Authority is entitled to prepay its obligations to the United States of America, thereby saving on the cost of the financing under the Repayment Contract and to receive certain other benefits including conveyance of all the right, title and interest in and to all land and improvements comprising the pipeline and related facilities of the Canadian River Project

as provided in 64 Stat. 1124 as a result of the prepayment and the assumption of certain additional responsibilities for the operation of the Project.

5. The Prepayment Legislation requires that the Authority pay the United States of America within 360 days of October 30, 1998.

6. Under the Repayment Contract, the Authority and the City have entered into a water supply agreement for water from the Project (the "Meredith Supply Agreement").

7. A condition precedent to the prepayment of the obligation to the United States of America for the Project is the execution of a contract between the Authority and each of its member cities to provide for the funding of the respective City's share of the costs of the prepayment of the Project.

8. The City desires to prepay its portion of the outstanding obligation for the Project and have its prepayment obligation substituted for its payment obligation for the Project in its Meredith Supply Agreement with the Authority.

9. The City and the Authority are authorized to enter into this Agreement under various legislative authority, including, but not limited to chapter 243, Acts of the 53rd Legislature, Regular Session, as amended, section 791.026, Texas Government Code, section 402.012, Texas Local Government Code, and article 1113, TEX. REV. CIV. STAT. ANN.

10. The City and the Authority therefore desire to agree to (a) the terms of the City's payment of its share of the costs of the prepayment for the Project, (b) the continuation of the Meredith Supply Agreement for the operation and management of the Project; and (c) the other obligations and performances of the parties set forth herein.

NOW, THEREFORE, in consideration of the premises, and for other good and valuable consideration, the parties agree as follows:

ARTICLE 1. PURPOSE

1.1 **Purpose of Agreement.** This Agreement is the agreement between the Authority and the City concerning prepayment of the City's share of the obligation for repayment of construction costs under the Meredith Supply Agreement (the "Prepayment Agreement").

1.2 Existing Contracts.

(a) Each of the Member Cities has a water supply agreement ("Meredith Supply Agreement") with the Authority for water from the Canadian River Project. This

Agreement is a supplement to the Meredith Supply Agreement between the City and the Authority for the Canadian River Project.

(b) The Authority and each of the Member Cities have entered into a contract for the purchase and acquisition of a conjunctive use groundwater ("Conjunctive Use Groundwater Agreement"). This Agreement is separate from the Conjunctive Use Groundwater Agreement between the City and the Authority.

(c) The Authority and each of the Member Cities have entered into a contract for the desalinization of the municipal water supply ("Salinity Control Agreement"). This Agreement is separate from the Salinity Control Agreement between the City and the Authority.

1.3 **Contract Payments.** This Agreement establishes a payment obligation to fund the prepayment of the Repayment Contract pursuant to the Prepayment Legislation or Revenue Bonds or both.

ARTICLE 2. DEFINITIONS

2.1 **Accumulated Funds** mean the funds paid by the Member Cities for their respective payments collected by the Authority during the period covered by the Drought Relief Act of 1996, Public Law 104-318.

2.2 **Additional Bonds** mean the additional revenue bonds for the Project which the Authority reserves the right to issue and deliver in the future as provided by this Agreement.

2.3 **Agreement** means this Agreement between the Canadian River Municipal Water Authority and the City of Lubbock, Texas for the prepayment of the Repayment Contract, as it may hereafter be amended from time to time.

2.4 **Applicable Amount** means the amount that the Authority must pay within 360 days of the date of enactment of the Prepayment Legislation, such amount being (a) \$34,806,731, if payment is made within the 270 day period beginning on the date of enactment of the Prepayment Legislation; or (b) the \$34,806,731 adjusted to include interest since the date of enactment of the Prepayment Legislation if the payment made by the Authority occurs after the 270th day period, but on or before the 360th day after the date of enactment of the Prepayment Legislation.

2.5 **Authority** means the Canadian River Municipal Water Authority, a conservation and reclamation district duly created and existing under the laws of the State of Texas.

- 2.6 **Board** means the Board of Directors of the Authority.
- 2.7 **Bond Documents** means this Agreement, the bond resolution or resolutions, and the indenture or indentures authorizing the issuance of the Revenue Bonds for the Project, and all amendments or supplements thereto.
- 2.8 **Bond Reserve Fund** means the fund established by the Board in accordance with Section 6.6 of this Agreement.
- 2.9 **Canadian River Project** means the project that includes the Sanford Dam and Lake Meredith as authorized by an Act of Congress dated December 29, 1950 (64 Stat. 1124).
- 2.10 **City** has the meaning ascribed to it in the introductory paragraph of this Agreement.
- 2.11 **City's Share** means forty-one and 877/1000 percent (41.877%) which represents the City's percentage of the repayable construction cost obligation after appropriate credits for the land cost under the Drought Relief Act of 1996, Public Law 104-318, and for payments made during the deferral period, such tabulation being attached as Schedule B.
- 2.12 **Effective Date** means the date upon which the Authority notifies the Bureau of Reclamation and the Member Cities that a Prepayment Agreement has been entered into between each Member City and the Authority, which shall be evidenced by written notice to each Member City.
- 2.13 **Financing Costs** means the costs associated with the issuance of the Revenue Bonds, including but not limited to the cost of funding the Bond Reserve Fund, rating agency fees, bond insurance premiums, underwriters discount, original issue discount, printing, professional services associated with the Revenue Bonds, and cost of the validation lawsuit or lawsuits, if any.
- 2.14 **Fiscal Year** means from October 1 through September 30 of the following calendar year, or any other period subsequently designated by the Board to be the fiscal year of the Authority.
- 2.15 **General Manager** means the General Manager of the Authority.
- 2.16 **Interest and Sinking Fund** means the fund established by the Board in accordance with Section 6.5 of this Agreement.

2.17 **Member City** means a city, town, or municipality which is a member of the Authority pursuant to Acts 53rd Leg., Ch. 243 (1953), as amended.

2.18 **Meredith Supply Agreement** means that certain Contract between the Canadian River Municipal Water Authority and the City of Lubbock, Texas, providing a Municipal Water Supply, dated January 9, 1961, as amended, a copy of which is attached as Schedule A.

2.19 **Parity Bond** shall have the meaning as ascribed in Section 6.10(a).

2.20 **Payment Schedule** means the schedule prepared by the Board in accordance with Article 4 of this Agreement.

2.21 **Prepayment Agreements** mean the agreements, in form and substance substantially identical to this Agreement, entered into between the Canadian River Municipal Water Authority and the respective Member Cities, for the prepayment of the Repayment Contract.

2.22 **Prepayment Legislation** means Public Law No. 105-316, the federal legislation authorizing the Authority to prepay its obligations to the United States of America.

2.23 **Project** means the Canadian River Project.

2.24 **Project Operation and Maintenance Costs** means the reasonable and necessary expenses incurred in the efficient and economical administration, management and operation and the maintenance of the Project in good repair and operating condition as provided in the Revised Manual.

2.25 **Project Prepayment Costs** means any and all costs and expenses whatsoever, of all kinds, of the Authority with respect to the prepayment to the United States of America of the Authority's obligation to repay the United States of America construction costs of the Project for which the Authority is liable, incurred on or after the date hereof, including but not limited to, the Authority's share of costs arising under the Prepayment Legislation, all Financing Costs, legal fees, superintendence, administration, overhead, general expenses, acquisition of land, rights-of-way and other property rights, inspections, special services, title transfer and related costs, and insurance, as may be necessary; provided, however, to the extent a Member City participates in Project Prepayment Costs under Section 4.3, the Financing Costs of the Revenue Bonds shall not be included as Project Prepayment Costs for that Member City. Unless approved in writing by the City and each of the other Member Cities, Project Prepayment Costs may not exceed \$32,220,000 (representing approximately \$29,129,667 in project costs and \$3,090,333 in Financing Costs).

2.26 **Project Prepayment Fund** means the fund established by the Board in accordance with Section 6.4 of this Agreement.

2.27 **Project Prepayment Fund Subaccount** means the subaccount created in the Project Prepayment Fund into which payments for Requisitions will be accumulated prior to the payment of the Requisition.

2.28 **Project Payments** means the payments from each Member City (other than the City) under its respective Prepayment Agreement and from the City under this Agreement.

2.29 **Project Cost Payment Schedule** means the schedule established by the General Manager, which shall correspond to the debt service schedule for the Revenue Bonds.

2.30 **Repayment Contract** means Contact No. 14-06-500-485 between the United States of America and the Canadian River Municipal Water Authority, Texas, dated November 28, 1960, and as subsequently amended, that provided for the construction of the Canadian River Project by the United States of America and the repayment of the cost of construction by the Canadian River Municipal Water Authority.

2.31 **Requisition** means an invoice, statement, or progress payment request submitted to the Authority for payment as a part of the Project Prepayment Costs.

2.32 **Revenue Bond Funding Date** means the date the Revenue Bonds are delivered to the initial purchasers of the Revenue Bonds.

2.33 **Revenue Bonds** means bonds to be issued by the Authority to prepay the Authority's obligation to repay the United States of America under the Repayment Contract and the Prepayment Legislation, and any additional bonds issued in accordance with Section 6.10 hereof.

2.34 **Revised Manual** means the current version of the Canadian River Municipal Water Authority Manual, as amended from time to time by the unanimous vote of the Board.

2.35 **Rule** means United States Securities and Exchange Commission Rule 15c-12, as amended.

2.36 **Sanford Dam Operations and Maintenance Reserve Fund** means the reserve fund created for operations and maintenance in Section 5.2.

2.37 **Unallocated and Unpledged Balance** means the balance of funds determined by the Board according to Section 6.7 of this Agreement.

2.38 **United States or Bureau of Reclamation** means the United States of America acting through the Department of the Interior, Bureau of Reclamation.

2.39 **Year** means the period January 1 through the next following December 31 unless otherwise indicated by the text.

ARTICLE 3. TERM OF AGREEMENT

3.1 The term of this Agreement is, unless sooner terminated or canceled in accordance with the provisions hereof, for the period beginning on the Effective Date of this Agreement and continuing (1) until the latter to occur of (a) the date on which the Revenue Bonds are fully paid, or (b) the date certified to the City by the Authority that there are no obligations remaining to be fulfilled by any party to the Prepayment Agreement, or (c) the date that the Project is terminated or abandoned by the Authority; or (2) until the Agreement is canceled as a result of the failure to tender the Applicable Amount within the 360-day period provided in the Prepayment Legislation, as provided in Section 4.6. The Project shall not be deemed terminated or abandoned by the Authority unless the Board has finally terminated, with no intention to resume, operation or maintenance of the Project or any part thereof, and has notified the Member Cities that the Authority has no further financial, maintenance, operational or other material obligations with respect to the Project or with respect to any Revenue Bonds.

ARTICLE 4. CITY'S PAYMENT OF ITS SHARE OF THE PREPAYMENT COSTS OF THE PROJECT

4.1 **Prepayment of Repayment Obligation.** In consideration for the ability to participate in the prepayment of the Obligations to the United States of America for the Project to obtain the benefit of the prepayment it receives from the Authority to result from the implementation of the prepayment of the Project, the City shall pay to the Authority the City's Share of Project Prepayment Costs.

4.2 **Payment of Project Prepayment Costs.** The Authority anticipates issuing Revenue Bonds to pay for the prepayment of the construction cost repayment obligation under the Repayment Contract that will be payable from and secured by the Project Payments from Member Cities pursuant to this Agreement. Payment of the City's Share of Project Prepayment Costs will be made to the Authority in accordance with the applicable Project Cost Payment Schedules for each series of Revenue Bonds established from time to time by the General Manager. Such Project Cost Payment Schedule shall correspond to the debt service schedules for the Revenue Bonds issued to fund any

portion of the Project Prepayment Costs. All payments will be made in such manner to provide the Authority with immediately available funds on the due date for such payment.

4.3 City's Option to Pay Project Prepayment Costs Without Providing Payment of the Authority's Revenue Bonds. Rather than committing to make monthly payments of the City's Share of Project Prepayment Costs for the Authority's Revenue Bonds, a Member City shall have the option to independently fund all or a portion of its own City's Share of the Project Prepayment Costs for any series of Revenue Bonds. In order to exercise this option, the City must notify the Authority of its intent to provide such funding so as not to participate in the payment of all or a portion of its City's Share of Project Prepayment Costs attributable to such series of the Authority's Revenue Bonds. Such notification must occur on or before thirty (30) days after the Authority notifies the City of its intention to issue Revenue Bonds as provided in Section 6.1.

(a) The City, if it gives such notice, shall arrange for the payment of all or a portion of the City's Share of Project Prepayment Costs which it will fund separately from the Revenue Bonds. The City shall deposit, in the time and manner provided below, the City's Share of Project Prepayment Costs which it desires to independently fund in an escrow account, pursuant to an escrow agreement, in a state or national bank with trust powers having a combined capital, surplus and undivided profits of at least \$75,000,000, that will be for the exclusive benefit of making the City's payment to the Authority for the payment of the City's Share of Project Prepayment Costs. The Authority shall have the right to approve and accept the form and provisions of the escrow agreement. The City and the Authority shall resolve any problem with the form and provisions of the escrow agreement to their mutual satisfaction. The City shall certify that it has unencumbered available funds to make its deposit into escrow according to the following schedule: For any series of Revenue Bonds the City shall make its certification within ninety (90) days after the receipt of notice provided in Section 6.1. If the City having given notice, fails to make its certification and provide for firm banking arrangements to create an escrow fund for the full payment of all or a portion of the City's Share of Project Prepayment Costs, the Authority shall notify the City that it is proceeding to issue the Revenue Bonds for an amount that includes all of the City's Share of the Project Prepayment Costs. Thereafter, the Authority may issue its Revenue Bonds in an amount that includes all of the City's Share of the Project Prepayment Costs, and the City agrees that it will be responsible for the payment on the same basis as if it had never given notice that it intended to provide independent funding for its own City's Share of the Project Prepayment Costs.

(b) Within 15 days following receipt of the notification that the City has certified the availability of funds to place in escrow under Section 4.3(a) of this Agreement, the Authority shall calculate the City's Share of the Project Prepayment Costs remaining, if any (the "Remaining Project Cost Percentage"), which percentage shall be attributable to costs other than those associated with the issuance of Revenue Bonds. The Authority shall notify the City of its Remaining Project Cost Percentage, if any. Such Remaining

Project Cost Percentage shall be calculated by reducing the portion of the total Project Prepayment Costs attributable to the City by the amount of funds to be deposited in escrow pursuant to Section 4.3(a) hereof (the "Remaining Project Cost Amount"). The Remaining Project Cost Amount shall be divided by the total Project Prepayment Cost to determine the Remaining Project Cost Percentage.

(c) If the City does timely give notice and makes its certification of available funds pursuant to Section 4.3(a), the Authority shall then reduce the amount of the Revenue Bonds to be issued to account for the City's escrow of the City's Share of Project Prepayment Costs and proceed to issue the Revenue Bonds. The City shall then place the funds in the escrow account no later than five working days prior to the date of the Revenue Bond Funding Date. The Authority shall notify the City of the Revenue Bond Funding Date on or about the time the contract for the purchase of the Revenue Bonds is approved by the Board.

(d) If the City elects to fund all or a portion of the City's Share of Project Prepayment Costs by depositing funds in an escrow account, the City shall be entitled to manage the account by making short term investments as authorized by the City's investment policy and to retain the interest earned on such account. The City shall not be entitled to interest on money transferred to the Project Prepayment Fund Payment Subaccount.

(e) To the extent that the City funds all of the City's Share of Project Prepayment Costs by depositing funds in an escrow account pursuant to this Article 4, the City shall have no liability for any of the Financing Costs, and any obligations associated with financing by Revenue Bonds, including, but not limited to, those described in Sections 4.2, 4.4, 4.6, 7.1, 8.8 and Article 6 shall not apply to the City.

4.4 Project Prepayment Costs Due for Revenue Bonds and Payments from Escrow Accounts.

(a) If the Authority issues Revenue Bonds to fund the prepayment of the Project, the Authority for each series of Revenue Bonds shall provide to each Member City a debt service schedule reflecting the total annual debt service on the Revenue Bonds prior to the Revenue Bond Funding Date. The debt service schedule will also reflect the City's Share of Project Prepayment Costs being funded by the issuance of the Revenue Bonds, the calculation being based on the Project Prepayment Costs. Unless the City has paid its City's Share of the Project Prepayment Costs into escrow pursuant to Section 4.3(a) above, the City shall pay to the Authority, no later than the first day of each month after the closing on the Revenue Bonds (the "Revenue Bond Funding Date"), one twelfth of the City's share of the annual debt service for the Revenue Bonds in accordance with the debt service schedule provided by the Authority without further notice or billing from the Authority.

(b) The Authority shall also prepare and provide to each Member City prior to the Revenue Bond Funding Date a Project Prepayment Cost Schedule that indicates the estimated schedule for the expenditures to be made for each series of Revenue Bonds. Such schedule shall be updated, as necessary, and provided to each Member City.

(c) When the Authority receives a Requisition for Project Prepayment Costs, the Authority shall transfer from the Project Prepayment Fund into a subaccount of the Project Prepayment Fund (the "Project Prepayment Fund Payment Subaccount") the amount necessary to fund the share of such Requisitions payable from the proceeds of the Revenue Bonds, and shall also make a draw on any escrow account for such share of the Requisition that is attributable to that escrow account.

(d) If the City has paid funds into escrow pursuant to Section 4.3(a), then the City must arrange to transfer that portion of the City's Share of Project Prepayment Costs necessary to pay a Requisition referenced in Section 4.4(c) to the Project Prepayment Fund Payment Subaccount. The Authority shall provide to each Member City that has paid funds into escrow, documentation for such payment. The Authority shall submit the Requisition with the Authority's calculation of the City's Share. The City shall have 15 calendar days to review the Requisition and the accompanying documentation to check the calculations. Unless the City finds a discrepancy in the Requisition and accompanying documentation during the 15 calendar day review period, the City shall immediately transfer its share of such Requisition from the escrow account into the Project Prepayment Fund Payment Subaccount. Should the City find a discrepancy in the Requisition and accompanying documentation, it shall immediately notify the General Manager of the Authority and both the City and the Authority agree to cooperate to resolve the problem prior to release of the funds from the escrow account.

(e) The Authority shall not release a payment for a Requisition from the Project Prepayment Fund Payment Subaccount unless the amount related thereto and required both from the Revenue Bonds financing and the escrow account or accounts have been placed in the Project Prepayment Fund Payment Subaccount.

(f) The parties understand and agree that, because of the nature of the Project, it is necessary that each debt service installment be made. Therefore, in the event of the failure or inability of a Member City to make its proportionate share of the debt service payments on Revenue Bonds, the Board may, for each year of nonpayment, establish an increased proportionate share of debt service for the other Member Cities that are participating in the Project through the particular series of Revenue Bonds related to the nonpayment, and increase each participating Member City's proportionate share of debt service (provided the City was not the Member City with the failure or inability to pay or a Member City that is participating in the financing solely through the escrow payment authorized in Section 4.3(a)) for the particular series of Revenue Bonds related to the nonpayment to prevent a default on such series of Revenue Bonds. The share of debt

service of the non-paying Member City shall be apportioned and allocated among the other participating Member Cities obligated for the payment of said series of Revenue Bonds according to each Member City's Share of Project Prepayment Costs at the time the allocation is made. The Authority agrees to pursue all reasonable efforts for the collection of any delinquent payments from a Member City which is in default under this Agreement, including litigation to recover any payments that are in default and to compel performance under the contract for payments by the defaulting Member City. Any recovery of such amounts that have been paid by the nondefaulting Member Cities that are participating in the Project through the particular series of Revenue Bonds related to the nonpayment will be credited back to those Member Cities which made the payments in proportion to the amount paid. If such amounts are not capable of being credited back, the defaulting Member City's allocation of the Meredith Water Supply will be reduced and credited proportionately to those Member Cities that have paid the non-paying Member City's share that are not in default under this Agreement. Notwithstanding anything to the contrary herein, a Member City that is participating in the Project solely through the escrow deposit provided for in Section 4.3(a) shall not, in any circumstance, be required to assume a part of the debt service attributable to the non-paying Member City. A Member City that is participating in the Project solely through the escrow deposit method may elect to participate in assuming its proportionate share of the non-paying Member City's share of debt service.

4.5 Substitution of Payment Obligation. On the Revenue Bond Funding Date and upon the tender of the Applicable Amount to the United States of America, the repayment obligation of the City for the construction costs of the Project under the Repayment Contract shall be substituted from that currently found in the Meredith Supply Agreement to that established by this Agreement.

4.6 Termination of Project.

(a) If the Project is terminated or abandoned, the City shall continue to pay timely to the Authority the City's Share of Project Prepayment Costs and the City's portion of Project Operation and Maintenance Costs incurred by the Authority or obligated to be paid by the Authority at such time and in such manner as will permit the Authority to meet its obligations and to otherwise fulfill its obligations and liabilities with respect to the Project, including without limitation, any obligations under any Revenue Bonds.

(b) The Project may not be terminated unless written notice is given to each Member City thirty (30) days prior to a meeting of the Board of the Authority when the issue of termination of the Project is on the agenda, and all of the Members of the Board who are present and voting vote to terminate the Project.

4.7 Cancellation of Contract for Failure to Fund. If the City and the Authority, along with the other Member Cities fail to contract and provide the funds required to tender

the Applicable Amount to the United States of America for the prepayment of the Authority's obligation to repay the construction costs of the Project within 360 days of October 30, 1998 (being the date of enactment of the Prepayment Legislation), this Agreement will expire and be of no force and effect with the obligation of the City to remain as prescribed in the Meredith Supply Agreement, as if this Agreement were never in effect.

ARTICLE 5. OPERATION AND MAINTENANCE COSTS AND ACCUMULATED FUNDS

5.1 The Authority has accumulated funds from payments by the Member Cities during the period covered by the Drought Relief Act of 1996, Public Law 104-318 (the "Accumulated Funds."). Such Accumulated Funds have been segregated for the benefit of the Member Cities which made the payments.

5.2 The parties to this Agreement recognize that enactment of Public Law 105-316 extinguished all obligation of the United States of America to pay for a portion of the operating and maintenance expense related to Sanford Dam of the Canadian River Project, and that the Authority will be fully responsible for payment of all such costs after prepayment of the construction cost repayment obligation. It is also recognized and acknowledged by the parties to this Agreement that the Applicable Amount required to be tendered for the prepayment is the net of the amount of \$1,506,917 which was determined to be the net present value of future costs of operation and maintenance which would have been payable by the United States of America as offsets against future debt payments receivable from the Authority if the Construction Cost Repayment Obligation were not prepaid. The parties agree that the amount of \$1,506,917 shall be established by the Authority as a special reserve fund for the support of operation and maintenance costs related to Sanford Dam (the "Sanford Dam Operations and Maintenance Reserve Fund"), and that proceeds from this Sanford Dam Operations and Maintenance Reserve Fund shall be utilized to pay those future costs of operation and maintenance which otherwise would have been payable by the United States of America. The Authority's Board of Directors shall establish procedures for replenishing this Sanford Dam Operations and Maintenance Reserve Fund when and if necessary, provided that the respective Member Cities' shares of payments to replenish the Sanford Dam Operations and Maintenance Reserve Fund shall always be proportionate to the share of water supply allocation available to the City under the Meredith Supply Agreement.

5.3 The City and the Authority agree that the Authority shall take any Accumulated Funds remaining after the payment into the Sanford Dam Operations and Maintenance Reserve Fund and apply such funds to the reduction of the amount needed to be borrowed by the Authority in the bond issue and to pay for costs of issuance of the Bonds.

5.4 The Authority shall provide an accounting to the City and each of the Member Cities demonstrating what each contributed.

5.5 Operation and maintenance expenses shall be as provided for pursuant to the Meredith Supply Agreement between the City and the Authority.

ARTICLE 6. FINANCING ARRANGEMENTS

6.1 Issuance of Revenue Bonds.

(a) The Authority shall determine and provide each Member City, not less than ninety (90) days prior to proposed issuance of any Revenue Bonds, a notice of the projected Project Prepayment Costs, the amount of Project Prepayment Costs that will be included in the proceeds of the Revenue Bonds, the principal amount of Revenue Bonds to be issued and each City's Share of Project Prepayment Costs.

(b) The Authority may, but is not required to, file a bond validation suit under article 717m-1, TEX. REV. CIV. STAT. ANN. prior to issuing its Revenue Bonds under this Agreement.

(c) If and at such time as the Revenue Bonds have been issued, all Project Prepayment Costs, including Project Prepayment Costs incurred prior to the issuance of the Revenue Bonds, shall be paid from the proceeds of the Revenue Bonds and escrow funds established pursuant to Section 4.3, to the extent permitted by state and federal law.

(d) The Authority agrees to use reasonable efforts to issue, sell and deliver the Revenue Bonds at the earliest practicable time and in an amount sufficient to pay all Project Prepayment Costs.

6.2 Revenue Bond Proceeds. The Authority agrees that all proceeds received from the sale of the Revenue Bonds, if any, as well as all other moneys and payments paid by the City to the Authority pursuant to this Agreement, shall be applied solely in the manner and for the purposes specified in this Agreement and the Bond Documents.

6.3 Establishment of Funds and Flow of Funds. For each series of Revenue Bonds equally and ratably secured from the same source of Project Payments from the same group of Member Cities, the following special funds shall be established and maintained by the Authority at an official depository bank of the Authority as provided in the Bond Documents, and must be kept separate and apart from all other funds and accounts of the Authority, including other issues of Revenue Bonds (except for Parity Bonds) issued under the Agreement; and shall be secured in accordance with the laws of

the State of Texas so long as any of the Revenue Bonds or any additional obligations or interest thereon are outstanding and unpaid:

Project Prepayment Fund
Interest and Sinking Fund
Bond Reserve Fund

6.4 Project Prepayment Fund.

(a) The Authority shall establish a Project Prepayment Fund for each series of Revenue Bonds issued under this Agreement.

(b) All payments from the Member Cities to the Authority under the Prepayment Agreements with the Member Cities, except for payments under an escrow agreement as provided for in Section 4.3, as received, are to be deposited in the Project Prepayment Fund for the particular series of Revenue Bonds. All money in the Project Prepayment Fund shall be applied as hereinafter provided.

(c) The money in each Project Prepayment Fund is to be used by the Board to pay the debt service on the Revenue Bonds for which such fund was established and to make deposits or payments required for the reserve funds or special accounts as provided herein for the particular series of Revenue Bonds.

(d) Concurrently with the delivery of each series of Revenue Bonds to the initial purchasers thereof, the Authority shall establish a subaccount of the Project Prepayment Fund, the Project Prepayment Fund Payment Subaccount, which shall be utilized for payments of Requisitions. The Project Payment Fund Payment Subaccount shall be funded with (1) money from escrow accounts of Member Cities which are established pursuant to Section 4.3, and (2) a transfer of bond proceeds from the Project Prepayment Fund. Such payments into the Project Prepayment Fund Payment Subaccount shall be limited to the prorata portion of such Requisition to be paid from proceeds of the Revenue Bonds and the escrow accounts established pursuant to Section 4.3. All Project Prepayment Costs, including those incurred prior to the establishment of the Project Prepayment Fund, shall be paid from the Project Prepayment Fund. Any amount remaining in this fund after the payment of all Project Prepayment Costs is to be transferred to the Interest and Sinking Fund, except that the prorata amount attributable to any excess payment by a Member City making payments under an escrow agreement as provided for in Section 4.3 shall be returned to that Member City.

6.5 Interest and Sinking Fund. For each series of Revenue Bonds, the Authority shall establish an "Interest and Sinking Fund." The Authority shall deposit in the Interest and Sinking Fund the following:

(a) such amounts, in substantially equal monthly installments, made on or before the fifth day of the month following the Revenue Bond Funding Date and each month thereafter, as will be sufficient to pay the interest scheduled to come due on the Revenue Bonds on the next interest payment date; and

(b) such amounts, in substantially equal monthly installments, made on or before the fifth day of the month following the Revenue Bond Funding Date and each month thereafter, as will be sufficient to pay the principal of the Revenue Bonds next due and payable. Except for Parity Bonds, the money deposited into the Interest and Sinking Fund for a particular series of Revenue Bonds shall be used only for principal and interest due on that series of Revenue Bonds. Money in each Interest and Sinking Fund shall be invested as provided in Section 6.8 of this Agreement, and interest earned on such investment is to be retained in the Interest and Sinking Fund for such series of Revenue Bonds.

6.6 Bond Reserve Fund.

(a) The Authority shall establish a "Bond Reserve Fund" for each series of Revenue Bonds on or before the Revenue Bond Funding Date. Concurrently with the delivery of the Revenue Bonds to the initial purchasers thereof, the Authority shall transfer to the Bond Reserve Fund for that series of Revenue Bonds an amount not to exceed the least of (i) ten percent of the par amount of the Revenue Bonds, (ii) the maximum annual principal and interest requirements on the Revenue Bonds, or (iii) 125 percent of the average annual principal and interest requirements on the Revenue Bonds from the proceeds of the sale of the Revenue Bonds; provided, however, the Bond Reserve Funds of Parity Bonds may be considered in the aggregate in meeting this requirement. Such amount shall never exceed the legally allowed amount permitted by Section 148(d) of the Internal Revenue Code of 1986, as amended. When and so long as the Bond Reserve Fund contains the legally authorized amount, no further payments need be made therein. But in the event it becomes necessary to withdraw money from the Bond Reserve Fund to prevent a default in the payment of principal of or interest on the Revenue Bonds, the Authority shall begin monthly transfers of funds from the Project Prepayment Fund into the Bond Reserve Fund on the fifth day of each month following the withdrawal from the Bond Reserve Fund at a rate, which in the judgment of the Board, will restore such fund to the required level within a reasonable period of time, such requirement to be specified in the resolution authorizing the issuance of the Revenue Bonds. Money in the Bond Reserve Fund is to be invested by the Board in the manner allowed by Section 6.8 of this Agreement. Interest earned on such investment must be deposited in the Interest and Sinking Fund for the particular series of Revenue Bonds; provided, however, if at any time, the Bond Reserve Fund contains less than the amount permitted under Section 148(d) of the Internal Revenue Code of 1986, as amended, interest on such investment shall be retained in the Bond Reserve Fund until such time as this fund again becomes fully capitalized.

The Bond Reserve Fund shall be used solely for the purpose of paying when due the principal of or interest, or both, on that particular series of Revenue Bonds (and Additional Bonds if issued as Parity Bonds) when and to the extent the amounts in the Interest and Sinking Fund are insufficient for such purpose, for defeasing outstanding Revenue Bonds (and Additional Bonds if issued as Parity Bonds) when excess funds are available resulting from a refunding, and for the purpose of finally retiring the last of the outstanding Revenue Bonds of that series (and Additional Bonds if issued as Parity Bonds).

(b) Notwithstanding the requirements of subsection (a) above, the Authority may provide a Surety Policy or Policies issued in amounts equal to all or part (as may be specified in the resolution authorizing any series of Parity Revenue Bonds) of the average annual principal and interest requirements of the Parity Revenue Bonds, in lieu of depositing cash into the Reserve Fund; provided, however, that no such Surety Policy may be so substituted unless (i) the substitution of the Surety Policy will not cause any ratings then assigned to the Bonds by either Moody's Investors Service or Standard & Poor's Ratings Group to be lowered and (ii) the ordinance authorizing the substitution of the Surety Policy for all or part of the average annual principal and interest requirements of the Parity Revenue Bonds contains (A) a finding that such substitution is cost effective and (B) a provision that the interest due on any repayment obligation of the Authority by reason of payments made under such policy does not exceed the highest lawful rate of interest which may be paid by the Authority at the time of the delivery of the Surety Policy. The Authority reserves the right to apply the proceeds of the Revenue Fund to payment of the subrogation obligation incurred by the Authority (including interest) to the issuer of the Surety Policy, the payment of which will result in the reinstatement of such Surety Policy, prior to making payments required to be made to the Reserve Fund pursuant to the provisions of this Section to restore the balance in such fund to the average annual principal and interest requirements of the Parity Revenue Bonds.

(c) In the event a Surety Policy issued to satisfy all or part of the Authority's obligation with respect to the Reserve Fund causes the amount then on deposit in the Reserve Fund to exceed the average annual principal and interest requirements of all Parity Revenue Bonds, the Authority may transfer such excess amount to any fund or funds established for the payment of or security for the Parity Revenue Bonds (including any escrow established for the final payment of any such obligations pursuant to Article 717k, Vernon's Texas Civil Statutes) or use such excess amount for any lawful purpose now or hereafter provided by law.

6.7 Unallocated and Unpledged Balance. Within thirty (30) days after the close of each fiscal year after the fiscal year in which any Revenue Bonds are issued, the Board shall examine for each series of Revenue Bonds (or all series of Parity Bonds) the balances in the Project Prepayment Fund, the Interest and Sinking Fund, and the Bond Reserve Fund. If, on the last day of any such fiscal year, the Board is current in the

making of deposits into the Interest and Sinking Fund and the Bond Reserve Fund for that particular series of Revenue Bonds, so that all deposits required under the Agreement have been made into the respective funds, and if there are no unpaid obligations against any of the respective funds, or in the event there are unpaid obligations if they are taken into account as indicated below, the Board will take the following actions with respect to the funds maintained for each series of Revenue Bonds that are similarly secured:

(a) Ascertain the balance of funds in the Project Prepayment Fund for that particular series of Revenue Bonds;

(b) Ascertain for that particular series of Revenue Bonds the total amount of unpaid obligations against: the Project Prepayment Fund, the Interest and Sinking Fund, and the Bond Reserve Fund (taking into account the special treatment afforded Parity Bonds) , including obligations which have been filed and those which have not been filed but, which in the opinion of the Board, will probably be filed;

(c) Subtract item (b) from the sum from item (a). The remainder shall constitute the Unallocated and Unpledged Balance for that particular series of Revenue Bonds;

(d) Transfer to the Interest and Sinking Fund for that particular series of Revenue Bonds such Unallocated and Unpledged Balance.

6.8 Investments. Any money held in the Project Prepayment Fund for each series of Revenue Bonds will be separately invested and reinvested in the following investments, as authorized by the Texas Public Funds Investment Act, Chapter 2256, Texas Government Code: (1) obligations of the United States of America or its agencies and instrumentalities; (2) direct obligations of the State of Texas or its agencies; (3) other obligations, the principal of and interest on which are unconditionally guaranteed or insured by the State of Texas or the United States of America; (4) obligations of states, agencies, counties, cities, and other political subdivisions or any state having been rated as to investment quality of not less than "A" or its equivalent; (5) certificates of deposits issued by state or national banks domiciled in the State of Texas that are guaranteed or insured by the Federal Deposit Insurance Corporation, or its successor; or are secured by obligations as permitted by Chapter 2256, Texas Government Code; (6) commercial paper payable in the United States of America, having original maturities of not more than 92 days that either is rated not less than A-1, P-1, or the equivalent by at least two nationally recognized credit rating agencies; or is rated at least A-1, P-1 , or the equivalent by at least one nationally recognized credit rating agency and is fully secured by an irrevocable letter of credit issued by a bank organized and existing under the laws of the United States of America or any state thereof; (7) prime domestic bankers' acceptances with a stated maturity of 270 days or less; or (8) fully collateralized repurchase agreements, as provided in Chapter 2256, Texas Government Code.

Any money held in the Interest and Sinking Fund and the Bond Reserve Fund for each series of Revenue Bonds will be separately invested and reinvested by the Board in investments described in subsections (1), (2) or (5) of the preceding paragraph.

Any investments will be held by or under the control of the Board and while so held will be deemed a part of the fund in which such money was originally held. The earnings accruing on such investments, including any profit realized, will be credited to such funds as provided for in this Agreement.

The Authority in the resolution authorizing the issuance of the Revenue Bonds or any Additional Bonds will covenant to pay the required rebate to the United States on any excess earnings on its investments in accordance with Section 148(f) of the Internal Revenue Code of 1986, as amended.

6.9 Final Payment. Notwithstanding anything to the contrary herein, whenever the total amount of funds in the Interest and Sinking Fund and the Bond Reserve Fund for a particular series of Revenue Bonds is equivalent to the aggregate principal and interest amount due and to become due on that series of Revenue Bonds (and Additional Bonds if issued as Parity Bonds), no further payments need be made into the Interest and Sinking Fund or the Bond Reserve Fund securing that series of Revenue Bonds, and the obligations shall not be regarded as being outstanding except for the purpose of being paid with the funds on hand. Any amounts remaining in any of these funds after defeasance and payment of the particular series of Revenue Bonds (and any Additional Bonds issued as a parity with such bonds) may be transferred to the Project Prepayment Fund for that particular series of Revenue Bonds.

6.10 Additional Bonds. The Authority reserves the right to issue, on a parity or non-parity basis, further revenue obligations (the "Additional Bonds") payable from the Project Payments for the purpose of refunding Revenue Bonds or completing the Project or for a Project Expansion to the extent contemplated by this Agreement. Unless Additional Bonds expressly provide they have a junior lien position, Additional Bonds will have a first lien position on the Project Payments for such Bonds.

(a) *Parity Bonds.* When issued as Parity Bonds in compliance with applicable law and the terms and conditions set forth in this Agreement and Bond Documents, if any, such Additional Bonds shall occupy an equal position with any previously issued Revenue Bonds that are secured by the same Project Payments from the same Member Cities. The Authority hereby covenants and agrees that no Additional Bonds will be issued on a parity basis with previously issued series of Revenue Bonds unless and until the following conditions have been met:

(1) The Authority is not then in default as to any covenant, condition or obligation prescribed by this Agreement or the Bond Documents

and that the Interest and Sinking Fund, and the Bond Reserve Fund contain the amounts then required to be on deposit therein;

(2) The applicable laws of the State of Texas in force at such time and which provide permission and authority for the issuance of such Additional Bonds have been fully complied with;

(3) The resolution authorizing such Additional Bonds shall contain provisions for increasing the Project Payments made in accordance with the Project Cost Payment Schedule so that the monthly deposits to be made into the Interest and Sinking Fund will assure the availability of money on time for the purpose of paying the installments of interest and principal of such Additional Bonds;

(4) The Additional Bonds are scheduled to mature only on the same interest payment dates as the Revenue Bonds, and the interest thereon is scheduled to be paid only on the same interest payment dates as the Revenue Bonds;

(5) The calculation of average annual principal and interest requirements made pursuant to this section shall be made as of and from the date of the installment or series of Revenue Bonds then proposed to be issued; and

(6) The resolution authorizing the issuance of such installment or series of Additional Bonds provides that the aggregate amount to be accumulated and maintained in the Bond Reserve Fund shall be increased from bond proceeds of the Additional Bonds to an aggregate amount not less than the least of the average annual principal and interest requirements for the Revenue Bonds and the installment or series of Additional Bonds then proposed to be issued or the amounts stated in Section 2.25.

(b) *Non-parity Basis.* Unless the Additional Bonds are issued as Parity Bonds, such bonds shall be issued with the establishment of separate Project Prepayment Funds, Interest and Sinking Funds, and Bond Reserve Funds which shall not be used except for the series of Revenue Bonds for which they were issued. Such Additional Bonds issued on a non-parity basis may not be issued unless

(1) The Authority is not then in default as to any covenant, condition or obligation prescribed by this Agreement;

(2) The applicable laws of the State of Texas in force at such time and which provide permission and authority for the issuance of such Additional Bonds have been fully complied with; and

(3) The Additional Bonds are scheduled to mature only on the same interest payment dates as the other Revenue Bonds, and the interest thereon is scheduled to be paid only on the same interest payment dates as the other Revenue Bonds.

(c) *Limitation on Revenue Bonds.* The aggregate amount of Revenue Bonds issued under this Agreement (exclusive of refunding bonds) shall not exceed the amount specified in Section 2.25 unless written approval has been obtained from each of the Member Cities.

ARTICLE 7. COVENANTS AND OBLIGATIONS OF THE AUTHORITY

7.1 Obligation to Complete Project.

(a) The obligation of the Authority to contract for the prepayment of the Repayment Contract for the Project shall be conditioned upon the execution of Prepayment Agreements with the Member Cities to produce revenues which, in the judgment of the Authority and participating Member Cities, will repay the costs of prepayment of the obligation for the Project. If Prepayment Agreements are not secured whereby such estimated costs of the Authority can be met, the Authority shall notify the City, whereupon this Agreement will be voided.

(b) The Authority agrees to proceed promptly and to the best of its ability for securing financing necessary for the performance of its obligations hereunder and to negotiate all contracts necessary to finance the prepayment of the Repayment Contract for the Project. It is understood that at this time the Authority is not in a position to guarantee the undertaking of the financing of the Project.

7.2 Records and Accounts.

(a) So long as any of the Revenue Bonds or any interest thereon remain outstanding and unpaid, the Authority will keep and maintain a proper and complete system of books, records and accounts pertaining to the Project, separate and apart from all other records and accounts in which complete and correct entries shall be made of all transactions relating to the Project, and that the registered owner of any of the Revenue Bonds or any duly authorized agent or agents of such registered owner shall have the right at all reasonable times to inspect all such books, records, accounts and data relating thereto, and to inspect the properties comprising the Project. Within six (6) months following the close of each fiscal year, the Board will cause an audit of such books and

accounts to be made by an independent certified public accountant, showing the receipts and disbursements for account of the Project for such fiscal year. Each such audit, shall in addition to any other items considered proper by the independent certified public accountant; particularly include the following:

(1) a detailed statement of the income and expenditures for account of the Project for such fiscal year;

(2) a balance sheet as of the end of such fiscal year;

(3) the independent certified public accountant's comments regarding the manner in which the Board has carried out the requirements of this Agreement and Bond Documents, and his or her recommendations for any changes or improvements in the operation, records and accounts of the Project; and

(4) a list of the insurance policies in force at the end of the fiscal year on the properties of the Project, setting out as to each policy the amount thereof, the risk covered, the name of the insurer, and the policy's expiration date.

(b) For so long as the Project is in operation, the Authority will maintain a proper set of books, records and accounts pertaining to the operation of the Project which shall be available for inspection by the Member Cities. The original purchasers of the Revenue Bonds and any bondholder shall have the right to discuss with the accountant making the annual audit the contents thereof and to request such additional information as he may reasonably request.

(c) Expenses incurred in making the audits above required shall be considered as Project Operation and Maintenance Costs and paid as such.

7.3 Defeasance. The Authority may provide for the defeasance of its Revenue Bonds in the Bond Documents.

7.4 Sale or Encumbrance of Properties. So long as any Revenue Bonds remain outstanding, the Authority shall not, except as otherwise prescribed herein or in the Bond Documents or as consented to by the holders of the Revenue Bonds, sell, or in any other manner dispose of any properties comprising the Project, including property acquired later with the proceeds of Additional Bonds. Notwithstanding anything herein to the contrary, the Board may dispose of property which in its judgment has become inexpedient for use in connection with the Project. In the event of the disposition of any property under such circumstances, the proceeds from such sale shall be used to acquire other property suitable for use and needed by the Project or, if such sale occurs following the termination of the Project pursuant to Section 4.6 hereof, the proceeds of the sale will be disposed of as follows: (a) return the pro rata portion attributable to a Member City which were paid

directly pursuant to Section 4.3, and (b) deposit the remainder to the credit of the appropriate Interest and Sinking Fund for the payment of the Revenue Bonds issued to pay all or a part of the property sold.

7.5 Board to Submit Information to Meet Continuing Disclosure Requirements. In order to meet the requirements imposed by United States Securities and Exchange Commission Rule 15c2-12, as amended (the "Rule"), if Revenue Bonds are issued and outstanding, the Authority shall provide annually to each Nationally Recognized Municipal Securities Information Repository ("NRMSIR") and the State Information Depository ("SID") for the State of Texas, within six months after the end of each fiscal year ending in or after 1999, financial information and operating data with respect to itself of the general type included in the final Official Statement. To the extent the City and the other Member Cities provide the requisite information, the Authority will provide such financial information and operating data with respect to the City and the other Member Cities of the general type included in the final Official Statement annually to each NRMSIR and the SID for the State of Texas, within six months after the end of each fiscal year ending in or after 1999. The obligation to make such reports will be for so long as the City or any of the Member Cities provide the information to the Authority and remain an "obligated person" as defined in Rule 15c2-12(f)(10). The Authority, with respect to the Revenue Bonds, also agrees to notify the SID for the State of Texas and either each NRMSIR or the Municipal Securities Rulemaking Board, in a timely manner, of any of the events listed in Rule 15c2-12(b)(5)(ii)(C), if such event is material within the meaning of the federal securities laws. This covenant is for the benefit of the City, the other Member Cities, and the holders of the Revenue Bonds and shall remain in effect for so long as the Authority remains an "obligated person."

7.6 Reports and Inspections. The Board covenants that it will obtain or prepare progress reports in connection with acquisition of real property and construction as required by the Bureau of Reclamation.

7.7 Water Supply and Payment Obligations. For so long as the Revenue Bonds and the Project are in operation, the Authority will supply water to the City pursuant to the Meredith Supply Agreement and will forward the City's payments under this contract to make the payments called for under this Agreement, including the payment on the Revenue Bonds, if applicable.

7.8 Default and Remedies-City. If the Authority fails or defaults in meeting the terms, conditions and covenants of this Agreement under Article 7, and such default continues for 30 days after the City has given the Authority notice, then the City shall have all of the rights and remedies provided at law and in equity, except in no event shall the City be relieved of its obligation to the payments required under this Agreement. So long as the City is not in default, the Authority stipulates that delivery of water, exclusive of the

allocation of water available for delivery, discretionary activities under the Meredith Supply Agreement, and factors beyond the Authority's control, is a ministerial duty.

ARTICLE 8. COVENANTS AND OBLIGATIONS OF THE CITY

8.1 Rate Covenant. The City covenants that during the term of this Agreement and if and for so long as any Revenue Bond is outstanding after the term of this Agreement, it shall fix, maintain and collect uniform and nondiscriminatory charges for the facilities and services afforded by its waterworks system as required by TEX. REV. CIV. STAT. ANN. art. 1113.

8.2 Additional Sources of Payments. The City may appropriate money from any lawfully available source for the purpose of relieving the necessity of increasing the rates and charges of its water service.

8.3 Compliance with Law. The City's obligations under this Agreement shall never be construed to constitute a debt of the City of such kind as to require it under the constitution and laws of the State of Texas to levy and collect a tax to discharge such obligation.

8.4 Authorization and Validity. The City represents and warrants that the execution, delivery and performance of this Agreement have been duly authorized by the City, that this Agreement has been duly executed and delivered by the City and constitutes a legal, valid and binding obligation of the City, enforceable against it in accordance with its terms. The City represents and warrants this Agreement does not exceed any constitutional or statutory limitations, and that provision will be made for all payments due hereunder by irrevocably pledging to the payment hereof sufficient revenues of the waterworks system of the City. The City warrants and guarantees that it has not obligated itself, and is not now bound by the issuance of prior bonds or otherwise in such a manner that prohibits or makes inoperative any of the terms, conditions or obligations herein provided. Neither the execution and performance of this Agreement, nor the consummation of the transactions contemplated hereby will (a) result in a violation or breach of any agreement or other instrument under which the City is bound or (b) violate any applicable law, ordinance or regulation, or any judgment or order of any court or governmental agency affecting the City.

8.5 Prior Obligations of City's Waterworks System. The City represents and covenants that the facilities and services to be obtained pursuant to this Agreement are essential and necessary to the operation of the City and its waterworks system, and that all payments made hereunder by it will constitute operating expenses of the City's waterworks system within the meaning of the provisions of all City ordinances and resolutions authorizing the issuance of the City's revenue bonds, payable from revenues of its waterworks system, with the effect that the City's obligation to make payments to the

Authority from its waterworks system revenues under this Agreement shall have priority over its obligations to make payments of the principal and interest on any and all of such bonds.

8.6 Exclusive Agreement. Pursuant to section 791.026(b), Tex. Govt. Code, the City agrees that it will obtain all of its water from the Canadian River Project as contemplated by this Agreement and the Meredith Supply Agreement from the Authority. The City may obtain other independent sources of supply which are not provided by the Authority under this Agreement from other sources.

8.7 City Obligation Not Separable. The City as a whole is obligated to pay to the Authority the charges becoming due by it and only it as provided in this Agreement, notwithstanding the default in the payment to the City by individual water users of charges fixed by the City.

8.8 City's Disclosure Agreement. The City acknowledges that if Revenue Bonds are issued, it will be an "obligated person" as defined in Rule 15c2-12(f)(10) of the Rules of the United States Securities and Exchange Commission. If Revenue Bonds are issued, the City appoints the Authority as its agent to file the financial information and operating data required by the Rule. The City agrees to provide to the Authority a copy of its annual audited financial statement and such other financial and operating information necessary for the Authority to comply with the continuing disclosure requirements under the Rule. The information for the annual report shall be provided no later than four months from the end of the City's fiscal year. This covenant is for the benefit of the Authority and the holders of the Revenue Bonds and shall remain in effect for so long as the City remains an "obligated person" as defined in Rule 15c2-12(f)(10). Should the City fail to provide the requisite information to the Authority within the four month period after the end of its fiscal year, the City agrees that it will make its own filings to comply with the Rule within six months after the end of its fiscal year.

ARTICLE 9. GENERAL PROVISIONS

9.1 Assignment of Agreement. This Agreement or the payment of performance obligations of the City hereunder, may not be assigned by the Authority without the consent of the City, which consent shall not be unreasonably denied. The City may not assign all or any part of this Agreement without the prior written consent of the Authority, which consent shall not be unreasonably denied.

9.2 Inspection of Books and Records. Each party shall have the right, during normal office hours, to inspect and at its own expense to make copies of the other party's books and official records relating to matters covered by this Agreement.

9.3 Past Due Payments. A past due penalty of one-half of one percent (.5%) per month shall be charged on any amount owed under this Agreement which is not paid when due.

9.4 Default under Bond Documents. If at any time, the Authority has failed to perform any of its obligations under this Agreement (a) which are related to the Bond Documents or (b) which result in the occurrence of an event of default under the Bond Documents, the Authority may obtain from the holder of the Revenue Bonds a consent to the Authority's failure to perform the obligation or a waiver of the event of default. The consent or the waiver of the holders of the Revenue Bonds will automatically cure an event of default under this Agreement resulting from the Authority's failure to perform the obligation and will relieve the Authority from performing the obligation to the holders of the Revenue Bonds.

9.5 Amendment. Subject to Section 9.9 and Section 9.12 of this Agreement, this Agreement may not be modified or amended without the mutual written agreement of the Authority and the City.

9.6 Subject to Authority Contract. This Agreement shall be subject to the terms, conditions, and provisions of the Repayment Contract between the Authority and the Bureau of Reclamation for the Canadian River Project, as amended or modified, and to all applicable state, federal and local government laws or regulations.

9.7 Notices. Each notice, request, demand, approval or other communication which may be or is required to be given under this Agreement shall be in writing and shall be deemed to have been properly given when delivered personally at the address set forth in Schedule C for the intended party during normal business hours at such address, when sent by facsimile or other electronic transmission to the respective facsimile transmission numbers of the parties set forth in Schedule C with the telephone confirmation of receipt, or when sent by recognized overnight courier or by United States registered or certified mail, return receipt requested, postage prepaid, addressed as provided in Schedule C. Notices shall be given to such other addressee or address, or both, or by way of such facsimile transmission number as the particular party may from time to time designate by written notice to the other parties hereto. Each notice, request, demand, approval or other communication made in accordance with this Section 9.7 shall be deemed given and received for all purposes of this Agreement as of three business days after the date of deposit thereof for mailing in a duly constituted United States post office or branch thereof, one business day after deposit with a recognized overnight courier service, or upon confirmation of receipt of any facsimile transmission. Notice given to a party hereto by any other method shall only be deemed to be given and received when actually received in writing by such party.

9.8 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Texas.

9.9 Further Action. The parties shall execute and deliver all documents, provide all information and take such action as may be reasonably necessary or appropriate to achieve the purposes of this Agreement or to assist the Authority in obtaining financing for the Project and related activities. The City specifically understands and agrees, in this respect, that the Authority may, in its discretion, obtain financing for all or a part of the Project from one or more sources, including but not limited to the issuance of Revenue Bonds. The City shall, as reasonably requested, execute such documents and enter into such amendments to this Agreement as the Authority reasonably requests, in order to facilitate the issuance of Revenue Bonds or obtaining other financing for the Project and related activities. A description of any issue of Revenue Bonds, or other Project financing, shall be attached to this Agreement as Schedule D, as soon as practicable after arrangements for such financing activities are finalized.

9.10 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors, legal representatives, and permitted assigns.

9.11 Integration. This Agreement constitutes the entire agreement among the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto.

9.12 Severability. In the event that any of the provisions, or portions thereof, of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions, or portions thereof, shall not be affected thereby. The parties shall, if any portion of this Agreement is determined to be unenforceable or invalid, exercise their reasonable best efforts to negotiate an amendment to this Agreement which will evidence the original intent of the parties with respect to the invalid or illegal provision.

9.13 Waiver. No failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute waiver of any such breach or any other covenant, duty, agreement or condition.

9.14 Defaults and Remedies.

(a) An event of default shall occur when the City fails to pay all or any part of a payment to the Authority when due hereunder.

(b) If the City fails to pay all or any part of a payment to the Authority when due, and such amount remains outstanding and unpaid for ninety (90) days, the Authority shall send notice to the City and all the other Member Cities of the failure of the City to make the payment. The City shall have ninety (90) days after the receipt of the notice to become current. Should the City fail to bring its account current within this time, an event of default occurs and the Authority may invoke Section 25 of the Meredith Supply Agreement.

(c) If an event of default occurs, the Parties may, in addition to any other rights or remedies provided herein or at law, exercise any or all of the following rights and remedies:

- (i) The City stipulates that payment of the City's obligations hereunder is a ministerial duty.
- (ii) The Authority may terminate this Agreement. Such termination shall not relieve the City of its obligations under this Agreement.

9.15 Force Majeure. If by reason of force majeure, either party shall be rendered unable, wholly or in part, to carry out its obligations under this Agreement, and if such party gives notice and full particulars of such force majeure, in writing, to the other party within a reasonable time after occurrence of the event or cause relied on, the obligations of the party giving such notice (other than obligations for the payment of money), so far as they are affected by such force majeure, shall be suspended during the continuance of the inability then claimed, including a reasonable time for removal of the effect thereof. The term "force majeure" shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, orders of any kind of the Government of the United States, or any state, or any agency or political subdivision of the United States or any state, or any other civil or military authority, insurrections, riots, epidemics, landslides, lightening, earthquakes, fire, hurricanes, tornadoes, storms, floods, washouts, arrests, civil disturbances, explosions, breakage or accidents to machinery, transmission pipes or canals, shortages of labor, materials, supplies or transportation, or any other like cause not reasonably within the control of the party claiming such inability. The requirement that any force majeure shall be reasonably beyond the control of the party shall be deemed to be fulfilled even though the existing or impending strike, lockout or other industrial disturbance may not be settled but could have been settled by acceding to the demand of the opposing person or persons. The parties shall use their best efforts to remove the cause of any force majeure.

9.16 Counterparts. This Agreement may be exercised in counterparts. All counterparts together shall constitute one agreement binding on all the parties, notwithstanding that all parties are not signatories to the original or the same counterparts.

9.17 Descriptive Headings. The headings in this Agreement are intended solely for convenience of reference and shall be given no effect in the construction or interpretation of this Agreement.

9.18 Construction of Agreement. The parties intend that this Agreement relate specifically to the Project, and constitutes an activity distinctly separate and apart from the Salinity Control Contract and the Conjunctive Use Groundwater Supply Agreement. The parties do not intend that this Agreement constitute an amendment or modification of the Salinity Control Contract or the Conjunctive Use Groundwater Supply Agreement. This Agreement is, however, supplementary to the Meredith Supply Agreement. It is the further intention of the parties that this Agreement not be strictly construed against either party hereto, it being understood that this Agreement was negotiated, in good faith, by each party to this Agreement.

9.19 Non-Discrimination. In connection with the performance of work under this Agreement and in the provision of waterworks services, the Parties agree not to discriminate against any employee or applicant for employment because of race, religion, color or national origin; provided, however, this does not waive any requirement of state or federal laws.

9.20 Determinations. Where the terms of this Agreement provide for action to be based upon the opinion or determination of either party to this contract, whether or not stated to be conclusive, said terms shall not be construed as permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or determinations.

9.21 Costs, Expenses and Legal Fees. Each party shall bear its own costs and expenses (including attorneys fees) except that each party hereto agrees, to the extent allowed by applicable law, to pay the costs and expenses, including reasonable attorneys fees, incurred by the other party in successfully (a) enforcing any of the terms of this Agreement or (b) proving that the other party breached any of the terms of this Agreement in any material respect.

9.22 Remedies. The remedies provided in this Agreement shall not be exclusive of any other rights or remedies available by one party against the other, either at law or in equity.

9.23 Contract not for Benefit of Third Parties. This Contract is made for the exclusive benefit of the City, the Authority, the owners of the Revenue Bonds, the parties to any credit agreements, as defined and authorized under the provisions of Art. 717q, Tex. Rev. Civ. Stat. Ann., which the Authority enters into relating to its obligations with respect to the Revenue Bonds.

AUTHORITY:

**CANADIAN RIVER MUNICIPAL WATER
AUTHORITY**

By: E.R. Moore

ATTEST:

John C. Williams

[SEAL]

CITY:

CITY OF LUBBOCK, TEXAS

By: Windy Sitton

ATTEST:

Kaythie Darnell
Kaythie Darnell, City Secretary

WINDY SITTON, MAYOR

[SEAL]

APPROVED AS TO CONTENT:

Terry Ellerbrook
Terry Ellerbrook, Managing Director
of Water Utilities

APPROVED AS TO FORM:

Anita Burgess
Anita Burgess, City Attorney

Bryan W. Shaw, Ph.D., *Chairman*
Carlos Rubinstein, *Commissioner*
Toby Baker, *Commissioner*
Zak Covar, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

June 21, 2013

CERTIFIED MAIL 7011 3500 0003 1426 9026
RETURN RECEIPT REQUESTED

The Honorable Glen C. Robertson, Mayor
City of Lubbock
PO Box 2000
Lubbock, TX 79408-2000

Re: Notice of Enforcement for Comprehensive Compliance Investigation at:
Lubbock Public Water System, 6001 N. Guava Ave., Lubbock (Lubbock County), Texas
RN101248722, TCEQ Additional ID: PWS 1520002, Investigation No. 1098784:

Dear Mayor Robertson:

From April 30 through May 7, 2013, Messrs. Jason Lindeman, Malcolm Laing, Jay Keith, and Joseph Hopkins of the Texas Commission on Environmental Quality (TCEQ) Lubbock Region Office conducted an investigation of the above-referenced regulated entity to evaluate compliance with applicable requirements for public water supply. During this investigation, a certain outstanding alleged violation was documented. Enclosed is a summary which lists the investigation findings and recommended corrective actions. Additional recommended corrective actions may be provided by the Enforcement Division. Corrective action must be completed so your public water supply may be operated and maintained in accordance with the requirements for an "Approved" system. Please note there were also two Additional Issues as indicated on the attached Summary of Investigation Findings.

In the listing of the alleged violation, we have cited applicable requirements, including TCEQ rules. Please note that both the rules themselves and the agency brochure entitled *Obtaining TCEQ Rules* (GI 032) are located on our agency website at <http://www.tceq.state.tx.us> for your reference. If you would like a hard copy of this brochure mailed to you, you may call and request one from either the Lubbock Region Office at (806) 796-7092 or the Central Office Publications Ordering Team at (512) 239-0028.

One or more of the violations documented during the subject investigation includes unauthorized activity and you are hereby advised that continued operation is not authorized.

Also, please be advised that the Legislature has granted enforcement powers to the TCEQ to carry out its mission to protect human health and the environment. Due to the apparent seriousness of the alleged violations, formal enforcement action has been initiated, and additional violations may be cited upon further review. We encourage you to immediately begin taking actions to address the outstanding alleged violation.

TCEQ Region 2 • 5012 50th St., Ste 100 • Lubbock, Texas 79414-3426 • 806-796-7092 • Fax 806-796-7107

Austin Headquarters: 512-239-1000 • tceq.texas.gov • How is our customer service? tceq.texas.gov/customersurvey

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The Honorable Glen C. Robertson, Mayor
June 21, 2013
Page 2

~~In responding with prompt corrective action, the administrative penalty to be assessed may be limited.~~

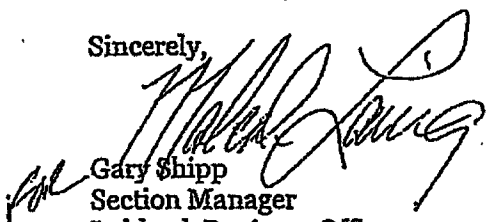
The Commission recognizes that the great majority of the regulated community wants to prevent pollution and to comply with environmental laws. We dedicate considerable resources toward making voluntary compliance achievable. But where compliance has not been met it is our duty to protect the public and the environment by enforcing the state's environmental laws, regulations, and permits.

Also, if you believe the violation documented in this notice have been cited in error, and you have additional information that we are unaware of, you may request a meeting to discuss this enforcement matter. To request a meeting, send a letter describing the additional information to the address shown below.

Manager, Water Section
Enforcement Division, MC 219
Re: Enforcement Meeting Request
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

If you or members of your staff have any questions, please feel free to contact Mr. Lindeman in the Lubbock Region Office at (806) 796-7092.

Sincerely,



Gary Shipp
Section Manager
Lubbock Region 2 Office

GJS/JKL/pah

Enclosure: Summary of Investigation Findings

cc: Ms. Marsha Reed, P.E., Chief Operating Officer, PO Box 2000, Lubbock, TX 79408-2000
Mr. Bruce Blalack, Water Production Superintendent, PO Box 2000, Lubbock, TX 79408-2000
Mr. Mike Lowe, Water Operations Manager, PO Box 2000, Lubbock, TX 79408-2000

Summary of Investigation Findings

LUBBOCK PUBLIC WATER SYSTEM

Investigation # 1098784

6001 N GUAVA AVE

Investigation Date: 04/30/2013

LUBBOCK, LUBBOCK COUNTY, TX 79403

Additional ID(s): 1520002

OUTSTANDING ALLEGED VIOLATION(S) ASSOCIATED TO A NOTICE OF ENFORCEMENT

Track No: 505293

Compliance Due Date: To Be Determined

2D TWC Chapter 26.121(a)(1)

Alleged Violation:

Investigation: 1098784

Comment Date: 06/17/2013

Failure to obtain a required Texas Pollutant Discharge Elimination System (TPDES) permit for an industrial wastewater discharge. At the time of the investigation, two concrete lined evaporation ponds were observed north of the Terminal Storage Reservoir (TSR) on the west side of the South Water Treatment Plant (SWTP). The east pond was dry and the west pond contained water that appeared to be several inches deep based on visual observations. Mr. Mike Lowe, Water Operations Manager, stated these ponds were used to evaporate the neutralized water from the automated filter clean-in-place (CIP) process and water pumped from the sumps in the facility floor drain and secondary containment basin system. There is no meter on the influent lines supplying water to these ponds. When the membrane filters are in full production, the CIP process utilizes approximately 3,000 gallons per event and runs every 30 days. Prior to discharging into the ponds, the CIP water is neutralized in a 7,000 gallon tank. Mr. Lowe indicated that the CIP process had occurred approximately 15 times since the City of Lubbock began operating the SWTP, resulting in an approximate discharge volume of 0.045 million gallons (MG). Multiple CIP events were also conducted by the manufacturer/contractor during construction. The control system at the plant indicated the sump pumps, with a capacity of 200 gallons-per minute (GPM), had been in operation for approximately 23 hours, resulting in a discharge volume of approximately 0.276 million gallons (MG). On May 7, 2013 the pH was tested in the west pond by Mr. Joseph Hopkins, TCEQ, using an Orion pH meter and found to be 9.15 standard units. On June 14, 2013, Mr. Lowe indicated the City of Lubbock has commented on the draft permit and that the engineer preparing the permit application completed the four consecutive weeks of required sampling during the week ending June 14, 2013.

Recommended Corrective Action: As required in 2 TWC §26.121(a)(1), except as authorized by the commission, no person may discharge sewage, municipal waste, recreational waste, agricultural waste, or industrial waste into or adjacent to any water in the state. A water quality permit must be obtained, or the discharge must be eliminated.

ADDITIONAL ISSUES

Description

Item 2

Additional Comments

During the investigation, significant areas of rust were observed on the flocculator arms in the sedimentation basins at the North Water Treatment Plant (NWTP). The City of Lubbock is currently in the process of evaluating the function, operation, and maintenance of the NWTP. For your convenience please review 30 TAC §290.46(m) to ensure adequate housekeeping and maintenance is performed during this process.

Item 3

During the investigation, handwritten calibration logs were available for each Individual Filter Effluent (IFE) turbidimeter; however, several of the calibration history logs on the turbidimeters themselves appeared to indicate the minimum calibration frequency had been exceeded. There were also minor discrepancies with other types of calibration records, such as those for well flow meters, rate-of-flow controllers at the North Water Treatment Plant, and laboratory equipment. For your convenience, please review 30 TAC §290.46(s)(1) and (2) to ensure required calibrations are properly conducted and documented.

Bryan W. Shaw, Ph.D., P.E., *Chairman*
Toby Baker, *Commissioner*
Zak Covar, *Commissioner*
Richard A. Hyde, P.E., *Executive Director*



ML m
IH 27
JK JK
JAL [signature]

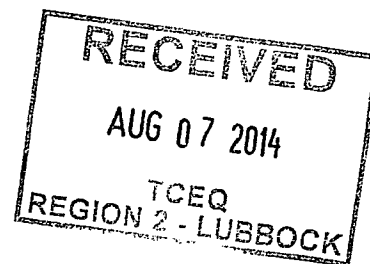
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

COPY

August 1, 2014

The Honorable Glen Robertson, Mayor
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79408



Re: Notice of Compliance with Agreed Order
City of Lubbock; RN105934384
Docket No. 2013-1321-IWD-E; Enforcement Case No. 47214

Dear Mayor Robertson:

This letter is to inform you that a review of Texas Commission on Environmental Quality (TCEQ) records concerning the above-referenced enforcement matter indicates that the City of Lubbock has fulfilled the requirements of the Agreed Order effective on February 9, 2014. Specifically, the City of Lubbock has fulfilled the technical and Supplemental Environmental Project requirements of the Agreed Order. Based upon this, we conclude that your response has been satisfactory and no further action is necessary at this time with respect to this enforcement matter. The Order will terminate on February 9, 2019, provided the City of Lubbock maintains compliance with all terms and conditions of the Order.

We appreciate your cooperation, and if we can be of any further assistance, please contact Mr. Michael Tucker at (512) 239-6924.

Sincerely,

A handwritten signature in cursive script, appearing to read "Carmen Pedraza".
Carmen Pedraza, Work Leader
Enforcement Division

cc: Manager, Water Section, Lubbock Regional Office, TCEQ
Mr. L. Wood Franklin, P.E., Public Works Engineering, 1625 13th Street, Lubbock, Texas 79401
Mr. Mike Lowe, City of Lubbock, P.O. Box 2000, Lubbock, Texas 79408

Bryan W. Shaw, Ph.D., *Chairman*
Carlos Rubinstein, *Commissioner*
Toby Baker, *Commissioner*
Zak Covar, *Executive Director*

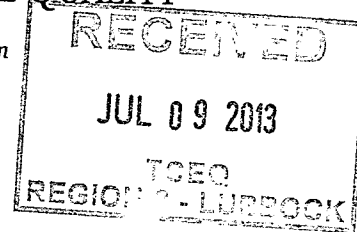


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JLH 214

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

August 5, 2013



CERTIFIED MAIL - RETURN RECEIPT REQUESTED

The Honorable Glen Robertson
Mayor of Lubbock
P.O. Box 2000
Lubbock, Texas 79408

91 7199 9991 7032 7485 7058

COPY

Re: Notice of Enforcement Action
City of Lubbock; RN101248722 - copy for PWS file
Docket No. 2013-1321-IWD-E; Enforcement Case No. 47214
FOR SETTLEMENT PURPOSES ONLY

Dear Mayor Robertson:

The Executive Director of the Texas Commission on Environmental Quality ("Commission" or "TCEQ") is pursuing an enforcement action against the City of Lubbock for a violation of the Texas Water Code. The violation was discovered during an investigation conducted on April 30, 2013, and documented in a letter dated June 21, 2013, from the TCEQ Lubbock Regional Office.

Please find enclosed a proposed agreed order which we have prepared in an attempt to expedite this enforcement action. The order assesses an administrative penalty of Three Thousand Seven Hundred Fifty Dollars (\$3,750). We are proposing a one time offer to defer Seven Hundred Fifty Dollars (\$750) of the administrative penalty if you satisfactorily comply with all the ordering provisions within the time frames listed. Therefore, the administrative penalty to be paid is Three Thousand Dollars (\$3,000). The order also identifies the violations that we are addressing and identifies specific technical requirements necessary to resolve them.

If you have any questions regarding this matter, we are available to discuss them in a conference in Austin or over the telephone. If we reach agreement in a timely manner, the TCEQ will then proceed with the remaining procedural steps to settle this matter. These steps include publishing notice of the proposed order in the *Texas Register*, and scheduling the matter for approval by the Commission. We believe that handling this matter expeditiously could save the City of Lubbock and the TCEQ a significant amount of time, as well as the expense associated with litigation.

CN660130734

LBK

P.O. Box 13087 • Austin, Texas 78711-3087 • 512-239-1000 • tceq.texas.gov

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The Honorable Glen Robertson
Page 2

Enclosed for your convenience is a return envelope. If you agree with the order as proposed, please sign and return the original order **and** the penalty payment (check payable to "TCEQ" and referencing City of Lubbock, Docket No. 2013-1321-IWD-E) to:

Financial Administration Division, Revenue Operations Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

Should you believe you are unable to pay the proposed administrative penalty, you may claim financial inability to pay part or all of the penalty amount. Please contact us immediately to obtain a list of financial disclosure documents that must be submitted within 30 days of the receipt of this letter. These documents, once properly completed and submitted, will be thoroughly reviewed to determine if we agree with the claim of financial inability. Please be aware that if financial inability is proven to the satisfaction of staff, discussions pertaining to the penalty amount adjustment will focus only on deferral and not on waiver of the penalty amount.

You may be able to perform or pay for a Supplemental Environmental Project ("SEP"), which is a project that benefits the environment, to offset a portion of your penalty. **If you are interested in performing a SEP, you must agree to the penalty amount and submit a SEP proposal within 30 days of receipt of this proposed order.** If you are a local government you may have additional SEP options available to assist you with coming into compliance or remediating the harm caused by the violations. A local government is defined as a school district, county, municipality, junior college district, river authority, water district or other special district or other political subdivision created under the constitution or a statute of this state.

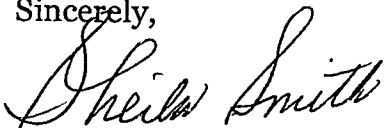
For additional information about the types of SEPs available and eligibility criteria, please go to the TCEQ's web site link at <http://www.tceq.texas.gov/legal/sep/> or contact the Enforcement Coordinator listed below.

Please note that any agreements we reach are subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).

If we cannot reach a settlement of this enforcement action or you do not wish to participate in this expedited process, we will proceed with enforcement under the Commission's Enforcement Rules, 30 TEX. ADMIN. CODE ch. 70. Specifically, if the signed order and penalty are not mailed and postmarked within 60 days from the date of this letter, your case will be forwarded to the Litigation Division and this settlement offer, including the penalty deferral, will no longer be available. The enforcement process described in 30 TEX. ADMIN. CODE ch. 70 requires the staff to prepare and issue an Executive Director's Preliminary Report and Petition to the Commission. If you would like to obtain a copy of 30 TEX. ADMIN. CODE ch. 70, or any other TCEQ rules, the rules themselves and the agency brochure entitled *Obtaining TCEQ Rules* (GI-032) are located on our agency website at <http://www.tceq.texas.gov> for your reference. If you would like a hard copy of this brochure mailed to you, you may call and request one from the Central Office Publications Ordering Team at (512) 239-0028.

For any questions or comments about this matter or to arrange a meeting, please contact Mr. Remington Burklund of my staff at (512) 239-2611.

Sincerely,



Sheila Smith, Acting Section Manager
Enforcement Division
Texas Commission on Environmental Quality

SS/RB

Enclosures: Proposed Agreed Order, Return Envelope, Penalty Calculation Worksheet,
Site Compliance History

cc: Manager, Water Section, Lubbock Regional Office, TCEQ

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
CITY OF LUBBOCK
RN101248722

§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§ ENVIRONMENTAL QUALITY

AGREED ORDER DOCKET NO. 2013-1321-IWD-E

I. JURISDICTION AND STIPULATIONS

On _____, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding the City of Lubbock ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent owns and operates a water treatment plant located at 6001 North Guava Avenue in Lubbock, Lubbock County, Texas (the "Facility").
2. The Respondent has caused, suffered, allowed or permitted the discharge of any waste or the performance of any activity in violation of TEX. WATER CODE ch. 26 or any rule, permit, or order of the Commission.
3. The Executive Director and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about June 26, 2013.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Three Thousand Seven Hundred Fifty Dollars (\$3,750) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Three Thousand Dollars (\$3,000) of the administrative penalty and Seven Hundred Fifty Dollars (\$750) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have failed to obtain a required Texas Pollutant Discharge Elimination System ("TPDES") permit prior to discharging industrial wastewater, in violation of TEX. WATER CODE § 26.121(a)(1) and 30 TEX. ADMIN. CODE § 305.42(a), as documented during an investigation conducted on April 30, 2013. Specifically, the Respondent disposed of floor drain water and neutralized water from the automated clean-in-place process without obtaining the required authorization.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of Lubbock, Docket No. 2013-1321-IWD-E" to:

Financial Administration Division, Revenue Operations Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. It is further ordered that the Respondent shall undertake the following technical requirements:

- a. Within 30 days after the effective date of this Agreed Order, submit a permit application in accordance with 30 TEX. ADMIN. CODE ch. 305 to:

Application Review and Processing Team
Water Quality Division, MC 148
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- b. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such requests or by any other deadline specified in writing;
- c. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision No. 2.a, in accordance with Ordering Provision No. 2.e below;
- d. Within 300 days after the effective date of this Agreed Order, submit written certification of compliance that either authorization to operate has been obtained or that operation has ceased until such time that appropriate authorization is obtained, in accordance with Ordering Provision No. 2.e below; and
- e. The certifications required by Ordering Provision Nos. 2.c and 2.d shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals

immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Water Section Manager
Lubbock Regional Office
Texas Commission on Environmental Quality
5012 50th Street, Suite 100
Lubbock, Texas 79414-3421

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

7. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

For the Executive Director

Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

Signature

Date

Name (Printed or typed)
Authorized Representative of
City of Lubbock

Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Section IV, Paragraph 1 of this Agreed Order.



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	24-Jun-2013	Screening	11-Jul-2013	EPA Due	
	PCW	18-Jul-2013				

RESPONDENT/FACILITY INFORMATION

Respondent	City of Lubbock	
Reg. Ent. Ref. No.	RN101248722	
Facility/Site Region	2-Lubbock	Major/Minor Source Minor

CASE INFORMATION

Enf./Case ID No.	47214	No. of Violations	1
Docket No.	2013-1321-IWD-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Remington Burkland
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$3,750
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History	0.0% Enhancement	Subtotals 2, 3, & 7	\$0
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Notes: No adjustment for compliance history.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement	Subtotal 6	\$0
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Total EB Amounts \$295
Approx. Cost of Compliance \$10,000
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$3,750
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount \$3,750

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$3,750
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DEFERRAL	20.0% Reduction	Adjustment	-\$750
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

Deferral offered for expedited settlement.

PAYABLE PENALTY	\$3,000
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Screening Date 11-Jul-2013

Docket No. 2013-1321-IWD-E

PCW

Respondent City of Lubbock

Policy Revision 3 (September 2011)

Case ID No. 47214

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101248722

Media [Statute] Water Quality

Enf. Coordinator Remington Burklund

Compliance History Worksheet

> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

> Compliance History Person Classification (Subtotal 7)

Satisfactory Performer

Adjustment Percentage (Subtotal 7) 0%

> Compliance History Summary

Compliance
History
Notes

No adjustment for compliance history.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 0%

> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 0%

Screening Date 11-Jul-2013
Respondent City of Lubbock
Case ID No. 47214
Reg. Ent. Reference No. RN101248722
Media [Statute] Water Quality
Enf. Coordinator Remington Burklund
Violation Number 1

Docket No. 2013-1321-IWD-E

PCW

Policy Revision 3 (September 2011)
PCW Revision August 3, 2011

Rule Cite(s)

Tex. Water Code § 26.121(a)(1) and 30 Tex. Admin. Code § 305.42(a)

Violation Description

Failed to obtain a required Texas Pollutant Discharge Elimination System permit prior to discharging industrial wastewater, as documented during an investigation conducted on April 30, 2013. Specifically, the Respondent disposed of floor drain water and neutralized water from the automated clean-in-place process without obtaining the required authorization.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification			
	Major	Moderate	Minor
	X		

Percent 5.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 3

72 Number of violation days

mark only one
with an x

daily	
weekly	
monthly	X
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$3,750

Three monthly events are recommended from the investigation date (April 30, 2013) to the screening date (July 11, 2013).

Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary	
Ordinary	
N/A	X (mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$295

Violation Final Penalty Total \$3,750

This violation Final Assessed Penalty (adjusted for limits) \$3,750

Economic Benefit Worksheet

Respondent: City of Lubbock
 Case ID No: 47214
 Reg. Ent. Reference No: RN101248722
 Media: Water Quality
 Violation No: 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	\$0	\$0
Record Keeping System				0.00	\$0	\$0	\$0
Training/Sampling				0.00	\$0	\$0	\$0
Remediation/Disposal				0.00	\$0	\$0	\$0
Permit Costs	\$10,000	30-Apr-2013	1-Dec-2013	0.59	\$295	\$295	\$295
Other (as needed)				0.00	\$0	\$0	\$0

Notes for DELAYED costs

Estimated cost to prepare and submit a permit application. The date required is the investigation date. The final date is the estimated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$10,000

TOTAL

\$295