



Control Number: 51530



Item Number: 1

Addendum StartPage: 0



Application for Sale, Transfer, or Merger of a Retail Public Utility

Pursuant to Texas Water Code § 13.301 and 16 Texas Administrative Code § 24.239

2020 NOV 20 AM 9:48
PUBLIC UTILITY COMMISSION
FILING CLERK

Sale, Transfer, or Merger (STM) Application Instructions

- I. **COMPLETE:** In order for the Commission to find the application sufficient for filing, the Applicant should:
 - i. Provide an answer to every question and submit any required attachment applicable to the STM request (i.e., agreements or contracts).
 - ii. Use attachments or additional pages to answer questions as necessary. If you use attachments or additional pages, reference their inclusion in the form.
 - iii. Provide all mapping information as detailed in Part G: Mapping & Affidavits.
- II. **FILE:** Seven (7) copies of the completed application with numbered attachments. One copy should be filed with no permanent binding, staples, tabs, or separators; and 7 copies of the portable electronic storage medium containing the digital mapping data.
 - i. **SEND TO:** Public Utility Commission of Texas, Attention: Filing Clerk, 1701 N. Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 (NOTE: Electronic documents may be sent in advance of the paper copy, however they will not be processed and added to the Commission's on-line Interchange until the paper copy is received and file-stamped in Central Records).
- III. The application will be assigned a docket number, and an administrative law judge (ALJ) will issue an order requiring Commission Staff to file a recommendation on whether the application is sufficient. The ALJ will issue an order after Staff's recommendation has been filed:
 - i. **DEFICIENT (Administratively Incomplete):** Applicants will be ordered to provide information to cure the deficiencies by a certain date, usually 30 days from ALJ's order. **Application is not accepted for filing.**
 - ii. **SUFFICIENT (Administratively Complete):** Applicants will be ordered by the ALJ to give appropriate notice of the application using the notice prepared by Commission Staff. **Application is accepted for filing.**
- IV. Once the Applicants issue notice, a copy of the actual notice sent and an affidavit attesting to notice should be filed in the docket assigned to the application. Recipients of notice may request a hearing on the merits.

HEARING ON THE MERITS: An affected party may request a hearing within 30 days of notice. In this event, the application may be referred to the State Office of Administrative Hearings (SOAH) to complete this request.
- V. **TRANSACTION TO PROCEED:** at any time following the provision of notice, or prior to 120 days from the last date that proper notice was given, Commission Staff will file a recommendation for the transaction to proceed as proposed or recommend that the STM be referred to SOAH for further investigation. The Applicants will be required to file an update in the docket to the ALJ every 30 days following the approval of the transaction. The transaction must be completed within six (6) months from the ALJ's order (Note: The Applicants may request an extension to the 6 month provision for good cause).
- VI. **FILE:** Seven (7) copies of completed transaction documents and documentation addressing the transfer or disposition of any outstanding deposits. After receiving all required documents from the Applicants, the application will be granted a procedural schedule for final processing. The Applicants are requested to consent in writing to the proposed maps and certificates, or tariff if applicable.
- VII. **FINAL ORDER:** The ALJ will issue a final order issuing or amending the applicable CCNs.

FAQ:

Who can use this form?

Any retail public utility that provides water or wastewater service in Texas.

Who is required to use this form?

A retail public utility that is an investor owned utility (IOU) or a water supply corporation (WSC) prior to any STM of a water or sewer system, or utility, or prior to the transfer of a portion of a certificated service area.

Terms

Transferor: Seller

Transferee: Purchaser

CCN: Certificate of Convenience and Necessity

STM: Sale, Transfer, or Merger

IOU: Investor Owned Utility

• 18915

Application Summary

Transferor: Esperanza Water Service Company, Inc.
(selling entity)

CCN No.s: 12881

☒ Sale ☐ Transfer ☐ Merger ☐ Consolidation ☐ Lease/Rental

Transferee: El Paso Water Utilities Public Service Board
(acquiring entity)

CCN No.s: 10211

☒ Water ☐ Sewer ☐ All CCN ☐ Portion CCN ☐ Facilities transfer

County(ies): Hudspeth

Table of Contents

Sale, Transfer, or Merger (STM) Application Instructions	1
Part A: General Information	3
Part B: Transferor Information	3
Part C: Transferee Information	4
Part D: Proposed Transaction Details	6
Part E: CCN Obtain or Amend Criteria Considerations	8
Part F: TCEQ Public Water System or Sewer (Wastewater) Information	9
Part G: Mapping & Affidavits	10
Part H: Notice Information	12
Appendix A: Historical Financial Information (Balance Sheet and Income Schedule)	15
Appendix B: Projected Information	18

Please mark the items included in this filing

<input checked="" type="checkbox"/> Contract, Lease, Purchase, or Sale Agreement	Part A: Question 1
<input checked="" type="checkbox"/> Tariff including Rate Schedule	Part B: Question 4
<input checked="" type="checkbox"/> List of Customer Deposits	Part B: Question 5
<input type="checkbox"/> Partnership Agreement	Part C: Question 7
<input type="checkbox"/> Articles of Incorporation and By-Laws (WSC)	Part C: Question 7
<input type="checkbox"/> Certificate of Account Status	Part C: Question 7
<input checked="" type="checkbox"/> Financial Audit	Part C: Question 10
<input type="checkbox"/> Application Attachment A & B	Part C: Question 10
<input type="checkbox"/> Disclosure of Affiliated Interests	Part C: Question 10
<input type="checkbox"/> Capital Improvement Plan	Part C: Question 10
<input checked="" type="checkbox"/> List of Assets to be Transferred	Part D: 11.B
<input type="checkbox"/> Developer Contribution Contracts or Agreements	Part D: 11.D
<input type="checkbox"/> Enforcement Action Correspondence	Part E: Question 18 (Part D: Q12)
<input checked="" type="checkbox"/> TCEQ Compliance Correspondence	Part F: Question 22
<input type="checkbox"/> TCEQ Engineering Approvals	Part F: Question 24
<input type="checkbox"/> Purchased Water Supply or Treatment Agreement	Part F: Question 26
<input checked="" type="checkbox"/> Detailed (large scale) Map	Part G: Question 29
<input checked="" type="checkbox"/> General Location (small scale) Map	Part G: Question 29
<input checked="" type="checkbox"/> Digital Mapping Data	Part G: Question 29
<input checked="" type="checkbox"/> Signed & Notarized Oath	Page 13-14

Part A: General Information

1. Describe the proposed transaction, including the effect on all CCNs involved, and provide details on the existing or expected land use in the area affected by the proposed transaction. Attach all supporting documentation, such as a contract, a lease, or proposed purchase agreements:

El Paso Water Utilities (EPWU) has executed an Asset Purchase Agreement (attached as Attachment 1) to purchase the Esperanza Water Service Company, Inc.'s (Esperanza) water system and transfer the customers to EPWU. Upon completion of the transfer, the area certificated to Esperanza will be certificated to EPWU. There will be no changes to the land uses in the Esperanza CCN area as a result of the transfer.

2. The proposed transaction will require (check all applicable):

For **Transferee** (Purchaser) CCN:

- ☐ Obtaining a NEW CCN for Purchaser
☒ Transfer all CCN into Purchaser's CCN (Merger)
☐ Transfer Portion of CCN into Purchaser's CCN
☐ Transfer all CCN to Purchaser and retain Seller CCN
☐ Uncertificated area added to Purchaser's CCN

For **Transferor** (Seller) CCN:

- ☒ Cancellation of Seller's CCN
☐ Transfer of a Portion of Seller's CCN to Purchaser
☐ Only Transfer of Facilities, No CCN or Customers
☐ Only Transfer of Customers, No CCN or Facilities
☐ Only Transfer CCN Area, No Customers or Facilities

Part B: Transferor Information

Questions 3 through 5 apply only to the transferor (current service provider or seller)

3. A. Name: Esperanza Water Service Company, Inc.
(individual, corporation, or other legal entity)
☐ Individual ☒ Corporation ☐ WSC ☐ Other: _____

B. Mailing Address: 1150 Southview Dr., El Paso, TX 79928-5240

Phone: (915) 298-9900

Email: _____

- C. Contact Person. Please provide information about the person to be contacted regarding this application. Indicate if this person is the owner, operator, engineer, attorney, accountant, or other title.

Name: Ralph Richards

Title: Attorney

Mailing Address: 1150 Southview Dr., El Paso, TX 79928-5240

Phone: (915) 298-9900

Email: ralph@jobeco.com

4. If the utility to be transferred is an Investor Owned Utility (IOU), for the most recent rate change, attach a copy of the current tariff and complete A through B:

A. Effective date for most recent rates: December 1, 2009

B. Was notice of this increase provided to the Public Utility Commission of Texas (Commission) or a predecessor regulatory authority?

☐ No

☒ Yes

Application or Docket Number: TCEQ Docket No. 2009-1259-UCR

If the transferor is a Water Supply or Sewer Service Corporation, provide a copy of the current tariff.

5. For the customers that will be transferred following the approval of the proposed transaction, check all that apply:

☐ There are no customers that will be transferred

☒ # of customers without deposits held by the transferor 291

☐ # of customers with deposits held by the transferor*

*Attach a list of all customers affected by the proposed transaction that have deposits held, and include a customer indicator (name or account number), date of each deposit, amount of each deposit, and any unpaid interest on each deposit.

Part C: Transferee Information

Questions 6 through 10 apply only to the *transferee* (purchaser or proposed service provider)

6. A. Name: El Paso Water Utilities Public Service Board

(individual, corporation, or other legal entity)

☐ Individual

☐ Corporation

☐ WSC

☒ Other: Municipally-owned utility

B. Mailing Address: 1154 Hawkins, El Paso, TX 79925

Phone: (915) 597-5595

Email:

C. Contact Person. Provide information about the person to be contacted regarding this application. Indicate if this person is the owner, operator, engineer, attorney, accountant, or other title.

Name: Emily W. Rogers

Title: Attorney

Address: 3711 S. MoPac Expressway, Bld. 1, Suite 300, Austin, TX 78746

Phone: (512) 472-8021

Email: erogers@bickerstaff.com

D. If the transferee is someone other than a municipality, is the transferee current on the Regulatory Assessment Fees (RAF) with the Texas Commission on Environmental Quality (TCEQ)?

☐ No

☐ Yes

☒ N/A

E. If the transferee is an IOU, is the transferee current on the Annual Report filings with the Commission?

☐ No

☐ Yes

☒ N/A

7. The legal status of the transferee is:

☐ Individual or sole proprietorship

☐ Partnership or limited partnership (*attach* Partnership agreement)

☐ Corporation

Charter number (as recorded with the Texas Secretary of State):

☐ Non-profit, member-owned, member controlled Cooperative Corporation [Article 1434(a) Water Supply or Sewer Service Corporation, incorporated under TWC Chapter 67]

Charter number (as recorded with the Texas Secretary of State):

☐ Articles of Incorporation and By-Laws established (*attach*)

☒ Municipally-owned utility

☐ District (MUD, SUD, WCID, FWSD, etc.)

- ☐ County
- ☐ Affected County (a county to which Subchapter B, Chapter 232, Local Government Code, applies)
- ☐ Other (please explain): _____

8. If the transferee operates under any d/b/a, provide the name below:

Name: _____

9. If the transferee's legal status is anything other than an individual, provide the following information regarding the officers, members, or partners of the legal entity applying for the transfer:

Name: See Attachment 4

Position: _____ Ownership % (if applicable): 0.00%

Address: _____

Phone: _____ Email: _____

Name: _____

Position: _____ Ownership % (if applicable): 0.00%

Address: _____

Phone: _____ Email: _____

Name: _____

Position: _____ Ownership % (if applicable): 0.00%

Address: _____

Phone: _____ Email: _____

Name: _____

Position: _____ Ownership % (if applicable): 0.00%

Address: _____

Phone: _____ Email: _____

10. Financial Information

The transferee Applicant must provide accounting information typically included within a balance sheet, income statement, and statement of cash flows. If the Applicant is an existing retail public utility, this must include historical financial information and projected financial information. However, projected financial information is only required if the Applicant proposes new service connections and new investment in plant, or if requested by Staff. If the Applicant is a new market entrant and does not have its own historical balance sheet, income statement, and statement of cash flows information, then the Applicant should establish a five-year projection taking the historical information of the transferor Applicant into consideration when establishing the projections.

Historical Financial Information may be shown by providing any combination of the following that includes necessary information found in a balance sheet, income statement, and statement of cash flows:

1. Completed Appendix A;
2. Documentation that includes all of the information required in Appendix A in a concise format; or
3. Audited financial statements issued within 18 months of the application filing date. This may be provided electronically by providing a uniform resource locator (URL) or a link to a website portal.

Projected Financial Information may be shown by providing any of the following:

1. Completed Appendix B;
2. Documentation that includes all of the information required in Appendix B in a concise format;
3. A detailed budget or capital improvement plan, which indicates sources and uses of funds required, including improvements to the system being transferred; or
4. A recent budget and capital improvements plan that includes information needed for analysis of the operations test (16 Tex. Admin. Code § 24.11(e)(3)) for the system being transferred and any operations combined with the system. This may be provided electronically by providing a uniform resource locator (URL) or a link to a website portal.

Part D: Proposed Transaction Details

11. A. Proposed Purchase Price: \$ 1,700,000.00

If the transferee Applicant is an investor owned utility (IOU) provide answers to B through D.

B. Transferee has a copy of an inventory list of assets to be transferred (*attach*):

☐ No ☒ Yes ☐ N/A

Total Original Cost of Plant in Service: \$ 3,670,480.00

Accumulated Depreciation: \$ 1,887,038.00

Net Book Value: \$ 1,723,410.00

C. **Customer contributions in aid of construction (CIAC):** Have the customers been billed for any surcharges approved by the Commission or TCEQ to fund any assets currently used and useful in providing utility service? Identify which assets were funded, or are being funded, by surcharges on the list of assets.

☒ No ☐ Yes

Total Customer CIAC: \$

Accumulated Amortization: \$

D. **Developer CIAC:** Did the transferor receive any developer contributions to pay for the assets proposed to be transferred in this application? If so, identify which assets were funded by developer contributions on the list of assets and provide any applicable developer agreements.

☒ No ☐ Yes

Total developer CIAC: \$

Accumulated Amortization: \$

12. A. Are any improvements or construction required to meet the minimum requirements of the TCEQ or Commission and to ensure continuous and adequate service to the requested area to be transferred plus any area currently certificated to the transferee Applicant? Attach supporting documentation and any necessary TCEQ approvals, if applicable.

☒ No ☐ Yes

B. If yes, describe the source and availability of funds and provide an estimated timeline for the construction of any planned or required improvements:

N/A

13. Provide any other information concerning the nature of the transaction you believe should be given consideration:

14. Complete the following proposed entries (listed below) as shown in the books of the Transferee (purchaser) after the acquisition. Debits (positive numbers) should equal credits (negative numbers) so that all line items added together equal zero. Additional entries may be made; the following are suggested only, and not intended to pose descriptive limitations:

Utility Plant in Service:	\$	0.00
Accumulated Depreciation of Plant:	\$	0.00
Cash:	\$	0.00
Notes Payable:	\$	0.00
Mortgage Payable:	\$	0.00
(Proposed) Acquisition Adjustment*:	\$	0.00

* Acquisition Adjustments will be subject to review under 16 TAC § 24.41(d) and (e)

Other (NARUC account name & No.):

Other (NARUC account name & No.):

15. A. Explain any proposed billing change (NOTE: If the acquiring entity is an IOU, the IOU may not change the rates charged to the customers through this STM application. Rates can only be changed through the approval of a rate change application.)

EPWU intends to maintain the same rates and fees as Esperanza charges for service until such time as EPWU conducts a cost of service analysis.

B. If transferee is an IOU, state whether or not the transferee intends to file with the Commission, or an applicable municipal regulatory authority, an application to change rates for some or all of its customers as a result of the transaction within the next twelve months. If so, provide details below:

N/A

Part E: CCN Obtain or Amend Criteria Considerations

16. Describe, in detail, the anticipated impact or changes in the quality of retail public utility service in the requested area as a result of the proposed transaction:

The quality of retail public utility service to the requested area is expected to remain the same or improve. EPWU is a large water service provider serving 214,832 customers in and around El Paso. EPWU has 25 water utility operators and maintains a staff of 33 customers service representatives to assist customers with any water service or billing issues. The Transferee also has the financial capabilities to address any water treatment or distribution issues as they arise.

17. Describe the transferee's experience and qualifications in providing continuous and adequate service. This should include, but is not limited to: other CCN numbers, water and wastewater systems details, and any corresponding compliance history for all operations.

See Response to No. 16 above. EPWU provides water service under Water CCN No. 10211. It owns and operates three water treatment plants that produce 130 million gallons of water per day, and a desalination plant that produces 27.5 million gallons of water per day. For FY 2020-2021, EPWU's Operating and Maintenance budget is \$111,755,000, its capital budget is \$237.6 million, and its total revenues is \$448.9 million. For additional detail about EPWU water system, please see the Budget Report found at https://www.epwater.org/about_us/financial_reports.

18. Has the transferee been under an enforcement action by the Commission, TCEQ, Texas Department of Health (TDH), the Office of the Attorney General (OAG), or the Environmental Protection Agency (EPA) in the past five (5) years for non-compliance with rules, orders, or state statutes? Attach copies of any correspondence with the applicable regulatory agency(ies)

☐ No

☒ Yes

19. Explain how the environmental integrity or the land will be impacted or disrupted as a result of the proposed transaction:

There will be no impact to the environmental integrity or the land as the system to be transferred already exists and no changes are required of the system for EPWU to operate and maintain the system. EPWU intends to operate the system as a physically separate system from EPWU's existing water utility system.

20. How will the proposed transaction serve the public interest?

The Esperanza water system will become part of a large municipal water system which has significant financial, managerial, and technical capabilities, thus ensuring that continuous and adequate water service is provided to the customers of Esperanza water system now and into the future. See Responses to Nos. 16 and 17.

21. List all neighboring water or sewer utilities, cities, districts (including ground water conservation districts), counties, or other political subdivisions (including river authorities) providing the same service within two (2) miles from the outer boundary of the requested area affected by the proposed transaction:

Fort Hancock Water Control and Improvement District

Part F: TCEQ Public Water System or Sewer (Wastewater) Information

Complete Part F for EACH Public Water or Sewer system to be transferred subject to approval of the transaction. Attach a separate sheet with this information if you need more space for additional systems being transferred.

22. A. For Public Water System (PWS):

TCEQ PWS Identification Number: 1150010 (7 digit ID)

Name of PWS: Esperanza Water Service

Date of last TCEQ compliance inspection: February 4, 2019 (attach TCEQ letter)

Subdivisions served: _____

B. For Sewer service:

TCEQ Water Quality (WQ) Discharge Permit Number: WQ - _____ (8 digit ID)

Name of Wastewater Facility: _____

Name of Permittee: _____

Date of last TCEQ compliance inspection: _____ (attach TCEQ letter)

Subdivisions served: _____

Date of application to transfer permit submitted to TCEQ: _____

23. List the number of existing connections, by meter/connection type, to be affected by the proposed transaction:

Water				Sewer	
	Non-metered	2	2"		Residential
289	5/8" or 3/4"		3"		Commercial
	1"		4"		Industrial
	1 1/2"		Other		Other
Total Water Connections:			292	Total Sewer Connections:	

24. A. Are any improvements required to meet TCEQ or Commission standards?

☒ No ☐ Yes

B. Provide details on each required major capital improvement necessary to correct deficiencies to meet the TCEQ or Commission standards (attach any engineering reports or TCEQ approval letters):

Description of the Capital Improvement:	Estimated Completion Date:	Estimated Cost:

C. Is there a moratorium on new connections?

☒ No ☐ Yes:

25. Does the system being transferred operate within the corporate boundaries of a municipality?

☒ No ☐ Yes: _____ (name of municipality)

If yes, indicate the number of customers within the municipal boundary.

Water: _____ Sewer: _____

26. A. Does the system being transferred purchase water or sewer treatment capacity from another source?

☒ No ☐ Yes: If yes, attach a copy of purchase agreement or contract.

Capacity is purchased from: _____

Water: _____

Sewer: _____

- B. Is the PWS required to purchase water to meet capacity requirements or drinking water standards?

☒ No ☐ Yes

- C. What is the amount of water supply or sewer treatment purchased, per the agreement or contract? What is the percent of overall demand supplied by purchased water or sewer treatment (if any)?

	Amount in Gallons	Percent of demand
Water:		0.00%
Sewer:		0.00%

- D. Will the purchase agreement or contract be transferred to the Transferee?

☐ No ☐ Yes:

27. Does the PWS or sewer treatment plant have adequate capacity to meet the current and projected demands in the requested area?

☐ No ☒ Yes:

28. List the name, class, and TCEQ license number of the operator that will be responsible for the operations of the water or sewer utility service:

Name (as it appears on license)	Class	License No.	Water or Sewer
See Attachment 7			

Part G: Mapping & Affidavits

ALL applications require mapping information to be filed in conjunction with the STM application.

Read question 29 A and B to determine what information is required for your application.

29. A. For applications requesting to transfer an entire CCN, without a CCN boundary adjustment, provide the following mapping information with each of the seven (7) copies of the application:

1. A general location (small scale) map identifying the requested area in reference to the nearest county boundary, city, or town. The following guidance should be adhered to:
 - i. If the application requests to transfer certificated service areas for both water and sewer, separate maps must be provided for each.
 - ii. A hand drawn map, graphic, or diagram of the requested area is not considered an acceptable mapping document.

- iii. To maintain the integrity of the scale and quality of the map, copies must be exact duplicates of the original map. Therefore, copies of maps cannot be reduced or enlarged from the original map, or in black and white if the original map is in color.

- 2. A detailed (large scale) map identifying the requested area in reference to verifiable man-made and natural landmarks such as roads, rivers, and railroads. The Applicant should adhere to the following guidance:
 - i. The map must be clearly labeled and the outer boundary of the requested area should be marked in reference to the verifiable man-made or natural landmarks. These verifiable man-made or natural landmarks must be labeled and marked on the map as well.
 - ii. If the application requests an amendment for both water and sewer certificated service area, separate maps need to be provided for each.
 - iii. To maintain the integrity of the scale and quality of the map, copies must be exact duplicates of the original map. Therefore, copies of maps cannot be reduced or enlarged from the original map, or in black and white if the original map is in color.
 - iv. The outer boundary of the requested area should not be covered by any labels, roads, city limits or extraterritorial jurisdiction (ETJ) boundaries.

B. For applications that are requesting to include area not currently within a CCN, or for applications that require a CCN amendment (any change in a CCN boundary), such as the transfer of only a portion of a certificated service area, provide the following mapping information with each of the seven (7) copies of the application:

- 1. A general location (small scale) map identifying the requested area with enough detail to locate the requested area in reference to the nearest county boundary, city, or town. Please refer to the mapping guidance in part A 1 (above).
- 2. A detailed (large scale) map identifying the requested area with enough detail to accurately locate the requested area in reference to verifiable man-made or natural landmarks such as roads, rivers, or railroads. Please refer to the mapping guidance in part A 2 (above).
- 3. One of the following identifying the requested area:
 - i. A metes and bounds survey sealed or embossed by either a licensed state land surveyor or a registered professional land surveyor. Please refer to the mapping guidance in part A 2 (above);
 - ii. A recorded plat. If the plat does not provide sufficient detail, Staff may request additional mapping information. Please refer to the mapping guidance in part A 2 (above); or
 - iii. Digital mapping data in a shapefile (SHP) format georeferenced in either NAD 83 Texas State Plane Coordinate System (US Feet) or in NAD 83 Texas Statewide Mapping System (Meters). The digital mapping data shall include a single, continuous polygon record. The following guidance should be adhered to:
 - a. The digital mapping data must correspond to the same requested area as shown on the general location and detailed maps. The requested area must be clearly labeled as either the water or sewer requested area.
 - b. A shapefile should include six files (.dbf, .shp, .shx, .sbx, .sbn, and the projection (.prj) file).
 - c. The digital mapping data shall be filed on a data disk (CD or USB drive), clearly labeled, and filed with Central Records. Seven (7) copies of the digital mapping data is also required.

Part H: Notice Information

The following information will be used to generate the proposed notice for the application.
DO NOT provide notice of the application until it is found sufficient and the Applicants are ordered to provide notice.

30. Complete the following using verifiable man-made or natural landmarks such as roads, rivers, or railroads to describe the requested area (to be stated in the notice documents). Measurements should be approximated from the outermost boundary of the requested area:

The total acreage of the requested area is approximately: 18,102.05

Number of customer connections in the requested area: 292

Affected subdivision :

The closest city or town: Sierra Blanca

Approximate mileage to closest city or town center: 26

Direction to closest city or town: Southeast

The requested area is generally bounded on the North by: Interstate 10

on the East by: Fort Quitman Lake Dam No 1

on the South by: United States - Mexico border

on the West by: FM 1088 and Knox Avenue in Fort Hancock

31. A copy of the proposed map will be available at: EPWU Offices, 1154 Hawkins, El Paso, TX 79925

32. What effect will the proposed transaction have on an average bill to be charged to the affected customers? Take into consideration the average consumption of the requested area, as well as any other factors that would increase or decrease a customer's monthly bill.

☒ All of the customers will be charged the same rates they were charged before the transaction.

☐ All of the customers will be charged different rates than they were charged before the transaction.

☐ higher monthly bill ☐ lower monthly bill

☐ Some customers will be charged different rates than they were charged before
(i.e. inside city limit customers)

☐ higher monthly bill ☐ lower monthly bill

Oath for Transferor (Transferring Entity)

STATE OF Texas

COUNTY OF El Paso

I, Irene Epperson being duly sworn, file this application for sale,
transfer,

merger, consolidation, acquisition, lease, or Vice President of Esperanza Water Service Company, Inc.
rental, as

(owner, member of partnership, title as officer of corporation, or authorized representative)

I attest that, in such capacity, I am qualified and authorized to file and verify such application, am personally familiar with the documents filed with this application, and have complied with all the requirements contained in the application; and, that all such statements made and matters set forth therein with respect to Applicant are true and correct. Statements about other parties are made on information and belief. I further state that the application is made in good faith and that this application does not duplicate any filing presently before the Commission

I further state that I have been provided with a copy of the 16 TAC § 24.239 Commission rules. I am also authorized to agree and do agree to be bound by and comply with any outstanding enforcement orders of the Texas Commission on Environmental Quality, the Public Utility Commission of Texas or the Attorney General which have been issued to the system or facilities being acquired and recognize that I will be subject to administrative penalties or other enforcement actions if I do not comply



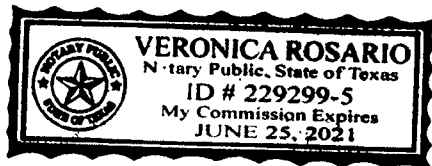
AFFIANT

(Utility's Authorized Representative)

If the Affiant to this form is any person other than the sole owner, partner, officer of the Applicant, or its attorney, a properly verified Power of Attorney must be enclosed.

SUBSCRIBED AND SWORN BEFORE ME, a Notary Public in and for the State of Texas
this day the 12th of November, 2020

SEAL





**NOTARY PUBLIC IN AND FOR THE
STATE OF TEXAS**

Veronica Rosario

PRINT OR TYPE NAME OF NOTARY

My commission expires: June 25, 2021

Oath for Transferee (Acquiring Entity)

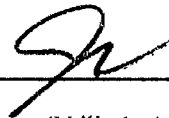
STATE OF Texas

COUNTY OF El Paso

I, John E. Balliew being duly sworn, file this application for sale, transfer, merger, consolidation, acquisition, lease, or rental, as President and CEO of El Paso Water Utilities Public Service Board
(owner, member of partnership, title as officer of corporation, or authorized representative)

I attest that, in such capacity, I am qualified and authorized to file and verify such application, am personally familiar with the documents filed with this application, and have complied with all the requirements contained in the application; and, that all such statements made and matters set forth therein with respect to Applicant are true and correct. Statements about other parties are made on information and belief. I further state that the application is made in good faith and that this application does not duplicate any filing presently before the Commission.

I further state that I have been provided with a copy of the 16 TAC § 24.239 Commission rules. I am also authorized to agree and do agree to be bound by and comply with any outstanding enforcement orders of the Texas Commission on Environmental Quality, the Public Utility Commission of Texas or the Attorney General which have been issued to the system or facilities being acquired and recognize that I will be subject to administrative penalties or other enforcement actions if I do not comply.

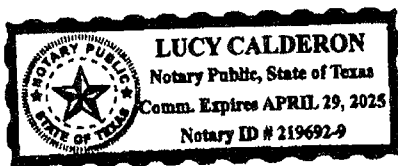


AFFIANT
(Utility's Authorized Representative)

If the Affiant to this form is any person other than the sole owner, partner, officer of the Applicant, or its attorney, a properly verified Power of Attorney must be enclosed.

SUBSCRIBED AND SWORN BEFORE ME, a Notary Public in and for the State of Texas
this day the 16th of November, 2020

SEAL



**NOTARY PUBLIC IN AND FOR THE
STATE OF TEXAS**

Lucy Calderon

PRINT OR TYPE NAME OF NOTARY

My commission expires: 4/29/25

Appendix A: Historical Financial Information (Balance Sheet and Income Schedule)

(Audited financial statements may be substituted for this schedule – see Item 17 of the instructions)

HISTORICAL BALANCE SHEETS (ENTER DATE OF YEAR END)	CURRENT(A) (- -)	A-1 YEAR (- -)	A-2 YEAR (- -)	A-3 YEAR (- -)	A-4 YEAR (- -)	A-5 YEAR (- -)
CURRENT ASSETS						
Cash						
Accounts Receivable						
Inventories						
Other						
A. Total Current Assets						
FIXED ASSETS						
Land						
Collection/Distribution System						
Buildings						
Equipment						
Other						
Less: Accum. Depreciation or Reserves						
B. Total Fixed Assets						
C. TOTAL Assets (A + B)						
CURRENT LIABILITIES						
Accounts Payable						
Notes Payable, Current						
Accrued Expenses						
Other						
D. Total Current Liabilities						
LONG TERM LIABILITIES						
Notes Payable, Long-term						
Other						
E. Total Long Term Liabilities						
F. TOTAL LIABILITIES (D + E)						
OWNER'S EQUITY						
Paid in Capital						
Retained Equity						
Other						
Current Period Profit or Loss						
G. TOTAL OWNER'S EQUITY						
TOTAL LIABILITIES+EQUITY (F + G) = C						
WORKING CAPITAL (A – D)						
CURRENT RATIO (A / D)						
DEBT TO EQUITY RATIO (E / G)						

DO NOT INCLUDE ATTACHMENTS A OR B IN FILED APPLICATION IF LEFT BLANK

HISTORICAL NET INCOME INFORMATION						
(ENTER DATE OF YEAR END)	CURRENT(A) (- -)	A-1 YEAR (- -)	A-2 YEAR (- -)	A-3 YEAR (- -)	A-4 YEAR (- -)	A-5 YEAR (- -)
METER NUMBER						
Existing Number of Taps						
New Taps Per Year						
Total Meters at Year End						
METER REVENUE						
Revenue per Meter (use for projections)						
Expense per Meter (use for projections)						
Operating Revenue Per Meter						
GROSS WATER REVENUE						
Revenues- Base Rate & Gallonage Fees						
Other (Tap, reconnect, transfer fees, etc)						
Gross Income						
EXPENSES						
General & Administrative (see schedule)						
Operating (see schedule)						
Interest						
Other (list)						
NET INCOME						

HISTORICAL EXPENSE INFORMATION (ENTER DATE OF YEAR END)	CURRENT(A) (- -)	A-1 YEAR (- -)	A-2 YEAR (- -)	A-3 YEAR (- -)	A-4 YEAR (- -)	A-5 YEAR (- -)
GENERAL/ADMINISTRATIVE EXPENSES						
Salaries & Benefits–Office/Management						
Office (services, rentals, supplies, electricity)						
Contract Labor						
Transportation						
Insurance						
Telephone						
Utilities						
Property Taxes						
Professional Services/Fees (recurring)						
Regulatory- other						
Other (describe)						
Interest						
Other						
Total General Admin. Expenses (G&A)						
% Increase Per Year	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
OPERATIONS & MAINTENANCE EXPENSES						
Salaries & Benefits (Employee, Management)						
Materials & Supplies						
Utilities Expense-office						
Contract Labor						
Transportation Expense						
Depreciation Expense						
Other(describe)						
Total Operational Expenses (O&M)						
Total Expense (Total G&A + O&M)						
Historical % Increase Per Year	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
ASSUMPTIONS						
Interest Rate/Terms						
Depreciation Schedule (attach)						
Other assumptions/information (List all)						

Appendix B: Projected Information

HISTORICAL BALANCE SHEETS (ENTER DATE OF YEAR END)	CURRENT(A) (- -)	A-1 YEAR (- -)	A-2 YEAR (- -)	A-3 YEAR (- -)	A-4 YEAR (- -)	A-5 YEAR (- -)
CURRENT ASSETS						
Cash						
Accounts Receivable						
Inventories						
Income Tax Receivable						
Other						
A. Total Current Assets						
FIXED ASSETS						
Land						
Collection/Distribution System						
Buildings						
Equipment						
Other						
Less: Accum. Depreciation or Reserves						
B. Total Fixed Assets						
C. TOTAL Assets (A + B)						
CURRENT LIABILITIES						
Accounts Payable						
Notes Payable, Current						
Accrued Expenses						
Other						
D. Total Current Liabilities						
LONG TERM LIABILITIES						
Notes Payable, Long-term						
Other						
E. Total Long Term Liabilities						
F. TOTAL LIABILITIES (D + E)						
OWNER'S EQUITY						
Paid in Capital						
Retained Equity						
Other						
Current Period Profit or Loss						
G. TOTAL OWNER'S EQUITY						
TOTAL LIABILITIES+EQUITY (F + G) = C						
WORKING CAPITAL (A – D)						
CURRENT RATIO (A / D)						
DEBT TO EQUITY RATIO (F / G)						

PROJECTED NET INCOME INFORMATION						
(ENTER DATE OF YEAR END)	CURRENT(A) (- -)	A-1 YEAR (- -)	A-2 YEAR (- -)	A-3 YEAR (- -)	A-4 YEAR (- -)	A-5 YEAR (- -)
METER NUMBER						
Existing Number of Taps						
New Taps Per Year						
Total Meters at Year End						
METER REVENUE						
Revenue per Meter (use for projections)						
Expense per Meter (use for projections)						
Operating Revenue Per Meter						
GROSS WATER REVENUE						
Revenues- Base Rate & Gallonage Fees						
Other (Tap, reconnect, transfer fees, etc)						
Gross Income						
EXPENSES						
General & Administrative (see schedule)						
Operating (see schedule)						
Interest						
Other (list)						
NET INCOME						

PROJECTED EXPENSE DETAIL	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	TOTALS
GENERAL/ADMINISTRATIVE EXPENSES						
Salaries						
Office						
Computer						
Auto						
Insurance						
Telephone						
Utilities						
Depreciation						
Property Taxes						
Professional Fees						
Interest						
Other						
Total						
% Increase Per projected Year	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
OPERATIONAL EXPENSES						
Salaries						
Auto						
Utilities						
Depreciation						
Repair & Maintenance						
Supplies						
Interest						
Other						
Total						

PROJECTED SOURCES AND USES OF CASH STATEMENTS	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	TOTALS
SOURCES OF CASH						
Net Income						
Depreciation (If funded by revenues of system)						
Loan Proceeds						
Other						
Total Sources						
USES OF CASH						
Net Loss						
Principle Portion of Pmts.						
Fixed Asset Purchase						
Reserve						
Other						
Total Uses						
NET CASH FLOW						
DEBT SERVICE COVERAGE						
Cash Available for Debt Service (CADS)						
A: Net Income (Loss)						
B: Depreciation, or Reserve Interest						
C: Total CADS (A + B = C)						
D: DEBT SERVICE (DS)						
Principle Plus Interest						
E: DEBT SERVICE COVERAGE RATIO						
CADS Divided by DS (E = C / D)						

List of Attachments

Attachment 1 – Water System Asset Purchase and Transfer Agreement

Attachment 2 – 2009 Tariff of Esperanza Water Service Company

Attachment 3 – List of El Paso Water Utilities Public Service Board's Board Members and Officers

Attachment 4 – Financial Information for El Paso Water Utilities

Attachment 5 - Esperanza Water Service Company's Texas Commission on Environmental Quality (TCEQ) Compliance Information

A. Docket No. 2015-1491-PWS-E

1. May 25, 2016 Agreed Order in the Matter of an Enforcement Action Concerning Esperanza Water Service Company, Inc., Docket No. 2015-1491-PWS-E
2. July 24, 2018 TCEQ's Letter to Esperanza re: Proposed Fluoride Reverse Osmosis Treatment System – Step 1
3. May 23, 2019 Esperanza's Letter to TCEQ re: Docket No. 2015-1491-PWS-E
4. June 21, 2019 Esperanza's Letter to TCEQ re: Docket No. 2015-1491-PWS-E
5. July 17, 2019 TCEQ's Amended Schedule for Compliance with Ordering Provisions, Docket No. 2015-1491-PWS-E, Agreed Order Effective Date: May 25, 2016
6. February 28, 2020 TCEQ's Letter re: Authorization to Construct RO Treatment System
7. August 18, 2020 Notification of Completion of Wastewater Treatment Facility
8. October 14, 2020 Esperanza's Request for Extension of Schedule for Compliance with Agreed Order

B. Compliance Evaluation Investigation #1540275 and Docket No. 2019-1242-PWS-E

1. February 27, 2019 TCEQ Notice of Violation for Compliance Evaluation Investigation #1540275
2. March 29, 2019 Esperanza's Response to Notice of Violation for Compliance Evaluation Investigation #1540275
3. June 6, 2019 Esperanza's Response and Exemption for Notice of Violation for Compliance Evaluation Investigation #1540275
4. August 2, 2019 TCEQ's Response to Esperanza's Request for an ACR and Exception of Groundwater Disinfection Location Requirement relating to Compliance Evaluation Investigation #1540275
5. August 30, 2019 TCEQ's Notice of Enforcement relating to Compliance Evaluation Investigation #1589828
6. January 28, 2020 Agreed Order in the Matter of an Enforcement Action Concerning Esperanza Water Service Company, Inc. (relating to Compliance Evaluation Investigation #1589828)
7. February 28, 2020 TCEQ's Notice of Compliance with Commission Order, Docket No. 2019-1242-PWS-E; Enforcement Case 58244 (relating to Compliance Evaluation Investigation #1589828)

Attachment 6 – List of Water System Operators for El Paso Water Utilities

Attachment 7 – General and Detailed Maps of the Esperanza Water CCN No. 12881

Attachment 8 – Filing Information related to the Digital Data for the Maps

**Attachment 1 – Water System Asset Purchase
and Transfer Agreement**

WATER SYSTEM ASSET PURCHASE AND TRANSFER AGREEMENT

THIS WATER SYSTEM ASSET PURCHASE AND TRANSFER AGREEMENT ("Agreement") is made and entered into by and between **ESPERANZA WATER SERVICE COMPANY, INC.** ("Esperanza"), a for-profit investor-owned retail public utility, and **THE CITY OF EL PASO**, a home rule municipality of the State of Texas, **for the benefit of EL PASO WATER UTILITIES PUBLIC SERVICE BOARD**, a municipal utility established by the City of El Paso, Texas' May 22, 1952 City Ordinance No. 752 to manage and operate the water and wastewater system for the City of El Paso ("El Paso").

RECITALS

WHEREAS, Esperanza is an investor-owned retail public utility and currently provides water service under Certificate of Convenience and Necessity No. 12881 ("CCN No. 12881") to certain areas within Hudspeth County, Texas;

WHEREAS, El Paso desires to purchase all of the Assets (as hereafter defined) of Esperanza for the purposes of treatment, and retail distribution of treated water to customers within CCN No. 12881;

WHEREAS, Esperanza and El Paso acknowledge that, upon Closing, the customers of Esperanza will become the customers of El Paso, and as customers will be required to comply with El Paso's orders, ordinances, and procedures regarding water service, including those related to its water service fees and deposits; and

WHEREAS, Esperanza and El Paso acknowledge their intention to fully comply with the provisions of Chapter 13 of the Texas Water Code, as applicable, and the corresponding Public Utility Commission of Texas ("PUC") regulations concerning the subject matter of this Agreement.

AGREEMENTS

NOW, THEREFORE, the foregoing recitals are incorporated herein and constitute material terms of this Agreement, and for good and valuable consideration and the mutual promises and covenants herein expressed, the receipt and sufficiency of which is hereby acknowledged, Esperanza and El Paso contract, covenant, and agree as follows:

I.

Assets to be Conveyed

Esperanza, in accordance with this Agreement, shall sell and El Paso shall purchase the following assets, hereafter collectively referred to as the "Assets":

1.1. Utility System. The retail public utility and water system ("Utility System") in areas located in the service territory located in Hudspeth County certified to Esperanza by the PUC under CCN No. 12881 and operating under Public Water Supply (PWS) Identification No. 1150010;

1.2. Land. All right, title, and interest in and to those certain tracts of land comprised of the property as more particularly described on Exhibit "A" attached hereto and made a part hereof, to include any leases and specifically the June 2013 Groundwater Lease No. SL20130045 between the Texas General Land Office and Esperanza Groundwater Lease recorded in the Hudspeth County Deed Records on July 8, 2013 in Volume No. 138105 ("Groundwater Lease"), (collectively, the "Land");

1.3. Improvements. All right, title, and interest of Esperanza in and to the improvements affixed to and located on the Land which are owned by Esperanza, and including, without limitation, (i) any buildings and other improvements, located on the Land, water wells, reverse osmosis ponds and appurtenances, storage tanks, pressure tanks, pumps and controls connected to storage tanks, service lines and pipes located on the Land; and (ii) all those items specifically listed on Exhibit "B" attached hereto and made a part hereof (collectively, the "Improvements");

1.4. Property Rights. All right, title, and interest of Esperanza in and to any right of way of any alley, street, road, or access way, opened or proposed, in front of, at a side of, or adjoining the land to the centerline thereof (collectively, the "Adjacent Property Rights");

1.5. Easements and Appurtenances. All rights, privileges, and easements, including public utility, sanitary control, and pipeline easements and development rights, including the June 2013 Miscellaneous Easement No. ME20130140 recorded in the Hudspeth County Deed Records on July 8, 2013 in Volume No. 138104 ("Miscellaneous Easement"), and the Sanitary Control Easement recorded in the Hudspeth County Deed Records on April 9, 2014 in Volume No. 139627 ("Sanitary Control Easement"), all of which are owned by or benefit Esperanza as those easements are more particularly described on Exhibit "A" attached hereto and made a part hereof, and any other easements, rights-of-way, claims, property interests (whether of record or not), or appurtenances arising or used in connection with the Utility System, whether appurtenant to the Land or in gross, including, without limitation, Esperanza's rights and/or access easements used to access the water lines and meters on land owned by customers of Esperanza, any other such access rights used by Esperanza (collectively, the "Easements");

1.6. Groundwater. All right, title and interest of Esperanza in and to all of the underground water, percolating water, artesian water, and any other water from any and all reservoirs, formations, depths, and horizons beneath the surface of the earth, excluding underflow or flow in a defined subterranean channel (collectively, the "Groundwater"), now or in the future located in, on, or under the Land, together with all associated rights related to the Groundwater, including, without limitation, the right to capture, explore for, drill for, develop, withdraw, produce, transport, and/or otherwise beneficially use such Groundwater, and the right to use the surface of the Land for the exercise of such rights, including the right to ingress and egress, and all permits, licenses, or other governmental authorizations relating to any of the foregoing, including rights under any permit issued by any applicable groundwater conservation district, together with any leases, reservations, or other legal entitlements of Esperanza that allow the holder to produce Groundwater in Hudspeth County for the purpose of supplying a public water system (collectively, "Groundwater Rights");

1.7. Tangible Personal Property. All of Esperanza's right, title, and interest in and to items of furniture, fixtures, equipment, machinery, supplies, and other items of tangible personal property owned or leased, used or held for use by Esperanza and affixed, attached to, placed, or located on the Land or used by Esperanza in connection with the ownership, operation, and/or maintenance of the Utility System, including, without limitation, all facilities, water lines, distribution lines, tanks, pumps, pipes, fittings, treatment equipment, meters, ground and elevated storage, water in all facilities and in storage, tools, vehicles, trailers, fuel tanks, fences, fill dirt and clay, copies of records (which shall include, without limitation, bills, employment and customer files, operational records, and insurance records), permits, materials and supplies, and inventories (which shall include, without limitation, those items identified on Exhibit "C" attached hereto and made a part hereof) (collectively, the "Tangible Personal Property");

1.8. Intangibles. With the exception of the Intangibles to be excluded that are listed on Exhibit "C", and to the extent assignable, all of Esperanza's rights, title, and interest in and to (i) all plans, drawings, specifications, surveys, engineering reports, and other materials related to the Land and/or the Utility System, which are conveyed without representation or warranty as to the information or conclusions set out therein; (ii) warranties and guaranties related to the Improvements and the Tangible Personal Property; (iii) licenses, permits, franchises, approvals, and any other development rights and benefits relating to the Land, including, without limitation, all correspondence, permits, CCN, and reports to or from the PUC related to the Utility System; and (iv) all software and intellectual property rights, as well as rights under any insurance policies, including, without limitation, automobile, property, or liability insurance, and all of Esperanza's rights and interest under any claims, causes of action, and judgments (collectively, the "Intangibles") which shall include, without limitation, those Intangibles also listed on Exhibit "C";

1.9. Deposits. All of Esperanza's rights, title, and interest at the date of Closing in customer security deposits ("Customer Deposits"), if any, with accrued statutory interest, held by Esperanza in connection with the operation of the Utility System, if any;

1.10. Contractual Rights. All rights, obligations, and interests in Esperanza's contractual rights and liens, to the extent those rights and obligations are assigned to El Paso as provided by this Section 1.10.

1.10.1. Esperanza represents that Exhibit "D" contains a complete list of Esperanza's contracts relating to the ownership, operation, maintenance, repair and billing related to the Utility System, provided this Section 1.10 does not include contracts with customers for water services. Esperanza further represents that Exhibit "D" are true and correct copies of all written contracts that may be described by this Section 1.10.

1.10.2. Esperanza and El Paso shall cooperate during the Review Period to determine which contracts, if any, listed in Exhibit "D" will be assigned to El Paso. To the extent any contracts listed in Exhibit "D" that are related to the Utility System and are terminable at will, or otherwise terminable without causing a breach by Esperanza, Esperanza shall, at El Paso's request, terminate any or all of such contracts simultaneously with the Closing. El Paso may, but is not obligated to, accept the assignment or partial assignment of any contracts listed in Exhibit

"D" that are related to the Utility System not otherwise terminated (collectively, "Transferred Contracts").

II.

Consideration

2.1. Consideration. As consideration for the acquisition of the Utility System and its Assets, at Closing, and subject to El Paso due diligence review, El Paso shall pay Esperanza \$1,700,000.00 for the Assets listed in Article I of this Agreement and will provide water service to the customers of the Utility System (collectively, the "Consideration"). Esperanza hereby acknowledges and agrees that the sufficiency of the Consideration and that the payment and assumption of service to the Utility System customers is fair and equitable benefit received. This Article II shall survive Closing, as that term is herein described.

III.

Representations, Warranties, and Covenants

Esperanza and El Paso represent and warrant to the following, which representations and warranties shall be true and accurate as of the Effective Date (as hereafter defined):

3.1 Esperanza's Representations and Warranties. For purposes of inducing El Paso to enter into this Agreement and to accept conveyance of the Assets, and subject to all other terms and conditions of this Agreement, Esperanza represents and warrants to El Paso the following, which representations and warranties shall be true and accurate as of the Effective Date and through the Closing:

3.1.1 Except for the Transferred Contracts, Esperanza has not entered into any contract, license, or lease relating to the use or possession of the Utility System including the Assets, which will be binding on El Paso after the Closing;

3.1.2 Esperanza has received no written notice of any pending or threatened litigation, condemnation or similar proceeding against Esperanza, or of any charge or special assessment affecting any of the Assets or any part thereof. Esperanza shall promptly advise El Paso of any litigation, condemnation or assessments affecting the Assets which is instituted or threatened after the Effective Date and up to Closing;

3.1.3 Esperanza has received no written notice from any insurance company which has issued a policy with respect to any portion of Land or any of the Assets, or from any Board of Fire Underwriters (or other body exercising similar functions) claiming any defects or deficiencies or requesting the performance of any repairs, replacements, alterations, or other work with which Esperanza has not complied. Esperanza shall promptly advise El Paso of any such notice received by Esperanza after the Effective Date and up to Closing;

3.1.4 Esperanza has received no written notices of any civil or criminal suits, or other judicial proceedings or judgments affecting the Assets and no civil or criminal suits, or other judicial proceedings or judgments affecting the Assets are pending. Except for the Texas Commission on Environmental Quality's ("TCEQ") Agreed Order dated May 25, 2015 under

TCEQ Docket No. 2015-1491-PWS-E ("TCEQ Agreed Order"), as of and since the Effective Date of this Agreement, Esperanza has received no written notice of violations, or other administrative proceedings or judgments relating to the violation of any laws, ordinances, regulations, codes, orders or other requirements affecting the Assets, including but not limited to written notices from the TCEQ, the United States Environmental Protection Agency ("EPA"), or the PUC, for which the violations or other administrative proceedings remain unresolved. Esperanza shall promptly advise El Paso of any such notice, suits or other proceedings or judgments, or written notice from TCEQ, PUC, EPA, or any other third party that any violation, action, or proceeding is pending or threatened that questions the validity or enforceability of this Agreement or any action taken or to be taken pursuant hereto, which come to Esperanza's knowledge after the Effective Date and before Closing;

3.1.5 Except for any portions of the Utility System located in a public utility easement, Esperanza is the owner of, lessee, or licensee of all easements, rights-of-way, or appurtenances listed in Exhibit A of this Agreement and, where an easement or other written authorization is absent, Esperanza is operating the Utility System with permission from the applicable landowner and;

3.1.6 Esperanza has all requisite power, authority, authorization and consents necessary to make, execute, deliver and perform this Agreement and all instruments and agreements contemplated hereby and obtain any and all required approvals to perform its obligations hereunder and to consummate the transactions contemplated hereby;

3.1.7 The execution, transaction, delivery and performance of this Agreement by Esperanza and the consummation by Esperanza of the transaction contemplated hereby has been duly authorized and approved by all required action of Esperanza and no other action on the part of Esperanza is necessary to authorize the execution, delivery and performance of this Agreement by Esperanza or the consummation of this transaction contemplated hereby;

3.1.8 This Agreement has been duly executed and delivered by Esperanza and is a valid and binding obligation of Esperanza subject to applicable law;

3.1.9 The persons signing this Agreement on behalf of Esperanza are authorized to do so;

3.1.10 Esperanza has not stored, disposed of, or permitted the release or threatened release of any hazardous substances or hazardous wastes on, from, or under the Land in violation of law (for purposes of this Agreement, the terms "disposal," "release," "threatened release," "hazardous substances," and "hazardous wastes" shall have the definitions assigned thereto by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601, et seq., as amended);

3.1.11 Esperanza has received no notice of a condition existing with respect to the Assets that violates any restrictive covenant, or any city, county, state or federal regulation, ordinance or statute, including the violation of any zoning ordinance or use restriction;

3.1.12 Esperanza is not aware of any underground storage tanks located on the Land or of any underground storage tanks previously located on the Land and subsequently removed and filled;

3.1.13 Esperanza has not conveyed to any person or entity other than El Paso any rights in, or any rights to acquire any interest in any of the Assets;

3.1.14 Esperanza is not aware of any previous use of the Land as a dump site or landfill;

3.1.15 There are no leases relating to the Land and there are no contracts relating to the Assets, including but not limited to, service, maintenance, supply and/or employment contracts, other than the Transferred Contracts and those contracts that will be canceled on or before Closing, and all sums due pursuant to any such contracts will be paid by Esperanza on or before Closing;

3.1.16 Esperanza shall convey to El Paso at Closing the Assets subject to the terms of this Agreement;

3.1.17 Esperanza has not defaulted under any promissory note, deed of trust, loan or other type of indebtedness or under any contract or committed any act that with the passage of time or giving of notice would result in a default under any indebtedness or contract; and

3.1.18 As of the date of Closing, Utility System is fully operational, is complying with the TCEQ Agreed Order, is in full compliance with all regulatory requirements, and that it has provided El Paso with copies of all documentation related to the history of regulatory compliance of the Utility System; and

3.1.19. There are no liens on the Assets or revenues of the Utility System.

By executing and delivering the documents listed in this Agreement, Esperanza shall be deemed to have made all of the foregoing representations and warranties as of the date of Closing. Should any of the foregoing representations and warranties be found to be incorrect on or prior to Closing, Esperanza shall notify El Paso and use all reasonable efforts to cure same by Closing; provided, however, in no event shall Esperanza be required to incur any costs or expenses in connection with its cure of same. If Esperanza is unable to cure same by Closing, at El Paso's option, Closing shall be postponed until five (5) business days following El Paso's receipt of proof satisfactory to El Paso that such matters have been cured. Provided, however, if Esperanza is unable despite reasonable efforts to cure same within ten (10) business days after the originally scheduled Closing Date, El Paso shall have the right to either waive same and proceed to Closing, or terminate this Agreement upon written notice to Esperanza.

3.2 **Esperanza's Covenants.** Esperanza covenants and agrees with El Paso that from and after the Effective Date through the Closing Date:

3.2.1 Upon obtaining knowledge of the institution of any proceedings for the condemnation of the Land or Assets or any associated easements, or any portion thereof, or any other proceedings arising out of injury or damage to the Land or Assets, or both, or any portion thereof, Esperanza will notify El Paso of the pendency of such proceedings as soon as reasonably possible thereafter;

3.2.2 Upon obtaining knowledge of the institution of any litigation, arbitration or administrative hearing concerning or affecting the Assets, Esperanza will notify El Paso of the pendency of such proceedings as soon as reasonably possible thereafter;

3.2.3 Esperanza will not encumber the Assets or allow any encumbrance upon title to the Assets that will not be released at or prior to Closing;

3.2.4 Esperanza will maintain the Assets, including the Land, the Improvements and Tangible Personal Property, in its current conditions reasonable wear, tear and casualty loss or condemnation loss excepted;

3.2.5 Esperanza will continue to operate its Utility System business, generally, in the manner it has operated its Utility System business in the past;

3.2.6 Esperanza will obtain all necessary approvals for the authority, authorization and consents necessary to make, execute, deliver and perform this Agreement and all instruments and agreements contemplated hereby;

3.2.7 Esperanza will not enter into any contracts with respect to the Assets or the Utility System which will obligate El Paso after Closing;

3.2.8 Esperanza will not intentionally take or omit to take any action that would have the effect of violating any of the representations, warranties, covenants and agreements of Esperanza contained in this Agreement;

3.2.9 Esperanza will maintain all casualty and liability as well as fire and extended property insurance policies currently covering the Assets or any part thereof in full force and effect;

3.2.10 Esperanza will maintain the Texas Commission on Environmental Quality of TPDES Permit No. WQ000527700; and

3.2.11 Effective as of the Closing Date, Esperanza will terminate all leases and contracts, except the Transferred Contracts, relating to the Assets unless Esperanza and El Paso otherwise mutually agree in writing prior to the Closing Date that certain of such leases or contracts, if any, will not be so terminated.

3.3 El Paso's Representations and Warranties. El Paso represents and warrants to Esperanza the following, which representations and warranties shall be true and accurate as of the Effective Date:

3.3.1 El Paso a municipal utility established by the City of El Paso, Texas' May 22, 1952 City Ordinance No. 752 to manage and operate the water and wastewater system for the City of El Paso;

3.3.2 El Paso has full power and authority to make, execute, deliver and perform this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby;

3.3.3 The execution, delivery and performance of this Agreement by El Paso and the consummation by it of the transaction contemplated hereby, has been duly authorized and approved by all required action of El Paso and no other action on the part of El Paso is necessary to authorize the execution, delivery and performance of this Agreement by El Paso and the consummation of the transaction contemplated hereby;

3.3.4 To El Paso's knowledge, neither the execution, delivery or performance of this Agreement by El Paso, nor compliance with the terms and provisions hereof, will result in any breach of the terms, conditions or provisions of, or conflict with or constitute a default under the terms of any note, agreement or other instrument by which El Paso is bound;

3.3.5 To El Paso's knowledge, El Paso has received no written notice that any action or proceeding is pending or threatened that questions the validity of this Agreement or any action taken or to be taken pursuant hereto;

3.3.6 This Agreement has been duly executed and delivered by El Paso and is a valid and binding obligation of El Paso subject to applicable law.

3.4. The representations, warranties, and covenants in Section 3.1 shall survive Closing for a period of two (2) years from the date of Closing.

IV.

Review Period and Right to Inspect

4.1 **El Paso's Right to Inspect.** Within fourteen (14) business days after the Effective Date, Esperanza shall make available for reasonable inspection and copying by El Paso, at Esperanza's office during regular business hours the following, to the extent in Esperanza's possession and to the extent not already delivered to El Paso:

4.1.1 All environmental reports, structural reports, engineering reports, soils tests results, evaluations, maps, traffic studies, flood control plans, drainage plans, and any and all other reports, studies or the like relating to the Assets;

4.1.2 All notices from any governmental agencies affecting the Utility System or the Land;

4.1.3 All current licenses, permits and other governmental licenses or approvals relating to the Utility System;

4.1.4 All surveys, title records, title documents (including any title insurance policies), debt instruments, liens, insurance policies, contracts, easement documents, and deeds;

4.1.5 Any engineering reports and plans and specifications relating to the Assets; provided, however, all such reports are delivered without representation or warranty as to the content;

4.1.6 True copies of any leases and contracts relating to the Assets, including but not limited to the contracts listed in Exhibit "D", and copies, if any, of any documents or records related to any beneficial interests, including but not limited to, security agreements, deeds of trusts, promissory notes or leases held by Esperanza;

4.1.7 A list of all customers of Esperanza, the current accounts receivable for such customers, and the amount of each customer's deposit, if any, with accrued statutory interest, together with copies of statements for all deposit accounts held by Esperanza;

4.1.8 Copies of all insurance policies and financial instruments related to the Utility System, Assets, or Esperanza; and

4.1.9 Copies of all warranties and guaranties related to the Assets.

4.2 Review Period. At any time from and after the Effective Date, El Paso its agents, employees, consultants, or invitees shall have the right, at its sole cost, to order title work to obtain title policies insuring the title to the Land, to order surveys or inspections, and to enter upon the Land during normal business hours and upon reasonable advance notice to Esperanza to inspect the Land or to conduct feasibility studies regarding the Assets, and shall have the further right to access those portions of the Utility System located on property other than the Land, if any, (but only to the extent authorized by that landowner) to conduct feasibility studies. El Paso, its agents, employees, consultants and invitees shall have such right of entry only during normal business hours and upon reasonable advance notice to Esperanza for purposes of conducting all such studies, inspections, tests and examinations deemed necessary by El Paso. All said studies, tests, inspections and examinations (collectively, the "Reports") shall be at El Paso's expense. El Paso shall provide Esperanza a copy of the Reports but failure to provide such copies to Esperanza shall not be considered a default under this Agreement. As used herein, the "Review Period" shall mean the period commencing on the Effective Date and ending on the date El Paso files the Application, as that term is defined in Section 7.1, with the PUC. During the Review Period, and subject to approval of both parties, Esperanza or El Paso may substitute any of the exhibits listed in this Agreement.

4.3 El Paso's Right to Review Books. During the Review Period, Esperanza shall make available for reasonable inspection and copying by El Paso and El Paso's accountants and other representatives, at Esperanza's office during regular business hours, the books and records of Esperanza with respect to the operation of the Assets. All such copying costs shall be borne by El Paso.

4.4 El Paso's Title Commitment and Review. El Paso, within its sole discretion and at El Paso's sole expense, may procure within sixty (60) days after the Effective Date, a commitment for title insurance on any of the Assets that El Paso desires. Esperanza shall not be required to provide an owner's policy for title insurance for any portions of the Assets, but Esperanza shall otherwise cooperate with El Paso in the review by El Paso of any title commitment applied for, or obtained by El Paso. El Paso will have twenty (20) days after the receipt of the title commitment with respect to any particular portion of the Assets to review such title commitment and to deliver to Esperanza written notice by hand delivery or overnight delivery, receipt requested, of any objections to the matters set for in such title commitment. Any items to which El Paso does not object with during this 20-day period will be deemed to be "Permitted Exceptions." As to items in the title commitment to which El Paso timely makes objections to in writing to Esperanza, Esperanza shall have a period of ten (10) days during which it may, but shall have no obligation to cooperate with El Paso to attempt to effectuate the cure of such objections such that Esperanza's covenants or representations in this Agreement are not false or misleading. At the end of the twenty (20) day period (if no objections are made by El Paso), or the ten (10) day period (if objections are made by El Paso), El Paso shall have the right, as its sole and exclusive remedies, to either terminate this Agreement, or waive such title objections and proceed to Closing.

4.5 Termination by El Paso. Except as otherwise provided in this Agreement, El Paso shall have the right to terminate this Agreement for any reason prior to date of a Determination Notice (as defined in Section 7.1) by providing written notice to Esperanza. El Paso shall have the right to terminate this Agreement prior to Closing by providing written notice to Esperanza if the Texas General Land Office declines to consent to the assignments of the Groundwater Lease, the Miscellaneous Easement, and the Sanitary Control Easement, or the TCEQ disapproves the transfer of TPDES Permit No. WQ0005277000.

V. Remedies

5.1. Esperanza's Remedies. In the event El Paso (i) fails to perform any of El Paso's obligations under this Agreement either prior to or at the Closing for any reason other than the breach of any of Esperanza's representations, warranties, or covenants, or other failure by Esperanza to perform its obligations hereunder, or (ii) otherwise breaches this Agreement, Esperanza shall be entitled as its sole and exclusive remedy to either: (a) terminate this Agreement by giving El Paso timely written notice of such election prior to Closing, or (b) waive the default and perform Esperanza's obligations under the Agreement pursuant to the terms hereof.

5.2. El Paso's Remedies. In the event Esperanza (i) fails to perform any of Esperanza's obligations under this Agreement either prior to or at the Closing for any reason other than the breach of any of El Paso's representations, warranties, or covenants, or El Paso's failure to perform its obligations hereunder, or (ii) otherwise breaches the Agreement, El Paso shall be entitled to either (a) enforce specific performance of this Agreement, or (b) waive the default and perform El Paso's obligations under the Agreement pursuant to the terms hereof. Notwithstanding the foregoing, El Paso may not enforce specific performance of this Agreement if the PUC denies the Application (as that term is defined in Section 7.1), the General Land Offices refuses to consent to

the assignment of the Groundwater Lease, the Miscellaneous Easement, and the Sanitary Control Easement, or the TCEQ disapproves the transfer of TPDES Permit No. WQ0005277000.

VI.
Closing

6.1. Closing Date. Except as provided in this Section, the Closing (herein so called) shall be held at a location that may be mutually agreed upon by Esperanza and El Paso on the date ("Closing Date") which shall be no earlier than the date of a Determination Notice (as defined in Section 7.1) and no later than sixty (60) days following receipt of a Determination Notice. Notwithstanding the foregoing, Esperanza and El Paso acknowledge that the Closing cannot occur unless and until the Texas General Land Office consents to the assignments of the Groundwater Lease, the Miscellaneous Easement, and the Sanitary Control Easement, and the TCEQ approves the transfer of TPDES Permit No. WQ0005277000.

6.2. Closing Matters.

6.2.1 At Closing, Esperanza shall:

- (a) Deliver all keys to the Assets to El Paso;
- (b) Deliver control of the Assets to El Paso;
- (c) Deliver control of the equipment or other Tangible Personal Property, if any, listed as part of the Tangible and Intangible Personal Property on Exhibit "C" to El Paso;
- (d) Deliver an updated list of all customers of Esperanza, the service address for each customer, a final meter reading for, or a meter reading associated with the last bill sent by Esperanza to, each customer, the accounts receivable for such customers, and the amount of each customer's deposit, with accrued statutory interest, certified by Esperanza to be true and correct as of the day immediately preceding Closing;
- (e) Deliver to El Paso evidence of payment of all bills by Esperanza;
- (f) Grant to El Paso the authority to provide the necessary consents of Esperanza to PUC with respect to the proposed maps, certificates, and the recommendation for approval and issuance or decertification of the CCN, and authorize the PUC to effectuate the transfer of the Utility System upon receipt of El Paso's signed consent form without the further involvement of Esperanza, including without limitation executing all necessary consent documents on behalf of Esperanza;
- (g) Deliver the consents to assignment and the assignments of the Groundwater Lease, Miscellaneous Easement, and Sanitary Control Easement, and consents to assignment and assignment of any Contractual Rights listed in Exhibit "D" to which El Paso has agreed to accept assignment.

6.2.2 At Closing, Esperanza shall execute, deliver, and acknowledge the following documents:

(a) A copy of an Affidavit of Closing, in substantially the form attached hereto as Exhibit "E", and any and all documents which El Paso may reasonably request after the Closing to evidence the consent and agreement of Esperanza for decertification of its service area and certification of the service area to El Paso. The agreement set forth in the preceding sentence shall survive the Closing. Esperanza shall file the Affidavit of Closing with the PUC in accordance with Section 7.1 of this Agreement;

(b) A Contract Closing Certification, in substantially the form attached hereto as Exhibit "F", which shall include the certification of records and the certification of correspondence, as well as the Engineering Certificate, attached hereto as Exhibit F-1.

(c) A Special Warranty Deed and Assignment of Easements, conveying the land, easements, and any improvements, in substantially the form attached hereto as Exhibit "G"; and

(d) A Bill of Sale and Assignment of Easements, conveying Tangible Personal Property, Intangibles, Deposits, and Contractual Rights, in substantially the form attached hereto as Exhibit "H".

6.2.3 At Closing, El Paso shall:

(a) Deliver reasonable evidence of El Paso's capacity and authority for the Closing of this transaction;

(b) Provide written acknowledgement and acceptance, without conditions, of Esperanza's assignment of the Groundwater Lease;

(c) Execute any and all documents reasonably necessary; and

(d) Transfer to Esperanza the total amount of consideration enumerated in Section 2.01 of this Agreement.

6.2.4 At Closing:

(a) All special taxes or assessments assessed prior to the Closing Date shall be paid by Esperanza; and

(b) Esperanza shall provide copies to El Paso of the last billing statement paid for each utility meter, copies of tax assessments (if any), statements of any other recurring expenses of Esperanza.

6.3 Water Utility System Revenues.

All revenues for water utility services rendered by El Paso for the period from and after the Closing Date shall be property of El Paso. Any such revenue received by Esperanza for the period from and after the Closing Date shall be immediately forwarded to El Paso. Any revenue received by El Paso for water utility service rendered by Esperanza for the period before Closing shall be the property of Esperanza. El Paso agrees to cooperate with Esperanza to collect the unpaid revenues due to Esperanza but not collected by Esperanza prior to Closing. El Paso shall

immediately forward any revenues collected by El Paso that are the property of Esperanza as per this Section 6.3. This Section 6.3 shall survive Closing;

VII. **Conditions Precedent**

Notwithstanding anything in this Agreement to the contrary, the obligations of the Parties to consummate the transaction contemplated by this Agreement shall be subject to and specifically conditioned upon the following:

7.1 PUC Determination. The PUC shall issue a written determination (“PUC Determination Notice”) that authorizes the transaction contemplated herein to proceed to Closing in accordance with this Agreement. Esperanza and El Paso each acknowledge that this purchase and sale transaction must comply with the requirements of Texas Water Code §13.301 and, therefore, cannot be completed prior to the PUC Determination Notice. Esperanza and El Paso agree to file with the PUC an Application for Sale, Transfer, or Merger of a Retail Public Utility (“Application”) as soon as reasonably possible after the Effective Date of this Agreement, and Esperanza and El Paso agree to cooperate in connection with completing the Application and further agree to support the PUC approval of the Application. In this regard, Esperanza and El Paso acknowledge that after receipt of the PUC Determination Notice and within ninety (90) days after the Closing Date, El Paso and Esperanza must file with PUC documents evidencing that the purchase and sale transaction contemplated by this Agreement is final. Following receipt by the PUC of these documents evidencing completion of the transaction contemplated by this Agreement and the disposition of Customer Deposits, if any, the PUC will prepare a proposed map, certificate, and recommendation for both Esperanza and El Paso to review and consent to before submitting the map, certificate, and recommendation to the PUC for approval and issuance of the CCN. The consent must be received by the PUC in order for the PUC to approve the CCN transfer. If PUC denies the Application, then the Parties shall make every effort to reverse the PUC decision and, if necessary, file a new Application as necessary to obtain a favorable decision from the PUC. If PUC requires a hearing, this condition precedent provided for herein shall not be satisfied until after any order issued by the PUC that is necessary for the transaction contemplated herein is final, and non-appealable.

7.2 Assignment of Easements and Groundwater Lease. Esperanza shall work to secure the consents of the Texas General Land Office to assignments of the Groundwater Lease, the Miscellaneous Easement, and the Sanitary Control Easement to El Paso before Closing. The Parties agree that the Texas General Land Office must consent to the assignment in order to complete the transaction contemplated by this Agreement and to proceed to Closing.

7.3 Approval of Transfer of Wastewater Discharge Permit. The TCEQ has issued to Esperanza Water Quality Permit No. WQ000380700, which is set to expire on September 1, 2020. Esperanza filed an application for a new wastewater discharge permit, TPDES Permit No. WQ000527700, which was issued to Esperanza on July 9, 2020. The Parties agree that at least thirty (30) days prior to Closing the Parties will submit an Application for to Transfer a Wastewater

Permit or CAFO Permit for TPDES Permit No. WQ0005277000. The Parties agree in order to proceed to Closing the Parties must have first obtained the approval by TCEQ of the transfer of TPDES Permit No. WQ0005277000. The Parties further agree that Water Quality Permit No. WQ000380700 will not be transferred to El Paso, and will be allowed to expire or will be terminated.

VIII.

Miscellaneous

8.1 Entire Agreement. This Agreement constitutes the entire agreement of the Parties as to the subject matter hereof and shall supersede any and all prior agreements and understandings of the Parties, whether oral or written. This Agreement may be amended or modified only by written agreement executed by the Parties.

8.2. Binding. This Agreement, and the terms, covenants, and conditions herein contained shall inure to the benefit of and be binding upon the heirs, personal representatives, successors, and assigns of each of the Parties hereto.

8.3 Effective Date. The term "Effective Date" as used in this Agreement shall be the date on which this Agreement is executed by the last Party to sign.

8.4 Notice. Any notice required or permitted hereunder shall be in writing; if notice is to El Paso, a copy must be delivered by email in addition to any other delivery elected by the sender. Notice shall be deemed to be delivered on the first of (a) the date received if delivered by email or by hand to the address shown hereinafter for either Party, (b) if delivered by United States First Class Mail, whether or not it is actually received, on the first business day after having been deposited in the mail, postage prepaid, registered or certified, return receipt requested, addressed to Esperanza or El Paso, as appropriate, at the address shown hereinafter. The addresses for Esperanza and El Paso for all purposes under this Agreement shall be the following:

If to Esperanza: Esperanza Water Service Company, Inc.
1150 Southview Dr.
El Paso, Texas 79928
Attention: Ralph W. Richards
Phone: (915) 298-9900
FAX: (915) 298-9992

If to El Paso El Paso Water Utilities Public Service Board
1154 Hawkins
El Paso, TX 79925
Attention: John E. Balliew
Phone (915) 597-5595

With a copy to: Bickerstaff Heath Delgado Acosta, LLP
3711 S. MoPac Expressway
Building One, Suite 300
Austin, Texas 78746
Attention: Emily Rogers
Phone: (512) 472-8021
FAX: (512) 320-5638

The Parties shall have the right from time to time to change their respective addresses, and each shall have the right to specify as its address any other address within the United States of America by at least five (5) days' written notice to the other Party.

8.5 Time. Time is of the essence in all things pertaining to the performance of this Agreement.

8.6 Applicable Law; Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of Texas. Any action in law or equity brought to enforce or interpret any provision of this Agreement shall be brought in a court of competent jurisdiction with venue in El Paso County, Texas.

8.7 Negotiation by Counsel. The Parties acknowledge that each Party and its counsel have reviewed and revised this Agreement, and agree that the normal rule of construction, to the effect that any ambiguities are to be resolved against the drafting party, shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

8.8 Counterparts and Faxes. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original and all of which shall constitute the same instrument. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart. A telecopied facsimile of an executed counterpart of this Agreement shall be sufficient to evidence the binding agreement of each party to the terms hereof. However, each party agrees to promptly deliver to the other party an original, duly executed counterpart of this Agreement.

8.9 Section Headings. The section and paragraph headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope of the various and several sections and paragraphs hereof.

8.10 Business Days. In the event that any date or any period provided for in this Agreement shall end on a Saturday, Sunday, or legal holiday, the applicable period shall be extended to the first business day following such Saturday, Sunday, or legal holiday. As used herein, the term "legal holiday" shall mean any state or federal holiday for which financial institutions or post offices are generally closed in the State of Texas.

8.11 Exhibits. All references to exhibits contained herein are references to exhibits attached hereto, all of which are made a part hereof. It is expressly understood that if any exhibit attached hereto which is to be executed and delivered at Closing contains blanks, the same shall be completed correctly and in accordance with the terms and provisions contained herein and as contemplated hereby prior to or at the time of execution and delivery thereof.

8.12 Modification; Assignment; and Benefit. This Agreement shall be subject to change or modification at any time, but only with the mutual consent of all of the Parties hereto. This Agreement shall not be assignable by either party hereto without the prior written consent of the other party hereto, such consent to not be unreasonably withheld, conditioned or delayed. This Agreement shall be for the sole and exclusive benefit of the Parties and third-party beneficiaries, if any, are hereby expressly disclaimed.

8.13 No Waiver. No waiver or waivers of any breach or default (or any breaches or defaults) by either party hereto of any term, covenant, condition, or liability hereunder, or of performance by the other party of any duty or obligation hereunder, shall be deemed or construed to be a waiver of subsequent breaches or defaults of any kind.


8.14 Severability. If any provision of this Agreement shall be held or deemed to be or shall, in fact, be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions, or in all jurisdictions because it conflicts with any provisions of any Constitution, statute, administrative rule, regulation or finding, rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question invalid, inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions of this Agreement invalid, inoperative or unenforceable to any extent whatever.

8.15 Further Assurances. Each signatory party agrees to execute and deliver any additional documents and instruments and to perform any additional acts necessary or appropriate to perform the terms, provisions, and conditions of this Agreement and all transactions contemplated by this Agreement, including but not limited to, acquiring easements or rights-of-way necessary to operation the Utility System.

8.16 Legal Construction. Whenever context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. Article and section headings in this Agreement are for reference only and are not intended to restrict or define the text of any section. This Agreement will not be construed more or less favorably between the parties by reason of authorship or origin of language.

IN WITNESS WHEREOF, this Agreement has been duly executed in multiple counterparts (each of which is to be deemed original for all purposes) by the Parties hereto on the date appearing opposite each Party's signature.

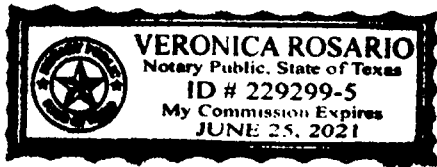
ESPERANZA WATER SERVICE COMPANY, INC.


Date: July 22, 2020 By: 
Irene Epperson, Vice President

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

BEFORE ME, the undersigned authority, on this day personally appeared Irene Epperson, Vice President of Esperanza Water Service Company, Inc., known to me to be the person whose name is subscribed on the foregoing instrument and acknowledged to me that the same was the act of the ESPERANZA WATER SERVICE COMPANY, INC., and that the person executed the same as the act of the ESPERANZA WATER SERVICE COMPANY, INC. for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 22nd day of July 2020.




Notary Public
The State of Texas

EL PASO WATER UTILITIES PUBLIC SERVICE BOARD

Date: July 30th, 2020

By: _____

Name: John E. Balliew

Title: President and CEO

APPROVED AS TO FORM:

Lee Ann Koehler

Lee Ann Koehler, General Counsel
El Paso Water Utilities

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

BEFORE ME, the undersigned authority, on this day personally appeared John E. Balliew, President and CEO of El Paso Water Utilities Public Service Board, known to me to the person whose name is subscribed on the foregoing instrument and acknowledged to me that the same was the act of the EL PASO WATER UTILITIES PUBLIC SERVICE BOARD, and that the person executed the same as the act of the EL PASO WATER UTILITIES PUBLIC SERVICE BOARD for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 30th day of July, 2020.

Lucy Calderon

Notary Public
The State of Texas

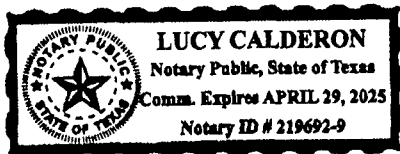


EXHIBIT "A"
LAND AND EASEMENTS

The following land are to be included with the Land to be transferred to El Paso:

I. Owned Real Property.

(a) Warranty Deed dated June 17, 1998

Grantor: Fort Hancock East, Inc.
Grantee: Esperanza Water Service Company, Inc.
Property: Tract 1 (3.2 acres) and Tract 2 (20 acres) in Section 13, Block A, Texas and Pacific Railroad Surveys, Hudspeth County, Texas
Recording Data: Filed for Record June 24, 1998, recorded July 2, 1998, Instrument No. 106689, Book 219, Page 205

(b) Warranty Deed dated May 10, 2000.

Grantor: Fort Hancock East, Inc.
Grantee: Esperanza Water Service Company, Inc.
Property: 124.164 acres of land, more or less, in Sections 13 and 14, Block A, Texas & Pacific RR Co. Surveys, Hudspeth County, Texas (Water Company Headquarters)
Recording Data: Filed for Record May 10, 2000 recorded May 18, 2000, Instrument No. 109253, Book 229, Page 846.

Note: this parcel at least includes 20 acres previously conveyed in June 1998 and may also include Tract 1 containing 3.2 acres (needs to be confirmed).

(c) General Warranty Deed dated August 29, 2008

Grantor: West Texas Development Ltd.
Grantee: Esperanza Water Service Company, Inc.
Property: Lot 8 (containing 20.0064 acres) and Lot 14 containing 34.7206 acres) in Section 11, Block 65½, Public School Lands, Hudspeth County, Texas
Recording Data: Filed for Record September 2, 2008, Instrument No. 128232

(d) General Warranty Deed dated September 15, 2015

Grantor: Fort Hancock East, Inc.
Grantee: Esperanza Water Service Company, Inc.
Property: 9.8271 acres in Section 13, Block A, T&P Railway Co. Surveys, Hudspeth County, Texas (located adjacent to FM 192, contains RO waste water ponds constructed in 2011/2012.)
Recording Data: Filed for Record October 16, 2015, Instrument No. 00000141970.

(e) Special Warranty Deed dated May 7, 2019

Grantor: Lexa Dean Jobe
Grantee: Esperanza Water Service Company, Inc.
Property: 0.425 acre in Section 13, Block A, Texas and Pacific Railway
Company Surveys, Hudspeth County, Texas
Recording Data: Filed for Record May 23, 2019, Instrument No. 00000148719.

II. Easements (non TXGLO).

(a) Easement for Water Lines dated September 10, 2015

Grantor: Fort Hancock East, Inc.
Grantee: Esperanza Water Service Company, Inc.
Property: Section 13, Block A, T&P Railway Co. Surveys, Hudspeth
County, Texas
Purpose: These were easements across Fort Hancock East's property for
existing Esperanza Water Service Company, Inc. water lines and
for lines from the old RO plant down to the RO ponds. One of
these easements covers the Esperanza Water Service Company's
distribution water line which runs parallel to FM 192 for purposes
of serving the farms and customers east of McNary down towards
Esperanza. The document describes a total of three easements.
Recording Data: Filed for record October 16, 2015, Instrument No. 00000141971.

III. Easements and Leases (TXGLO).

(a) State of Texas Groundwater Lease No. SL20130045 dated June 13, 2013

Lessor: Commissioner of the Texas General Land Office
Lessee: Esperanza Water Service Company, Inc.
Purpose: Exploring, evaluating, drilling for, producing, developing and
extracting groundwater from the premises for potable municipal
water use. This site is now for EWS two production wells
completed in 2013 and put into production in 2014. This lease
covers 160 acres located in Sections 35, 38, and 39, Block 74, Twp
6S, T&P Railway Co. Surveys. The TXGLO has agreed to amend
this lease to add an additional 520 acres to the lease, increasing the
total coverage to the lease to 680 acres. Documentation is expected
to be completed on this in July 2020.
Term: 30 years, commencing 6/1/2013 and terminating 5/31/2043
Recording Data: Recorded July 8, 2013, Instrument No. 00000138105

(b) State of Texas Miscellaneous Easement No. ME20130140 dated June 13, 2013

Lessor: Commissioner of the Texas General Land Office
Lessee: Esperanza Water Service Company, Inc.
Purpose: As a right of way to construct, maintain, operate, inspect, and
repair one (1) 6-inch water line and one (1) access road

Term: 30 years, commencing 6/1/2013 and terminating 5/31/2043

Recording Data: Recorded July 8, 2013, Instrument No. 00000138104

Note: Esperanza Water Service Company and the TXGLO have agreed to an amendment to this easement in 2019 to increase the area covered by the easement at the mid-point where the seven water storage tanks and RO system are located to increase it from a 100 ft. wide easement to a 1.999 acres tract to include the seven water tanks, the water transmission line, and the RO operating system.

(c) State of Texas Sanitary Control Easement dated March 26, 2014

Lessor: Commissioner of the Texas General Land Office

Lessee: Esperanza Water Service Company, Inc.

Purpose: To protect the water supply of the wells by creating a sanitary control easement around the wells

Recording Data: Recorded May 12, 2014, Instrument No. 00000139627

EXHIBIT "B"

IMPROVEMENTS

The following improvements are included with the Improvements to be transferred to El Paso:

1. All active and inactive water wells and water well pumping equipment and improvements, including the well control and regulator room located at the Diablo Wells, two storage facilities at such wells, two generators and fuel tank used to provide fuel for pumping of the wells, together with security fencing at the well site, and water meters;
2. Test wells and test well improvements;
3. Office building at 38581 Texas 20, Fort Hancock, and improvements, well equipment building, electrical control room, the building known as the regulator room which includes the pressure reduction gauge, a chlorination system, and a sand trap, which regulator room is located at the end of the six inch transmission line;
4. Water distribution and transmission pipelines, gate and air release valves, tapping sleeves, and other facilities used to provide water service to customers in the service area, and water meters;
5. Water storage tanks, including active and inactive water storage tanks and all related improvements, and any equipment necessary for operation of the same;
6. Gathering pipelines;
7. Diablo transmission pipeline, which brings water from the Diablo Wells to the regulator room at 38581 Texas 20, including all air release valves and other improvements and equipment related to operation of the Diablo pipeline and all related appurtenances;
8. RO system located at the mid-transmission line break point where the seven 21,000 storage tanks are located, including generators, pressure tanks, water pumps, booster pumps, chlorinator system, and all other related appurtenances and equipment necessary for operation of the RO system, including the RO discharge water line; and
9. RO discharge ponds located on FM 192 (related to the old RO system).

EXHIBIT "C"
TANGIBLE PERSONAL PROPERTY
AND
INTANGIBLES (WARRANTIES, ETC.)
(Excluded and Included)

Included Tangible and Intangible Property: The following property is included with the Tangible Personal Property and Intangibles to be transferred to El Paso.

1. All of the furniture, equipment, inventory, spare parts, supplies, and other tangible personal property now currently owned, possessed and/or used by Esperanza in Hudspeth County, Texas to support, maintain, or operate a water treatment and distribution system.
2. All intangible personal property owned, possessed or used by Esperanza in operating or maintaining a water treatment and distribution system in Hudspeth County, Texas.
3. All papers and records (whether in written or other form) of any kind related to the operation and maintenance of the water system, including but not limited to, member/customer lists, customer service agreements, supplier lists, distributor lists, purchase and sales records, personnel and independent contractor records, lease records, environmental control records, maintenance records, operating and management manuals, plans, specifications and designs related to the water system, water system computer systems and software documentation, and forms.
4. All permits, licenses, franchises, consents, authorities, special authorities, and other similar acts of any governmental body (federal, state, local, or foreign) held by Esperanza that may lawfully be assumed, assigned or transferred, subject to any action by such body that may be required in connection with such assumption, assignment or transfer, including but not limited to the TPDES Permit No. 000527700, Pipeline Crossing Agreement with Union Pacific Railroad Company, dated June 18, 2014; Texas Department of Transportation Utility Installation Permit Nos. 7486 and 7487.
5. All water charges and other income from the sale of water collected after Closing in accordance with Section 6.2.4 of the Agreement.
6. All water pumping, storage, and treatment equipment and distribution lines thereof together with all appurtenances thereto presently owned by Esperanza, including, but not limited to, water intake structures, and storage and pumping facilities, pump house and mechanical equipment, pumps, motors, electrical material, pipes, valves, meters, casing, reservoirs and tanks.
7. All wastewater treatment equipment;
8. All vehicles, trailers, shop tools, tools, heavy equipment, M & E Welder, fuel tank, storage container;

9. Any and all facilities, contracts and properties related to Esperanza's water distribution system that have not otherwise been transferred to El Paso by specific document including all pipes, pumps, valves, fittings, tools, machinery, equipment, funds, accounts, property, appurtenances, easements, rights-of-way, licenses, leases and all other similar items.

A handwritten signature in black ink, appearing to be a stylized 'P' or 'R' followed by a checkmark-like flourish.

EXHIBIT "D"

CONTRACTUAL RIGHTS

1. Contract Agreement between Esperanza Water Service Company, Inc. and Hudspeth County, Texas dated November 19, 2010.
2. Amended Bulk Sales Agreement for Sale of Water between Esperanza Water Service Company and Traveling Tiger Centers, L.L.C. dated September 4, 2019.

EXHIBIT "E"

AFFIDAVIT OF CLOSING

PUBLIC UTILITY COMMISSION OF TEXAS

DOCKET NO. _____

STATE OF TEXAS

COUNTY OF EL PASO

AFFIDAVIT OF CLOSING

BEFORE ME, the undersigned authority, on this day personally appeared Irene Epperson, Vice President of Esperanza Water Service Company, Inc., a for-profit water supply corporation ("Seller"), personally known to me to be the person whose name is subscribed hereto and upon his/her oath depose and state that:

"I am a citizen of the United States, of legal age, and have never been known by any other name than set out below; I am Irene Epperson, Vice President of Esperanza Water Service Company, Inc., authorized agent of Seller, and am authorized to make this affidavit on its behalf.

Seller and the El Paso Water Utilities Public Service Board ("Purchaser") entered into that certain Asset Transfer Agreement dated effective as of _____ ("Contract"), which provided for the lease and eventual sale and transfer to Purchaser of Seller's water supply system, consisting of real property rights, easements, pipelines and related infrastructure and personal property as more fully described in the Contract (collectively the "Assets").

Pursuant to the terms of the Contract the Seller has agreed that upon closing it will decertify and transfer the its CCN No. 12881 to Purchaser so that the Purchaser may acquire the necessary rights to provide retail water service to the customers within CCN No. 12881 in accordance with Chapter 13 of the Texas Water Code.

The sale and transfer to the Purchaser of Seller's water supply system, the transfer of Seller's CCN No. 12881, to Purchaser shall be collectively referred to as the "Transfer."

In addition, after the receipt by the Public Utility Commission of Texas ("PUC") of the applicable closing documents, Seller understands that PUC staff will prepare proposed maps, certificates, and recommendations for both the Seller and the Purchaser to review and approve before their submittal to the PUC for approval of the Transfer; provided, however, that Seller understands that it has the right to grant the Purchaser the right to consent to the proposed maps, certificates and recommendations on behalf of the Seller.

The Seller hereby certifies that (i) as of the date hereof the portion of the water supply system and the Assets have been sold to Purchaser in accordance with the terms of the Contract, (ii) Seller concurs with the Transfer under the applicable provisions of Chapter 13 of the Texas Water Code, (iii) Seller agrees that the PUC may take action to transfer CCN No. 12881 to the Purchaser; and (iv) Seller has granted Purchaser the authority to provide the necessary Seller's consent to PUC with respect to the proposed maps, certificates and the recommendation for decertification, and approval and issuance of any CCN necessary to effectuate the Transfer, and hereby authorizes the PUC to effectuate the Transfer upon receipt of Purchaser's signed consent form without the further involvement of Seller, including, but not limited to, executing all necessary consent documents on behalf of the Seller.

Executed this _____ day of _____, 20__.

Affiant

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

SWORN AND SUBSCRIBED TO under oath by Irene Epperson, Vice President of Esperanza Water Service Company, Inc., before the undersigned notary public in witness of which I place my hand and seal on this _____ day of _____, 20__.

SEAL

Print name: _____
Notary Public for the State of Texas
Commission expires: _____

Esperanza Water Service Company, Inc.

EXHIBIT "F"

CONTRACT CLOSING CERTIFICATION

Date: _____, 20____ (the "Closing Date")

BEFORE ME, the undersigned authority, on this day personally appeared Irene Epperson, Vice President of Esperanza Water Service Company, Inc., a for-profit corporation ("Seller"), personally known to me to be the person whose name is subscribed hereto and upon his/her oath depose and state that:

I am of legal age, and have never been known by any other name than set out below; I am Irene Epperson, authorized agent of Seller, and am authorized to make this affidavit on its behalf.

1. Seller and the El Paso Water Utilities Public Service Board ("Buyer") entered into that certain Water System Asset Purchase and Transfer Agreement dated effective as of _____ 2020 ("Agreement"), which provided for the sale and transfer of Seller's water supply system, consisting of real property rights, easements, pipelines and related infrastructure and personal property as more fully described in the Agreement (collectively the "Assets"), located within or for the purpose of serving the area designated by the Public Utility Commission of Texas under Water CCN No. 12881.

2. Seller has performed its disclosure obligations under the Agreement by providing the Buyer records and other documents as set out in Article 4 of the Agreement.

3. Seller is the owner of the Assets and has not granted any rights or interests in Assets during the pendency of the Agreement, and there are no leases, contracts of sale, parties in possession, or other contracts for the use or purchase of Assets.

4. Seller has no improvements to the Assets that have not been fully paid for or that could give rise to any mechanic's and materialman's liens or adverse claims.

5. There are no unpaid debts, judgments, taxes, liens, or obligations affecting the Assets.

6. Except as listed on Exhibit "A" hereto, to Seller's knowledge, Seller has not received notice of any condemnation proceeding, proceeding arising out of injury or damage to the Assets, litigation, arbitration, or administrative hearing, adverse claim, violation of applicable law, notice of default, or other proceeding that could adversely affect the Assets.

7. Seller has complied with Seller's Covenants in Section 3.2 of the Agreement.

8. Seller acknowledges that this affidavit is made to induce Buyer to purchase the Assets.

9. To Seller's knowledge, as of the Closing Date, the representations and warranties set out in the Agreement are still true and correct and have not been breached.

10. Seller's engineer has provided an Engineering Certificate, attached hereto as Exhibit "B" to this affidavit.

11. Seller's representations, warranties, covenants, and other agreements set forth in this Contract Closing Certification shall merge on the closing of the transactions contemplated by the Agreement and shall have no further force and effect thereafter.

Irene Epperson, Vice President

Esperanza Water Service Company, Inc.

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

SWORN AND SUBSCRIBED TO under oath by Irene Epperson, Vice President of Esperanza Water Service Company, Inc., before the undersigned notary public in witness of which I place my hand and seal on this ____ day of _____, 20____.

SEAL

Print name: _____
Notary Public for the State of Texas
Commission expires: _____

Exhibit “A” to Contract Closing Certification

Notice of Claims and Proceedings

A handwritten signature in black ink, located in the bottom right corner of the page. The signature is stylized and appears to be a single word or a short phrase.

Exhibit “B” to Contract Closing Certification

Engineer’s Certificate

A handwritten signature in black ink, located in the bottom right corner of the page. The signature is stylized and appears to be a single name.

EXHIBIT F-1
FORM OF ENGINEER'S CERTIFICATE

Engineer's Certificate

THE STATE OF TEXAS §
 §
COUNTY OF §

I, the undersigned ("Engineer"), of the firm of _____, do hereby certify the following:

1. Engineer is familiar with the Esperanza Water Utility System, including the water wells, the gathering pipelines, the transmission pipelines, the distributions lines, the storage tanks, pressure tanks, the RO wastewater system and pond and related appurtenances.

2. In the course of performing engineering services for the Esperanza Water Service Company, Inc., Engineer is not aware of any information regarding the engineering design of such water utility system affecting the current condition and future needs of the water utility system that is not contained in the records of the Esperanza Water Service Company, Inc., except for the following:

3. The word "certify" as used herein is an expression of professional opinion only and shall not be construed or understood to be a statement of fact, a warranty, or a guarantee of any kind, expressed or implied.

NAME OF ENGINEERING FIRM

By: _____

STATE OF TEXAS §

§

COUNTY OF EL PASO §

SWORN AND SUBSCRIBED TO under oath by _____ before the
undersigned notary public in witness of which I place my hand and seal on this ____ day of
_____, 20____.

SEAL

Print name: _____

Notary Public for the State of Texas

Commission expires: _____



EXHIBIT "G"

FORM OF SPECIAL WARRANTY DEED AND ASSIGNMENT OF EASEMENTS

THE STATE OF TEXAS	§	
	§	KNOW ALL BY THESE PRESENTS:
COUNTY OF EL PASO	§	

That Esperanza Water Service Company, Inc. (hereinafter called "Grantor"), for and in consideration of the sum of TEN and NO/100 DOLLARS (\$10.00) and other good and valuable consideration paid to Grantor by the City of El Paso for the benefit of El Paso Water Utilities Public Service Board (hereinafter called "Grantee"), the receipt and sufficiency of which are hereby acknowledged and for the payment of which no lien, express or implied, is retained, has GRANTED, SOLD AND CONVEYED, and by these presents does GRANT, SELL AND CONVEY to Grantee the real property situated in Hudspeth County, Texas described in Exhibit "A" attached hereto and made a part hereof (the "Land"), together with (i) any and all improvements located thereon; (ii) all right, title and interest of Grantor, if any, in and to any land lying in the bed of any alley, street, road or access way, open or proposed, in front of, at a side of, or adjoining the Land to the centerline thereof; (iii) to the extent assignable, all rights, privileges, and easements whether appurtenant to the Land or in gross, which are owned by Grantor, including without limitation, those easements more particularly described in Exhibit "B" hereto, and, to the extent such are used by Grantor in connection with Grantor's water treatment and retail water system operated on the Land, the right to access the water lines and other appurtenances on lands owned by customers of the retail water system operated on the Land, all development rights relating to the Land and any other easements, rights-of-way, or appurtenances arising or used in connection with the beneficial use and enjoyment of the Land; and (iv) any and all reversionary interests of the Grantor in and to the Land (the Land and all of the related improvements, appurtenances, rights and interests referenced in items (i) through (iv) above are collectively referred to herein as the "Property"). This conveyance is made and accepted subject and subordinate to (i) any and all matters affecting the state of title to the Property and recorded in the appropriate public records or that would be apparent on a Land survey and (ii) all zoning, building and other laws, regulations and ordinances of any and all municipal, governmental and quasi-governmental bodies and agencies having jurisdiction over the Property or any part thereof (collectively, the "Permitted Exceptions").

TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances thereto in anywise belonging, unto Grantee, and Grantee's successors and assigns forever; and Grantor does hereby bind Grantor and Grantor's successors to warrant and forever defend all and singular the Property unto Grantee, and Grantee's successors and assigns, against every person whomsoever lawfully claiming, or to claim the same, or any part thereof by, through or under Grantor, but not otherwise.

IN WITNESS WHEREOF, this Special Warranty Deed is executed by Grantor on the _____ day of _____, 2020.

Irene Epperson, Vice President
Esperanza Water Service Company, Inc.

THE STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on this _____ day of _____, _____, by Irene Epperson, Vice President of Esperanza Water Service Company, Inc.

Notary Public, State of _____



EXHIBIT "A" TO DEED

LAND

(a) Warranty Deed dated June 17, 1998

Grantor: Fort Hancock East, Inc.
Grantee: Esperanza Water Service Company, Inc.
Property: Tract 1 (3.2 acres) and Tract 2 (20 acres) in Section 13, Block A, Texas and Pacific Railroad Surveys, Hudspeth County, Texas
Recording Data: Filed for Record June 24, 1998, recorded July 2, 1998, Instrument No. 106689, Book 219, Page 205

(b) Warranty Deed dated May 10, 2000.

Grantor: Fort Hancock East, Inc.
Grantee: Esperanza Water Service Company, Inc.
Property: 124.164 acres of land, more or less, in Sections 13 and 14, Block A, Texas & Pacific RR Co. Surveys, Hudspeth County, Texas (Water Company Headquarters)
Recording Data: Filed for Record May 10, 2000 recorded May 18, 2000, Instrument No. 109253, Book 229, Page 846.

(c) General Warranty Deed dated August 29, 2008

Grantor: West Texas Development Ltd.
Grantee: Esperanza Water Service Company, Inc.
Property: Lot 8 (containing 20.0064 acres) and Lot 14 containing 34.7206 acres) in Section 11, Block 65½, Public School Lands, Hudspeth County, Texas
Recording Data: Filed for Record September 2, 2008, Instrument No. 128232

(d) General Warranty Deed dated September 15, 2015

Grantor: Fort Hancock East, Inc.
Grantee: Esperanza Water Service Company, Inc.
Property: 9.8271 acres in Section 13, Block A, T&P Railway Co. Surveys, Hudspeth County, Texas (located adjacent to FM 192, contains RO waste water ponds constructed in 2011/2012.)
Recording Data: Filed for Record October 16, 2015, Instrument No. 00000141970.

(e) Special Warranty Deed dated May 7, 2019

Grantor: Lexa Dean Jobe
Grantee: Esperanza Water Service Company, Inc.
Property: 0.425 acre in Section 13, Block A, Texas and Pacific Railway Company Surveys, Hudspeth County, Texas
Recording Data: Filed for Record May 23, 2019, Instrument No. 00000148719.

EXHIBIT "B" TO DEED

EASEMENTS

I. Easements (non TXGLO).

(a) Easement for Water Lines dated September 10, 2015

Grantor: Fort Hancock East, Inc.
Grantee: Esperanza Water Service Company, Inc.
Property: Section 13, Block A, T&P Railway Co. Surveys, Hudspeth County, Texas
Purpose: These were easements across Fort Hancock East's property for existing Esperanza Water Service Company, Inc. water lines and for lines from the old RO plant down to the RO ponds. One of these easements covers the Esperanza Water Service Company's distribution water line which runs parallel to FM 192 for purposes of serving the farms and customers east of McNary down towards Esperanza. The document describes a total of three easements.
Recording Data: Filed for record October 16, 2015, Instrument No. 00000141971.

II. Easements and Leases (TXGLO).

(b) State of Texas Groundwater Lease No. SL20130045 dated June 13, 2013

Lessor: Commissioner of the Texas General Land Office
Lessee: Esperanza Water Service Company, Inc.
Purpose: Exploring, evaluating, drilling for, producing, developing and extracting groundwater from the premises for potable municipal water use. This site is now for EWS two production wells completed in 2013 and put into production in 2014. This lease covers 160 acres located in Sections 35, 38, and 39, Block 74, Twp 6S, T&P Railway Co. Surveys. The TXGLO has agreed to amend this lease to add an additional 520 acres to the lease, increasing the total coverage to the lease to 680 acres. Documentation is expected to be completed on this in July 2020.
Term: 30 years, commencing 6/1/2013 and terminating 5/31/2043
Recording Data: Recorded July 8, 2013, Instrument No. 00000138105

(c) State of Texas Miscellaneous Easement No. ME20130140 dated June 13, 2013

Lessor: Commissioner of the Texas General Land Office
Lessee: Esperanza Water Service Company, Inc.
Purpose: As a right of way to construct, maintain, operate, inspect, and repair one (1) 6-inch water line and one (1) access road
Term: 30 years, commencing 6/1/2013 and terminating 5/31/2043
Recording Data: Recorded July 8, 2013, Instrument No. 00000138104

(d) State of Texas Sanitary Control Easement dated March 26, 2014

Lessor: Commissioner of the Texas General Land Office

Lessee: Esperanza Water Service Company, Inc.

Purpose: To protect the water supply of the wells by creating a sanitary control easement around the wells

Recording Data: Recorded May 12, 2014, Instrument No. 00000139627

A handwritten signature in black ink, located in the bottom right corner of the page. The signature is stylized and appears to be a cursive name.

EXHIBIT "H"

FORM OF CONVEYANCE, BILL OF SALE, AND ASSIGNMENT

This Conveyance, Bill of Sale and Assignment ("Assignment") is entered into by and between Esperanza Water Service Company, Inc. ("Grantor"), a Texas corporation, and the City of El Paso for the benefit of El Paso Water Utilities Public Service Board ("Grantee"), the board established by the City of El Paso, Texas' May 22, 1952 City Ordinance No. 752 to manage and operate the water and wastewater systems of the City of El Paso.

RECITALS

A. Concurrently with the execution and delivery of this instrument, the Grantor is conveying to Grantee by Special Warranty Deed all of that certain parcel of real property, together with improvements thereon ("Improvements"), in Hudspeth County, Texas (the "Property"), more particularly described in Exhibit "A" attached hereto and made a part hereof for all purposes.

B. It is the desire of the Grantor to bargain, sell, convey, transfer, set over and assign unto Grantee the following:

- (i) All of the Grantor's right, title and interest in items of furniture, fixtures, equipment, machinery, supplies and other items of tangible personal property presently owned, used or held for use by the Grantor and affixed, attached to, placed or located on the Property or used by the Grantor exclusively in connection with the ownership, operation and/or maintenance of the retail water system operated on the Property ("Utility System"), including without limitation, all facilities, wells, water lines, distribution lines, tanks, pumps, pipes, fittings, treatment equipment, meters, copies of records, permits, materials and supplies, inventories, and those items listed in Exhibit "B" attached hereto and made a part hereof (collectively, the "Tangible Personal Property");
- (ii) All of the Grantor's right, title and interest in customer deposits, if any, on the Closing Date, if any, with accrued statutory interest, held by the Grantor in connection with the Grantor's operation of the Utility System ("Customer Deposits"); and
- (iii) To the extent assignable, all of the Grantor's right, title and interest in and to (a) all plans, drawings, specifications, surveys, engineering reports, and other materials related to the Land and the Utility System, which are conveyed without representation or warranty as to the information or conclusions set out therein; (b) all warranties and guaranties related to the Improvements and the Tangible Personal Property; (c) all licenses, permits, franchises, approvals and any other development rights and benefits relating to the Property; and (d) all insurance policies, software

and intellectual property rights, all contract rights, interest in any claims, causes of action or judgments (collectively, the "Intangible Property").

C. The Tangible Personal Property, Customer Deposits, and Intangible Property are hereinafter collectively referred to as the "Transferred Properties."

CONVEYANCE, ASSIGNMENT AND AGREEMENT

For and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor does hereby BARGAIN, SELL, CONVEY, TRANSFER, SET-OVER AND ASSIGN unto Grantee, its successors and assigns, the Transferred Properties.

TO HAVE AND TO HOLD the Transferred Properties, together with all and singular the rights and appurtenances thereto in anywise belonging, unto Grantee and Grantee's successors and assigns forever, and the Grantor does hereby bind the Grantor and the Grantor's successors to warrant and forever defend all and singular the Transferred Properties unto Grantee, and Grantee's successors and assigns against any person whomsoever lawfully claiming, or to claim the same, or any part thereof, by, through or under the Grantor, but not otherwise.

This Assignment is given pursuant to that certain Closing Agreement dated effective _____ (the "Agreement") by and between the Grantor and Grantee concerning the Property and the Transferred Properties.

This Assignment shall be construed under and in accordance with the laws of the State of Texas and shall be performable in Hudspeth County, Texas. This Assignment and the covenants, conditions and agreements herein shall inure to the benefit of and be binding upon the Grantor and Grantee, and their respective heirs, executors, administrators, successors and assigns.

EXECUTED the ____ day of _____, 2020.

ESPERANZA WATER SERVICE COMPANY, INC:

By: _____
Name: Irene Epperson
Title: Vice President

THE STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on the ____ day of _____, 2020 by
_____.

Notary Public, State of Texas



EL PASO WATER UTILITIES PUBLIC SERVICE BOARD

By: _____

Name: John E. Balliew

Title: President and CEO

THE STATE OF TEXAS §

§

COUNTY OF EL PASO §

 This instrument was acknowledged before me on the ____ day of _____, 2020 by
_____.

Notary Public, State of Texas



EXHIBIT "A" TO CONVEYANCE

IMPROVEMENT ON PROPERTY

1. All active and inactive water wells and water well pumping equipment and improvements, including the well control and regulator room located at the Diablo Wells, two storage facilities at such wells, two generators and fuel tank used to provide fuel for pumping of the wells, together with security fencing at the well site, and water meters;
2. Test wells and test well improvements;
3. Office building at 38581 Texas 20, Fort Hancock, and improvements, well equipment building, electrical control room, the building known as the regulator room which includes the pressure reduction gauge, a chlorination system, and a sand trap, which regulator room is located at the end of the six inch transmission line;
4. Water distribution and transmission pipelines, gate and air release valves, tapping sleeves, and other facilities used to provide water service to customers in the service area, and water meters;
5. Water storage tanks, including active and inactive water storage tanks and all related improvements, and any equipment necessary for operation of the same;
6. Gathering pipelines;
7. Diablo transmission pipeline, which brings water from the Diablo Wells to the regulator room at 38581 Texas 20, including all air release valves and other improvements and equipment related to operation of the Diablo pipeline and all related appurtenances;
8. RO system located at the mid-transmission line break point where the seven 21,000 storage tanks are located, including generators, pressure tanks, water pumps, booster pumps, chlorinator system, and all other related appurtenances and equipment necessary for operation of the RO system, including the RO discharge water line; and
9. RO discharge ponds located on FM 192 (related to the old RO system).

EXHIBIT "B" TO CONVEYANCE

TANGIBLE PERSONAL PROPERTY

1. All of the furniture, equipment, inventory, spare parts, supplies, and other tangible personal property now currently owned, possessed and/or used by Esperanza in Hudspeth County, Texas to support, maintain, or operate a water treatment and distribution system.
2. All intangible personal property owned, possessed or used by Esperanza in operating or maintaining a water treatment and distribution system in Hudspeth County, Texas.
3. All papers and records (whether in written or other form) of any kind related to the operation and maintenance of the water system, including but not limited to, member/customer lists, customer service agreements, supplier lists, distributor lists, purchase and sales records, personnel and independent contractor records, lease records, environmental control records, maintenance records, operating and management manuals, plans, specifications and designs related to the water system, water system computer systems and software documentation, and forms.
4. All permits, licenses, franchises, consents, authorities, special authorities, and other similar acts of any governmental body (federal, state, local, or foreign) held by Esperanza that may lawfully be assumed, assigned or transferred, subject to any action by such body that may be required in connection with such assumption, assignment or transfer, including but not limited to the TPDES Permit No. 000527700.
5. All water charges and other income from the sale of water collected after Closing in accordance with Section 6.2.4 of the Agreement.
6. All water pumping, storage, and treatment equipment and distribution lines thereof together with all appurtenances thereto presently owned by Esperanza, including, but not limited to, water intake structures, and storage and pumping facilities, pump house and mechanical equipment, pumps, motors, electrical material, pipes, valves, meters, casing, reservoirs and tanks.
7. All wastewater treatment equipment;
8. All vehicles, trailers, shop tools, tools, heavy equipment, M & E Welder, fuel tank, storage container;
9. Any and all facilities, contracts and properties related to Esperanza's water distribution system that have not otherwise been transferred to El Paso by specific document including all pipes, pumps, valves, fittings, tools, machinery, equipment, funds, accounts, property, appurtenances, easements, rights-of-way, licenses, leases and all other similar items.

Attachment 2 – Esperanza Water Service Company's Tariff

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**SOAH DOCKET NO. 582-10-0351
TCEQ DOCKET NO. 2009-1259-UCR
APPLICATION NO. 36355-R**

WATER RATE/TARIFF CHANGE,	§	
APPLICATION OF ESPERANZA	§	BEFORE THE
WATER SERVICE COMPANY,	§	
INC., CERTIFICATE OF	§	TEXAS COMMISSION ON
CONVENIENCE AND NECESSITY	§	
NO. 12881 IN HUDSPETH	§	ENVIRONMENTAL QUALITY
COUNTY, TEXAS	§	

ORDER

An application by Esperanza Water Services Company, Inc., (Applicant) for a water rate and tariff change in Hudspeth County (Application) was presented to the Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) for approval pursuant to Section 5.122 of the Texas Water Code (Code). The Applicant provides water service in Hudspeth County, Texas, and is a public utility as defined in Section 13.002(23) of the Code.

On April 8, 2009, the Applicant filed the Application with the Commission, which was assigned Application No. 36355-R. Notice of the rate change, with a proposed effective date of July 1, 2009, was provided to the customers by the Applicant. The notice of the rate increase, which was provided by mail on April 6, 2009, complied with the notice requirements of Section 13.187 of the Code and 30 Texas Administrative Code (TAC) Section 291.22 and was sufficient to place affected persons on notice regarding the proposed rate increase. The Commission received timely requests for a public hearing on the application from more than 10% of the customers. Therefore, pursuant to Section 291.28 of the Commission's rules, the matter was referred to the State Office of Administrative Hearings (SOAH) for a contested case hearing.

A preliminary hearing was held on December 2, 2009 at the Community Center in Fort Hancock, Texas, for the above captioned matter. The Honorable Administrative Law Judge (ALJ), Paul Keeper, took jurisdiction and admitted the following as parties: (1) the Applicant; (2) the Executive Director of the Texas Commission on Environmental Quality; (3) Moises Morales (Protestant); and (4) the Office of the Public Interest Counsel of the TCEQ. The parties entered into settlement negotiations and reached a settlement in the matter. The parties agreed to a remand of the case. Therefore, pursuant to 30 TAC § 80.101, on December 4, 2009, the matter was dismissed from the SOAH docket by the ALJ and remanded to the ED for uncontested processing.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that:

1. Application No. 36355-R by Esperanza Water Services Company, Inc. for a water rate change is hereby approved as reflected in the tariff attached to this Order.
2. Unless previously provided, the Applicant shall provide written notice of the final rate structure approved in this proceeding to all affected customers with the next billing cycle after issuance of this Order.
3. The Chief Clerk of the Texas Commission on Environmental Quality shall forward a copy of this Order to the parties.
4. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of the Order.

ISSUE DATE: **October 17, 2011**

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY


For the Commission

TCEQ Interoffice Memorandum

To: Marisa Weber
Offices of the Chief Clerk

From: Elizabeth Nichols
Administrative Support
Water Supply Division

Date: October 7, 2011

Subject: Item for the Executive Director's Signature

Esperanza Water Services Company, Inc.; Application No: 36355-R

CCN No: 12881

The item listed above is for the Executive Director's Signature. Please present this to Marisa Weber.

Contact Name: Elsie Pascua and Brian Dickey

Date Stamp This Page One

WATER UTILITY TARIFF FOR

Esperanza Water Service Company, Inc.
(Utility Name)

6 Briarwood Circle
(Business Address)

Pecos, Texas 79772
(City, State, Zip Code)

(915) 566-5521
(Area Code/Telephone)

This tariff is effective for utility operations under the following Certificate of Convenience and Necessity:

12881

This tariff is effective in the following county:

Hudspeth

This tariff is effective in the following cities or unincorporated towns (if any):

None

This tariff is effective in the following subdivisions and public water systems:

Fort Hancock East Subdivisions and area farm land (rural): PWS ID 1150010

TABLE OF CONTENTS

The above utility lists the following sections of its tariff (if additional pages are needed for a section, all pages should be numbered consecutively):

SECTION 1.0 -- RATE SCHEDULE	2
SECTION 2.0 -- SERVICE RULES AND POLICIES.....	3
SECTION 3.0 -- EXTENSION POLICY.....	8
SECTION 4.0 -- DROUGHT CONTINGENCY PLAN	10

APPENDIX A -- SAMPLE SERVICE AGREEMENT
APPENDIX B -- APPLICATION FOR SERVICE

SECTION 1.0 -- RATE SCHEDULE

Section 1.01 - Rates .

<u>Meter Size</u>	<u>Monthly Minimum Charge</u>	<u>Gallonge Charge</u>
5/8" or 3/4"	\$46.00 (Includes 2,000 gallons)	\$6.06 per 1,000 gallons, 2,001 – 20,000 gallons
2"	\$368.00	\$6.60 per 1,000 gallons, 20,001 gallons and up

FORM OF PAYMENT: The utility will accept the following forms of payment:

Cash X, Check X, Money Order X, Credit Card , Other (specify)

THE UTILITY MAY REQUIRE EXACT CHANGE FOR PAYMENTS AND MAY REFUSE TO ACCEPT PAYMENTS MADE USING MORE THAN \$1.00 IN SMALL COINS. A WRITTEN RECEIPT WILL BE GIVEN FOR CASH PAYMENTS.

REGULATORY ASSESSMENT..... 1.0%

TCEQ RULES REQUIRE THE UTILITY TO COLLECT A FEE OF ONE PERCENT OF THE RETAIL MONTHLY BILL.

Section 1.02 - Miscellaneous Fees

RESIDENTIAL TAP FEE \$200.00

TAP FEE COVERS THE UTILITY'S COSTS FOR MATERIALS AND LABOR TO INSTALL A STANDARD RESIDENTIAL 5/8" or 3/4" METER. AN ADDITIONAL FEE TO COVER UNIQUE COSTS IS PERMITTED IF LISTED ON THIS TARIFF.

METER TEST FEE..... \$25.00

THIS FEE WHICH SHOULD REFLECT THE UTILITY'S COST MAY BE CHARGED IF A CUSTOMER REQUESTS A SECOND METER TEST WITHIN A TWO-YEAR PERIOD AND THE TEST INDICATES THAT THE METER IS RECORDING ACCURATELY. THE FEE MAY NOT EXCEED \$25.

RECONNECTION FEE

THE RECONNECT FEE MUST BE PAID BEFORE SERVICE CAN BE RESTORED TO A CUSTOMER WHO HAS BEEN DISCONNECTED FOR THE FOLLOWING REASONS (OR OTHER REASONS LISTED UNDER SECTION 2.0 OF THIS TARIFF):

- a) Non payment of bill (Maximum \$25.00)..... \$25.00
- b) Customer's request that service be disconnected..... \$25.00

TRANSFER FEE..... \$30.00

THE TRANSFER FEE WILL BE CHARGED FOR CHANGING AN ACCOUNT NAME AT THE SAME SERVICE LOCATION WHEN THE SERVICE IS NOT DISCONNECTED

RATES LISTED ARE EFFECTIVE ONLY IF
THIS PAGE HAS TCEQ APPROVAL STAMP

SECTION 1.0 -- RATE SCHEDULE (Continued)

LATE CHARGE (EITHER \$5.00 OR 10% OF THE BILL).....\$5.00

TCEQ RULES ALLOW A ONE-TIME PENALTY TO BE CHARGED ON DELINQUENT BILLS. A LATE CHARGE MAY NOT BE APPLIED TO ANY BALANCE TO WHICH THE PENALTY WAS APPLIED IN A PREVIOUS BILLING.

RETURNED CHECK CHARGE.....\$30.00

RETURNED CHECK CHARGES MUST BE BASED ON THE UTILITY'S DOCUMENTABLE COST.

CUSTOMER DEPOSIT RESIDENTIAL (Maximum \$50).....\$50.00

COMMERCIAL & NON-RESIDENTIAL DEPOSIT..... 1/6TH OF ESTIMATED ANNUAL BILL

GOVERNMENTAL TESTING, INSPECTION AND COSTS SURCHARGE N/A

WHEN AUTHORIZED IN WRITING BY TCEQ AND AFTER NOTICE TO CUSTOMERS, THE UTILITY MAY INCREASE RATES TO RECOVER INCREASED COSTS FOR INSPECTION FEES AND WATER TESTING. [30 TAC 291.21(K)(2)]

LINE EXTENSION AND CONSTRUCTION CHARGES:

REFER TO SECTION 3.0--EXTENSION POLICY FOR TERMS, CONDITIONS, AND CHARGES WHEN NEW CONSTRUCTION IS NECESSARY TO PROVIDE SERVICE.

RATES LISTED ARE EFFECTIVE ONLY IF
THIS PAGE HAS TCEQ APPROVAL STAMP

Attachment No. 3
List of Board Members and Officers of El Paso Water Utilities

Board Members

Mayor Dee Margo
Kristina Mena, Chair
Ivonne Santiago, Vice Chair
Terri Garcia, Secretary-Treasurer
Christopher Anticliff
Henry Gallardo
Bryan Morris

Officers

John E. Balliew, President and CEO
Marcela Naverret, Vice President – Strategic, Financial, and Managerial Services
Alan Shubert, Vice President – Engineering, Operations and Technical Services

Attachment 4 – Financial Information for El Paso Water Utilities

El Paso Water Utilities Public Service Board's Comprehensive Annual Financial Report for Fiscal Year Ending on February 29, 2020 is available at:

https://www.epwater.org/UserFiles/Servers/Server_6843404/File/AboutUs/Financial/Reports/CAFR%20FY%2019-20.pdf

El Paso Water Utilities Public Service Board's Fiscal Year 2020-2021 Budget is available under Budget Reports at:

https://www.epwater.org/about_us/financial_reports

Attachment 5 – Esperanza Water Service Company's Compliance Information

Within the past 5 years, Esperanza Water Service Company has had two enforcement actions brought against it by the Texas Commission on Environmental Quality: TCEQ Docket No. 2015-1491-PWS-E and TCEQ Docket No. 2019-1242-PWS-E.

TCEQ Docket No. 2015-1491-PWS-E:

Based on a records review, the TCEQ found that Esperanza exceeded the running average concentrations of fluoride. On May 25, 2016, the TCEQ entered into an Agreed Order to address the violations. To correct the fluoride issue, Esperanza constructed a reverse osmosis treatment system. That system is now constructed and has been operating since August 2020. Because the reporting data for fluoride is a running annual average, Esperanza must provide the TCEQ with additional quarterly reports for fluoride to demonstrate that it is in compliance. On October 14, 2020, Esperanza requested an extension of the Agreed Order to allow it time to provide the additional reporting data to demonstrate compliance.

TCEQ Docket No. 2019-1242-PWS-E:

In early 2019, the TCEQ investigated the Esperanza Water System and issued a notice of violation regarding several matters. Esperanza responded to those the alleged violations, and on February 28, 2020, the TCEQ concluded that Esperanza had fulfilled all of the technical requirements and paid the administratively penalties assessed by the Agreed Order.

Bryan W. Shaw, Ph.D., P.E., *Chairman*
Tohy Baker, *Commissioner*
Jon Niermann, *Commissioner*
Richard A. Hyde, P.E., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

May 27, 2016

FIRST CLASS MAIL

Irene Epperson, Vice President
Lexa Dean Jobe, President
Esperanza Water Service Company, Inc.
1150 Southview Drive
El Paso, Texas 79928-5240

RE: Esperanza Water Service Company, Inc.
TCEQ Docket No. 2015-1491-PWS-E; Registration No. 1150010
Agreed Order Assessing Administrative Penalties and Requiring Certain Actions

Enclosed is a copy of an order issued by the Commission.

Questions regarding the order should be directed to the Texas Commission on Environmental Quality's Enforcement Division at (512) 239-2545 or the Litigation Division at (512) 239-3400. If there are questions pertaining to the mailing of the order, then please contact Leslie Gann of the Office of the Chief Clerk at (512) 239-3319.

Sincerely,

A handwritten signature in cursive script that reads "Bridget C. Bohac".

Bridget C. Bohac
Chief Clerk

BCB/lg

Enclosure

cc: James Boyle, Enforcement Coordinator, TCEQ Enforcement Division

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
ESPERANZA WATER SERVICE
COMPANY, INC.
RN101207371

§
§
§
§
§
§

BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2015-1491-PWS-E

At its **MAY 25 2016** agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding ESPERANZA WATER SERVICE COMPANY, INC. ("Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 341. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent presented this agreement to the Commission.

The Respondent understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, the Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. 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. The duties and responsibilities imposed by this Agreed Order are binding upon the Respondent.

The Commission makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. The Respondent owns and operates a public water supply approximately 30 miles southeast of Fabens between Interstate Highway 10 and the United States-Mexico

international border in Hudspeth County, Texas (the "Facility") that has approximately 275 service connections and serves at least 25 people per day for at least 60 days per year.

2. During a record review conducted from August 31, 2015 to September 11, 2015, TCEQ staff documented the running annual average concentrations of fluoride were 4.5 milligrams per liter ("mg/L") for the first quarter of 2015, 4.5 mg/L for the second quarter of 2015, and 4.5 mg/L for the third quarter of 2015.
3. The Respondent received notice of the violations on September 18, 2015.

II. CONCLUSIONS OF LAW

1. The Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 341 and the rules of the Commission.
2. As evidenced by Findings of Fact No. 2, the Respondent failed to comply with the maximum contaminant level ("MCL") of 4.0 mg/L for fluoride based on the running annual average, in violation of 30 TEX. ADMIN. CODE § 290.106(f)(3)(C) and TEX. HEALTH & SAFETY CODE § 341.0315(c).
3. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049, the Commission has the authority to assess an administrative penalty against the Respondent for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
4. An administrative penalty in the amount of Two Hundred Two Dollars (\$202) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. HEALTH & SAFETY CODE § 341.049(b). Two Hundred Two Dollars (\$202) of the administrative penalty is deferred contingent upon the Respondent's timely and satisfactory compliance with all terms of this Agreed Order and shall be waived only upon full compliance with all the terms and conditions contained in this Agreed Order. If the Respondent fails to timely and satisfactorily comply with any requirement contained in this Agreed Order, the deferred amount of the administrative penalty shall become immediately due and payable without demand or notice, and the Executive Director may request the Respondent to pay all or part of the deferred administrative penalty.

III. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The Respondent is assessed an administrative penalty in the amount of Two Hundred Two Dollars (\$202) as set forth in Section II, Paragraph 4 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: ESPERANZA WATER SERVICE COMPANY, INC., Docket No. 2015-1491-PWS-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. The Respondent shall undertake the following technical requirements:
 - a. Within 120 days after the effective date of this Agreed Order, complete a feasibility study, or update an existing feasibility study, and submit a written report or engineering study conducted by a Texas registered professional engineer regarding the results of the feasibility study to evaluate the necessary corrective actions designed to achieve compliance with the MCL for fluoride. The report shall include a tentative schedule describing additional studies, tests, or other methods that may be utilized for the completion of necessary corrective actions within 1,095 days after the effective date of this Agreed Order. If the Respondent purchases or sells water, a copy of the purchase water contract must be submitted with the feasibility study report or engineering study. The evaluation shall be sent to the addresses in listed in Ordering Provision No. 2.g.;
 - b. Within 135 days after the effective date of this Agreed Order, submit written certification as described in Ordering Provision No. 2.g. below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a.;
 - c. Within 180 days after the effective date of this Agreed Order, submit an acceptable written plan, including a proposed schedule, to the Executive Director that provides for the completion of an alternate water source or treatment technology to the addresses listed in Ordering Provision No. 2.g.;
 - d. Within 180 days after the effective date of this Agreed Order, and on a semi-annual basis thereafter, submit progress reports to the addresses listed in

Ordering Provision No. 2.g. below. These reports shall include information regarding actions taken to provide water which meets the MCL for fluoride;

- e. Within 195 days after the effective date of this Agreed Order, submit written certification as described in Ordering Provision No. 2.g. below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.c.;
- f. Within 1,095 days after the effective date of this Agreed Order, return to compliance with the MCL for fluoride, based on the running annual average, in accordance with 30 TEX. ADMIN. CODE § 290.106; and
- g. Within 1,110 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.f. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, 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:

Public Drinking Water Section
Water Supply Division, MC 155
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- 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. 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.
5. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to the Respondent if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
6. 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.
7. 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.
8. 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.
9. The effective date of this Order is the date it is signed by the Commission. A copy of this fully executed Order shall be provided to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Bryan W. Shaw
For the Commission

5-25-16
Date

Ronnie Morris Jr.
For the Executive Director

4/8/16
Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of ESPERANZA WATER SERVICE COMPANY, INC. I am authorized to agree to the attached Agreed Order on behalf of ESPERANZA WATER SERVICE COMPANY, INC., and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, ESPERANZA WATER SERVICE COMPANY, INC. waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

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.

Irene Epperson
Signature

February 17, 2016
Date

Irene Epperson
Name (Printed or typed)
Authorized Representative of
ESPERANZA WATER SERVICE COMPANY, INC.

Vice President
Title

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

Bryan W. Shaw, Ph.D., P.E., *Chairman*
Toby Baker, *Commissioner*
Jon Niemann, *Commissioner*
Stephanie Bergeron Perdue, *Interim Executive Director*



PWS_1150010_CO_20180724_Plan Ltr

Texas Commission on Environmental Quality

Protecting Texas by Reducing and Preventing Pollution

July 24, 2018

Mr. Abel Garcia, P.E.
CEA Group, Inc.
4712 Woodrow Bean, Suite F
El Paso, TX 79924

Re: Esperanza Water Service - Public Water System ID No. 1150010
Proposed Fluoride Reverse Osmosis (RO) Treatment System - Step 1
Engineer Contact Telephone: (915) 544-5232
Plan Review Log No. P-05092018-041
Hudspeth County, Texas

CN:601179757; RN:101207371

Dear Mr. Garcia:

On May 9, 2018, the Texas Commission on Environmental Quality (TCEQ) received planning material with your letter dated March 15, 2018 for the proposed fluoride RO treatment system - Step 1. Based on our review of the information submitted, the project generally meets the minimum requirements of Title 30 Texas Administrative Code (TAC) Chapter 290 - Rules and Regulations for Public Water Systems and is **conditionally approved for construction** if the project plans and specifications meet the following requirement(s):

1. Please note, before a new RO membrane system can be used to produce drinking water, but after the proposed RO membrane system has been constructed at the water system, a Texas-licensed professional engineer must submit an addendum to the engineering report to the Plan Review Team for review and approval. The addendum shall include the following verification data of the full-scale treatment process:
 - (A) Provide the initial baseline performance of the plant. The baseline net driving pressure, normalized permeate flow, salt rejection (or salt passage) must be documented when the reverse osmosis membrane systems are placed online;
 - (B) Provide the frequency of cleaning or membrane replacement. The frequency must be based on a set time interval or at a set point relative to baseline performance of the unit(s);
 - (C) If modeling is used as the basis for the design, provide verification of the model's accuracy. If the baseline performance evaluation shows that the modeling projection in the engineering report was inaccurate, the licensed professional engineer shall determine if the deviation from the modeled projections resulted from incorrect water quality assumptions or from other incorrect data in the model. The model shall be considered inaccurate if the overall salt passage or the required feed pressure is 10% greater than the model projection. For any inaccurate model, provide a corrected model with the addendum to the engineering report;

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

How is our customer service? www.tceq.texas.gov/goto/customersurvey

printed on recycled paper

- (D) Provide verification of plant capacity. The capacity of the reverse osmosis and nanofiltration membrane facility shall be based on the as-built configuration of the system and the design parameters in the engineering report with adjustments as indicated by the baseline performance;
 - (E) Provide a complete physical and chemical analysis of the water. The analyses shall be in accordance with §290.41(c)(3)(G) for the raw water (before any treatment), the water produced from the membrane systems, and the water after any post-treatment. Samples must be submitted to an accredited laboratory for chemical analyses;
 - (F) The calculations for sizing feed pump(s) and chemical storage tank(s) must be submitted to demonstrate that a project meets chemical feed and storage capacity requirements; and
 - (G) Submit final blending report showing compliance to all maximum contaminant levels (MCL) and secondary contaminant levels (SCL).
2. The disposals of RO concentrate shall comply with all applicable state and federal statutes and regulations and/or permit for discharging RO concentrate shall be obtained from the TCEQ, if necessary, per 30 TAC §290.42(i).

A membrane use checklist is enclosed for your use.

The submittal consisted of 3 sheets of engineering drawings and technical specifications. The approved project consists of:

RO Pretreatment:

- Three (3) raw water storage tanks;
- One (1) variable control frequency (VFD) pressure pump;
- One (1) 55-gallon anti-scalant drum with attached pump having a dosage rate between 2.0 and 5.0 milligrams per liter;
- 5-micron pre-treatment filter with stainless steel housing and a maximum loading rate of 5 gallons per minute;

RO Unit:

- One (1) RO plant treatment system:
 - Nine (9) 4M pressure vessels in a 5:3:1 array, each with four (4) Dow Filmtec XLE-440 membranes (thirty-six (36) membranes total);
 - 200 gpm feed rate;
 - 150 gpm permeate rate;

Post RO Treatment:

- Chlorination (existing)
- Blending ratio of 2/1 permeate to well water;
- Two (2) 343 gpm, 17.6 horsepower, VFD, end section pumps with 193 feet maximum total dynamic head; and
- All associated yard piping, valves, fittings, and appurtenances.

This approval is for the construction of the above listed items only. Any wastewater components contained in this design were not considered.

The Esperanza Water Service public water supply system provides water treatment.

Mr. Abel Garcia, P.E.
Page 3
July 24, 2018

The project is located at 38581 Texas 20 in Fort Hancock, Hudspeth County, Texas.

An appointed engineer must notify the TCEQ's Region 6 Office in El Paso at (915) 834-4949 when construction will start. Please keep in mind that upon completion of the water works project, the engineer or owner will notify the commission's Water Supply Division, in writing, as to its completion and attest to the fact that the completed work is substantially in accordance with the plans and change orders on file with the commission as required in 30 TAC §290.39(h)(3).

Please refer to the Plan Review Team's Log No. **P-05092018-041** in all correspondence for this project.

Please complete a copy of the most current Public Water System Plan Review Submittal form for any future submittals to TCEQ. Every blank on the form must be completed to minimize any delays in the review of your project. The document is available on TCEQ's website at the address shown below. You can also download the most current plan submittal checklists and forms from the same address.

<https://www.tceq.texas.gov/drinkingwater/udpubs.html>

For future reference, you can review part of the Plan Review Team's database to see if we have received your project. This is available on TCEQ's website at the following address:

<https://www.tceq.texas.gov/drinkingwater/planrev.html/#status>

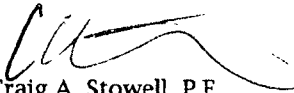
You can download the latest revision of 30 TAC Chapter 290 - Rules and Regulations for Public Water Systems from this site.

Mr. Abel Garcia, P.E.
Page 4
July 24, 2018

If you have any questions concerning this letter or need further assistance, please contact Mr. Craig A. Stowell, P.E. at (512) 239-4633 or by email at craig.stowell@tceq.texas.gov or by correspondence at the following address:

Plan Review Team, MC-159
Texas Commission on Environmental Quality
P.O. Box 13087

Sincerely,



Craig A. Stowell, P.E.
Plan Review Team
Plan and Technical Review Section
Water Supply Division
Texas Commission on Environmental Quality



Vera Poe, P.E., Team Leader
Plan Review Team
Plan and Technical Review Section
Water Supply Division
Texas Commission on Environmental Quality

VP/CAS/sg

Enclosure: "Membrane Use Checklist - Step 2"

cc: Esperanza Water Service, Attn: Ms. Lexa Dean Jobe, 1150 Southview Drive, El Paso, TX
79928-5240

MEMBRANE USE CHECKLIST (STEP 2)

Texas Commission on Environmental Quality
Water Supply Division
Plan Review Team MC-159
P.O. Box 13087, Austin, Texas 78711-3087

Public Water System I.D. No. _____
TCEQ Log No. P- _____

Any membrane treatment systems proposed for a public water supply must have plans approved by TCEQ prior to construction— see the “Membrane Construction Checklist (Step 1)”. Plans are reviewed for compliance with “Rules and Regulations for Public Water Systems” Title 30 TAC Chapter 290. After the membrane treatment system is constructed, the completion data listed below must be submitted to TCEQ for evaluation. Based on this submitted data, approval may be given for use of the membrane treatment system. Please include the TCEQ construction approval Log Number and public water system name and identification number when submitting membrane treatment system completion information. This list is not a substitute for the rules and this checklist cannot be accepted in lieu of the required engineering submittals. Failure to submit the following items may delay project approval. Copies of the rules may be obtained from **Texas Register, 1019 Brazos St, Austin, TX, 78701-2413, Phone: (512) 463-5561** or downloaded from the website: <http://www.tceq.texas.gov/rules/indxpathdf.html>

Before reverse osmosis or nanofiltration membrane systems can be used to produce drinking water, but after the reverse osmosis or nanofiltration membrane system has been constructed at the water system, the licensed professional engineer must submit an addendum to the engineering report required by paragraph (6) of this subsection to the executive director for review and approval. The addendum shall include the following verification data of the full-scale treatment process:
[§290.39(e)(7)]

1. ☐ Provide the initial baseline performance of the plant. The baseline net driving pressure, normalized permeate flow, salt rejection (or salt passage) must be documented when the reverse osmosis or nanofiltration membrane systems are placed online;
[§290.39(e)(7)(A)]
2. ☐ Provide the frequency of cleaning or membrane replacement. The frequency must be based on a set time interval or at a set point relative to baseline performance of the unit(s); [§290.39(e)(7)(B)]
3. ☐ If modeling is used as the basis for the design, provide verification of the model's accuracy. If the baseline performance evaluation shows that the modeling projection in the engineering report were inaccurate, the licensed professional engineer shall determine if the deviation from the modeled projections resulted from incorrect water quality assumptions or from other incorrect data in the model. The model shall be considered inaccurate if the overall salt passage or the required feed pressure is 10% greater than the model projection. For any inaccurate model, provide a corrected model with the addendum to the engineering report; [§290.39(e)(7)(C)]
4. ☐ Provide verification of plant capacity. The capacity of the reverse osmosis and nanofiltration membrane facility shall be based on the as-built configuration of the system and the design parameters in the engineering report with adjustments as indicated by the baseline performance; [§290.39(e)(7)(D)]
5. ☐ The calculations for sizing feed pump(s) and chemical storage tank(s) must be submitted to demonstrate that a project meets chemical feed and storage capacity requirements;
[§290.39(e)(8)]

Please be aware when you review your radiological data that if the report has gross alpha over 15 pCi/L and individual uranium isotopes are not reported, you will have to resample or reanalyze and resubmit radionuclide results. If you see gross alpha plus radium-228 over 5 pCi/L, and don't have radium-226, you will have to resample or reanalyze and resubmit complete results. For more information please see the website at the following URL:

https://www.tceq.texas.gov/drinkingwater/chemicals/radionuclides/pdw_rad.html

List of Counties where Radionuclide Testing is Required

Please be aware that we have added the requirement for analysis for **radionuclides** for high-risk counties. For elevated levels of any contaminants found in a test well, treatment or blending may be required.

COUNTY	STATE CODE#
Atascosa	007
Bandera	010
Bexar	015
Bosque	018
Brazoria	020
Brewster	022
Burnet	027
Concho	048
Culberson	055
Dallam	056
Dawson	058
Erath	072
Fort Bend	079
Frio	082
Garza	085
Gillespie	086
Gray	090
Grayson	091
Harris	101
Hudspeth	115
Irion	118
Jeff Davis	122
Jim Wells	125
Kendall	130
Kent	132
Kerr	133
Kleberg	137
Liberty	146
Llano	150
Lubbock	152

Continued	
McCulloch	154
Mason	160
Matagorda	161
Medina	163
Midland	165
Montgomery	170
Moore	171
Parker	184
Pecos	186
Polk	187
Presidio	189
Refugio	196
San Jacinto	204
San Saba	206
Tarrant	220
Travis	227
Tyler	229
Upton	231
Val Verde	233
Victoria	235
Walker	236
Washington	239
Wichita	243
Williamson	246
Zavala	254

RALPH Wm. RICHARDS
ATTORNEY AT LAW
1150 Southview Drive
El Paso, TX 79928
(915) 298-9900 [Office]
(915) 298-9992 [Fax]

May 23, 2019

VIA FEDEX

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
12100 Park 35 Circle
Austin, Texas 78753

Public Drinking Water Section
Water Supply Division, MC 155
Texas Commission on Environmental Quality
12100 Park 35 Circle
Austin, Texas 78753

Re: In the Matter of an Enforcement Action concerning Esperanza Water Service Company, Inc.
RN101207371
Agreed Order Docket No. 2015-1491-PWS-E / Entry date May 25, 2016

To Whom It May Concern:

I am writing you on behalf of Esperanza Water Service Company, Inc. ("Esperanza Water"). On the May 25, 2016, agenda, the Texas Commission on Environmental Quality (the "Commission" or "TCEQ") considered and entered an Agreed Order in the above-referenced matter.

After thoroughly investigating and testing several methods of removing fluoride from the water, pursuant to the Agreed Order, Esperanza Water Service Company, Inc., Public Water System ID No. 1150010 had its engineers, CEA Group, submit an application and planning material to the TCEQ for a proposed fluoride RO treatment system. On July 24, 2018, the TCEQ sent a letter of conditional approval for construction of the fluoride RO treatment system to Mr. Abel Garcia, P.E. at CEA Group. Since that date, additional communication has been carried on between CEA Group on behalf of Esperanza Water and the Plan Review Team and Plan and Technical Review Section. To implement this system, three new 21,000 gallon storage tanks have been added to the Esperanza Water system and an RO treatment system has been constructed and installed at Esperanza Water. We had actually anticipated being able to start the post installation operation and testing of the system by May 14, 2019, but after the installation, we found that there are additional parts for the system that needed to be ordered.

Pursuant to the Agreed Order, we were supposed to be in operation by May 25, 2019. The RO system is in place and we presently expect that it will be ready to commence the post installation start-up and testing operations by Friday, May 24, 2019, and at the latest on Tuesday May 28, 2019. At that point, we must go through and comply with the Membrane Use Checklist (Step 2) that was attached to the conditional approval for construction issued on July 24, 2018, that must be completed before the new RO Membrane system can be used for drinking water for Esperanza Water customers. We believe we will be ready to start this process no later than Tuesday, May 28, 2019.

In addition, a Texas licensed professional engineer (CEA Group) must submit an addendum to the engineering report to the Plan Review Team for review and approval. The addendum shall include the items required by the letter dated July 24, 2018, and the Membrane Use Checklist (Step 2). We therefore believe that although the RO system will be ready to start operations and commence testing within the next three to five days, realistically, it is probably going to be several weeks before we will be able to have approval from the TCEQ to provide this water to the Esperanza Water's customers.

Also, for your information, although our fluoride levels remain above 4.00 mg/l, they are not extremely high. I am attaching a copy of the reports on our wells for the laboratory testing completed by the El Paso Water Utilities International Quality Laboratory on May 13, 2019, which shows that one of our wells had a fluoride level of 4.41 mg/l and the other well had a fluoride level of 4.07 mg/l.

The purpose of this letter is to advise you that although Esperanza Water has been diligently working on this matter and is very close to having the new fluoride RO treatment system operational and approved for operation to provide water to its customers, unfortunately, it is still several weeks from having the system operational with TCEQ approval for delivery of water to its customers. Because of the deadline of May 25, 2019, imposed by the original Agreed Order, I wanted to give you an updated report and seek your input regarding any further action required by Esperanza Water at this time with regard to this matter.

I have copied the Plan Review Team and Plan and Technical Review Section Water Supply Division on this letter so that they will also be aware of our ongoing action and status. We expect that CEA Group will be making an additional submittal to the TCEQ with regard to this permit as soon as the start-up data from the RO system is available. We understand that we cannot provide this water to the utility's customers until the TCEQ has approved the addendum and additional supplemental information that CEA Group will be submitting to the TCEQ in the very near future. If you would like documentation of where we are at this time, I would be glad to submit to you photographs showing the new tanks and the RO system structure and equipment that is in place and that will commence operations for testing within the next few days.

In addition to CEA Group providing engineering services on this matter, we have contracted with and have purchased the RO system from Industrial Water Services in El Paso, Texas, and have the benefit of their expertise regarding the operation of an RO treatment system.

TCEQ
5/23/2019
Page 3 of 3

If you have any questions, need any additional information, or require any additional action from us other than the addendum which CEA Group will prepare as soon as the testing data from operation of the RO system is available, please advise us.

Very truly yours,



Ralph Wm. Richards
Attorney for Esperanza Water Service Company, Inc.

RWR/vr
Enclosure

pc: Mr. Craig A. Stowell, P.E. *(VIA FEDEX)*
Plan Review Team, MC-159
Texas Commission on Environmental Quality
12100 Park 35 Circle
Austin, Texas 78753

Mr. Abel Garcia, P.E.
CEA Group
4712 Woodrow Bean, Ste. F
El Paso, Texas 79924

Mr. Michael J. Castañeda, E.I.T.
CEA Group
4712 Woodrow Bean, Ste. F
El Paso, Texas 79924

Mr. Brian Ibarra
Industrial Water Services
4500 Turf Road
El Paso, TX 79938

ESPERANZA WATER SERVICE COMPANY, INC.
1150 Southview Drive
El Paso, TX 79928
(915) 298-9900 [Office]
(915) 298-9992 [Fax]

June 21, 2019

VIA E-MAIL: monica.larina@tceq.texas.gov

Compliance Monitoring Section, Team, Enforcement Division
Attn: Monica Larina, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

Re: **Request for Extension**
Agreed Order Docket No. 2015-1491-PWS-E
Esperanza Water Service Company, Inc.
Regulated Entity No. RN101207371

Dear Ms. Larina:

By this letter, Esperanza Water Service Company, Inc. ("EWSCO") is requesting an extension of 365 days on the following provisions of the Order referenced above entered on May 25, 2016:

- 2.f - Return to compliance with the MCL for fluoride, based on the running annual average; and
- 2.g - Submit written certification to demonstrate compliance with Ordering Provision No. 2.f

On May 23, 2019, I sent a letter to the TCEQ (copy attached) outlining our efforts since 2016 to address the fluoride issue. As indicated in that letter, on July 24, 2018, our engineers received conditional approval for construction of the fluoride RO treatment system. Pursuant thereto, we have installed three additional 21,000 gallon tanks and now have eight storage tanks in place at the site where the RO system is installed, which will give us 160,000 gallons of storage.

The RO system is installed and we have done initial operations, including a 36-hour run so the required water samples could be taken. As I reported to you on Wednesday, the El Paso Water Utility International Water Quality Laboratory lost some of the samples that were submitted on June 3, 2019, so we were required to submit additional samples that were delivered to the laboratory on June 11, 2019. We were told by the laboratory that the preliminary results were good and we should have the final results by June 24, 2019.

Our engineers are in the process of putting together the information required by the Membrane Use Checklist (Step 2). Although there are still a couple of items we have questions on, our engineers should be ready to submit the required Addendum to the Engineering Report by June 27, 2019, for TECQ's review and approval.

We have determined that our operators are required to have the training course for a reverse osmosis membrane system that operators are now required to have under Item 9 of the Membrane Use Checklist. The operator that we have at this time was the same operator who took care of that system for many years. We will get the required training as soon as a course is available. For over 15 years, up until January 2014, EWSCO previously operated and used a reverse osmosis treatment system. Industrial Water Services, who constructed and installed our new RO system and services it, is the same company that we used when we previously operated an RO system. They have very qualified and knowledgeable personnel regarding reverse osmosis systems and while I am not sure if they have a Class "C" operator's license, they would be qualified to oversee and supervise our operators until they have obtained the required TCEQ training. Our engineers are presently seeking clarification from the TCEQ regarding several items listed on the Membrane Use Checklist (Step 2).

Subject to the TCEQ's review of the information submitted under the Membrane Use Checklist (Step 2), including the Addendum to the Engineering Report, we anticipate that we will be ready to start use of the RO system and to provide water from the RO system to our customers sometime in July 2019, depending on when we receive a response from the TCEQ to our submittal under the Membrane Use Checklist (Step 2).

Another item that has arisen is that we are applying for an alternate permit for disposing of the industrial waste water from the RO operation and believe that that may take some additional time to get approved.

Since August 2018, Esperanza Water Service Company has been diligently pursuing construction of the facilities required for the reverse osmosis system. This includes ordering three additional tanks for which there was some delay in production because of the demand for similar types of tanks in the oil fields. The RO system was constructed and placed in a 40 ft. container so that it could be constructed in El Paso and moved to the site for installation. It is presently in place, operational, and has been used to perform the pre-start testing and test runs so that the water samples could be taken. Again, constructing these facilities inside the container and then getting the container in place and plumbed into our system required considerable work and time. As many times occurs with these types of projects, there are items that arise during the course of construction and start-up which may result in delays that were not anticipated. While we had originally anticipated we would be operating by May, we had some issues on the start-up of the RO system and had to order some additional parts and have had several other issues arise in the last month that we had not anticipated just like the delays we have had in the last couple of weeks regarding the issues getting the results from the water testing that is required for start-up.

Compliance Monitoring Section, Team, Enforcement Division
Attn: Monica Larina, MC 149A
6/21/2019
Page 3 of 3

We believe that subject to TCEQ approval are now just a few weeks away from being able to provide our customers with water that will be fully compliant.

In addition to my letter of May 23, 2019, attached are photographs showing the total of eight storage tanks at this site, the RO system container, and the system in the container. Since this is a remote location, we have a remote reporting system that immediately alerts three people on their cell phones if the RO system does not start when it receives a signal from the tank probes. This is very similar to the system that we have had at the wells since 2014 and it has worked very well for us.

We understand that although we expect to have the system operational within the next two to four weeks, we will still have a reporting requirement for four quarters after we commence operations to show that we are maintaining compliance with the MCL for fluoride based on a running annual average.

If you have any questions or require additional information to consider our request for a 365-day extension on Items 2.f and 2.g, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink that reads "Ralph Wm Richards". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Ralph Wm. Richards
Attorney Esperanza Water Service Co., Inc.

RWR/vr
Enclosures

7 : 5
Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Toby Baker, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

July 17, 2019

Ms. Irene Epperson, Vice President
Esperanza Water Service Company, Inc.
1150 Southview Drive
El Paso, Texas 79928

Re: Amended Schedule for Compliance with Ordering Provisions
Esperanza Water Service Company, Inc.; RN101207371
Docket No. 2015-1491-PWS-E; Enforcement Case No. 51355
Agreed Order Effective Date: May 25, 2016

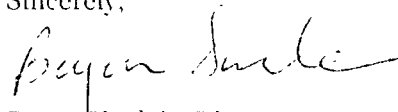
Dear Ms. Epperson:

We are in receipt of a letter dated June 21, 2019, from Mr. Ralph Wm. Richards, Attorney, which requested an amended schedule for completion of Ordering Provision Nos. 2.f and 2.g of the above-referenced Agreed Order. The request also provided specific reasons for delays.

Based upon the reviewed information, we approve an amended schedule as requested. The new deadline for compliance with Ordering Provision Nos. 2.f and 2.g is June 21, 2020, provided interim progress reports are submitted by October 21, 2019 and February 21, 2020.

Thank you for your continuing efforts to achieve compliance. If you have any questions, please contact Ms. Monica Larina of the Enforcement Division staff at (512) 239-0184.

Sincerely,



Bryan Sinclair, Director
Enforcement Division

cc: Ms. Lexa Dean Jobe, President, Esperanza Water Service Company, Inc., 2501 Museum
Way, Apartment 502, Fort Worth, Texas 76107
Mr. Ralph Wm. Richards, Attorney, Esperanza Water Service Company, Inc., 1150
Southview Drive, El Paso, Texas 79928

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Toby Baker, *Executive Director*



PWS_1150010_CO_20200228_Plan Ltr

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

February 28, 2020

Mr. Abel Garcia, P.E.
CEA Group
4712 Woodrow Bean, Suite F
El Paso, TX 79924

Re: Esperanza Water Service - Public Water System ID No. 1150010
Reverse Osmosis (RO) Step 2, Disinfection System, and pH Adjustment
Engineer Contact Telephone: (915) 544-5232
Plan Review Log No. P-12272019-150
Hudspeth County, Texas

CN: 601179757; RN: 101207371

Dear Mr. Garcia:

On December 27, 2019, the Texas Commission on Environmental Quality (TCEQ) received planning material with your letter dated December 19, 2019 for the RO Use Step 2, disinfection system, and pH adjustment. Based on our review of the information submitted, the project generally meets the minimum requirements of Title 30 Texas Administrative Code (TAC) Chapter 290 - Rules and Regulations for Public Water Systems and is **conditionally approved for construction** if the project plans and specifications meet the following requirement(s):

- This submittal constitutes notification of the addition of a treatment as required by 30 TAC Section 290.117(i)(9)(B). In accordance with 30 TAC Section 290.117(d)(2)(E) systems that change treatment may be required by the TCEQ to conduct additional monitoring to ensure that the system maintains minimal levels of corrosion. Based upon this addition of a new or change in treatment, the TCEQ is removing any previous approvals for reduced Lead and Copper Rule monitoring frequency and requiring your system to return to routine sampling for two consecutive six-month periods. **The new monitoring schedule will begin July 1, 2021.**

The sampling needs to be reflective of the new treatment installed. If the treatment changes are not going to be installed and operational prior to the start of the new monitoring period, please fill out the enclosed Notification of Delay in Treatment Installation Form. Please submit the completed form to the TCEQ at the following address:

Texas Commission on Environmental Quality
Lead and Copper Program MC-155
PO Box 13087
Austin, Texas 78711-3087