

WATER DISCONNECTION AGREEMENT

THIS AGREEMENT is made and entered into by and between RCH Water Supply Corporation, hereinafter referred to as "WSC" and the City of McLendon-Chisholm, Texas ("City") on December 9, 2014, 2014 ("Effective Date") regarding the disconnection of retail water service for failure to pay the City's sewer service. The City and WSC are collectively referred to herein as the "Parties."

RECITALS

WHEREAS, the City will own and operate the sewer system for the Sonoma Verde development, which is located in the Sonoma Verde Public Improvement District ("PID"); and

WHEREAS, WSC will provide water service to the same Sonoma Verde development located in the PID; and

WHEREAS, on January 8, 2014, WSC and the City entered into a License Agreement between RCH Water Supply Corporation and the City of McLendon-Chisholm, Texas and agreed to execute a written agreement between the entities providing that the WSC will disconnect water to customers within the PID for non-payment of sewer service; and

WHEREAS, the Parties agreed to execute the disconnection agreement prior to any customers within the PID being connected to the water or sewer systems; and

WHEREAS, Texas Water Code § 13.147 authorizes the Parties to execute such an agreement that provides for the termination of water service for non-payment of sewer service; and

WHEREAS, Texas Water Code § 13.250 authorizes the WSC to disconnect water service for the failure to pay the City charges for the City's sewer service;

NOW THEREFORE, the City and WSC agree as follows:

1. **Disconnection of Services.**

- a. WSC will disconnect water service to any WSC water customer within the PID for non-payment of the customer's wastewater bill, and all associated fees and penalties, if:
 - i. The City, or its third party operator, provides the WSC with a copy of the written termination of service notification to the customer stating that, in compliance with the City's ordinances, the customer has not paid the customer's wastewater bill and that water and wastewater service will be terminated within ten (10) days if the bill is not paid;

- ii. The written termination of service notification was mailed to the customer by certified mail;
 - iii. Ten (10) days have passed from the date of the written termination of service notification;
 - iv. The City, or its third party operator, has placed the written termination of service notification on the front door of the customer at least 24 hours prior to termination of service; and
 - v. The City, or its third party operator, has provided the WSC with a written statement that the City has not received payment from the customer.
- b. WSC will disconnect service to the delinquent customer by the close of business the next business day after receipt of the notice during the business hours as determined by WSC. Business hours for purposes of this Agreement will not include hours on Friday, weekends, or other holidays as designated by the WSC. The WSC will provide the City and its third party operator with written notice that the disconnection of water service has been completed.
- c. Except as otherwise required by law, or as agreed to by the City, the WSC shall not provide water service to the disconnected customer until the WSC receives written notification from the City, or its third party operator, that the delinquent wastewater bill, along with all associated fees and penalties, has been paid.
- d. The WSC is not obligated to collect any delinquent sewer bills on behalf of the City. If any sewer customer of the City's attempts to pay a delinquent sewer bill to the WSC, the WSC will direct the City's sewer service customers to the payment locations provided to the WSC by the City.
- e. Upon payment to the City of the delinquent bill and all associated fees and penalties, the City shall notify the WSC in writing and by email that the WSC may reconnect water service. Delinquent payments shall be made at the City Hall.

2. **Compensation.**

- a. As compensation for the performance of services described in Paragraph 1 of this Agreement, the City shall pay the WSC a service trip fee for each disconnection and reconnection of service performed. Said service trip fee shall be set by WSC, but shall in no case be more than the maximum allowed by law. Within 10 days after the effective date of any change in the WSC's service trip fee, the WSC shall provide the City with written notice of such change.

- b. Nothing in this Agreement prohibits the WSC from charging and collecting disconnection and reconnection fees related to the customer's failure to pay water service to the WSC.
 - c. The City shall remit payment for any disconnection and reconnection service trips performed by the WSC on the City's behalf within thirty (30) days after the City collects the fee from the customer.
 - d. In those cases where (1) the customer is delinquent on his or her sewer bill, but is current on his or her water bill, (2) WSC has terminated water service in accordance with this Agreement, and (3) the customer breaks or otherwise damages the water meter and/or barrel lock in order to restore water service, the City shall pay WSC for the damaged water and/or barrel lock. Nothing in this Agreement prohibits the City from taking all actions necessary to recoup the cost of the damaged water meter and/or barrel lock from the customer. In the event a customer damages a water meter and/or barrel lock in an effort to restore service, WSC agrees it will take all actions required to discontinue water service to the customers unless and until the customer has paid to the City his or her delinquent bills, the Late Penalty Fee, any service trip fees, and the costs of the damaged water meter and/or barrel lock.
3. **Defense and Hold Harmless.** WSC shall not be liable or responsible for, and the City agrees to defend, save, and hold harmless WSC, to the maximum extent authorized by law, from and against any and all suits, actions, losses, damages, claims, or liability of any character, type, or description, including all expenses of litigation, court costs, and attorney's fees of any kind, including for injury or death to any person, or injury to any property, received or sustained by any person or persons, or property, arising out of, or occasioned by, directly or indirectly, the performance of the services described in Paragraph 1, except to the extent such claims or damages arise from WSC's breach of this Agreement, or the gross negligence, strict liability, or willful misconduct of WSC. The WSC shall have no responsibility or liability for the billing and collection of monthly payments for the City's sewer customers.
4. **Term.** Unless terminated by mutual agreement of the parties hereto, this Agreement shall continue in full force and effect until such time as WSC no longer provides water service to customers in the PID.
5. **Effect of Force Majeure.** In the event either party is rendered unable by force majeure to carry out any of its obligations under this Agreement, in whole or in part, then the obligations of that party, to the extent affected by the force majeure shall be suspended during the continuance of the inability, provided however, that due diligence is exercised to resume performance at the earliest practical time. As soon as reasonably possible after the occurrence of the force majeure relied upon to suspend performance, the party whose contractual obligations are affected thereby shall give notice and full particulars of the force majeure to the other party. The cause, as far as possible, shall be remedied with all reasonable diligence. The term "force majeure" includes acts of God, strikes, lockouts or

other industrial disturbances, acts of the public enemy, orders of the government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and civil disturbances, explosions, breakage, or accidents to equipment, pipelines, or canals, and any other incapacities of either party, whether similar to those enumerated or otherwise, that are not within the control of the party claiming the inability and that could not have been avoided by the exercise of due diligence and care. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty and that the requirement that any force majeure be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party if the settlement is unfavorable to it in the judgment of the party having the difficulty.

6. **Notices.** Any notice or communication including any required documents or instruments required or permitted hereunder shall be in writing and shall be deemed to be delivered, (i) whether actually received or not, three (3) days after it was deposited in the United States mail, postage fully prepaid, registered or certified mail, addressed to the intended recipient at the address below, (ii) when sent via facsimile with the sender retaining a confirmation thereof, (iii) when received via hand courier service, or (iv) the day after sent, if sent by overnight delivery service such as Federal Express, Lone Star or Airborne. Any address for notice may be changed by written notice so given.

Any notice mailed to the WSC shall be addressed:

RCH Water Supply Corporation
P.O. Box 2034
Rockwall, TX 75087
Telephone: (972) 722-3203
Facsimile: _____

Any notice mailed to City shall be addressed:

City of McLendon-Chisholm
ATTN: City Administrator
1248 S. Hwy 205
McLendon-Chisholm, TX 75032
Telephone: (972) 524-2077
Facsimile: (972) 524-9128

Either party may change the address for notice to it by giving notice of such change in accordance with the provisions of this paragraph.

7. **Severability.** The provisions of this Agreement are severable, and if any word, phrase, clause, sentence, paragraph, section, or other part of this Agreement or the application thereof to any person or circumstance shall ever be held by any court of competent

jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such word, phrase, clause, sentence, paragraph, section, or other part of this Agreement to other persons or circumstances shall not be affected thereby and this Agreement shall be construed as if such invalid or unconstitutional portion had never been contained therein.

8. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties relative to the subject matter of this Agreement. All prior agreements, covenants, representations, or warranties, whether oral or in writing, between the parties are merged herein.
9. **Amendment.** No amendment of this Agreement shall be effective unless and until it is duly approved by each party and reduced to a writing signed by the authorized representatives of the WSC and the City, respectively, which amendment shall incorporate this Agreement in every particular not otherwise changed by the amendment.
10. **Governing Law.** This Agreement shall be construed under and in accordance with the laws of the State of Texas and all obligations of the parties are expressly deemed performable in Rockwall County, Texas.
11. **Venue.** Venue for any suit arising hereunder shall be in Rockwall County, Texas.
12. **Successors and Assigns.** This Agreement shall be binding on and shall inure to the benefit of the successors and assigns of the parties.
13. **Assignability.** This Agreement is not transferable and may not be assigned.
14. **Effective Date.** This Agreement shall be effective from and after the date of due execution by all parties.
15. **Mediation.** Prior to the institution of legal action by either party related to any dispute arising under this Agreement, said dispute shall be referred to mediation within 15 days after written notice from a party requesting same by an independent mediator mutually agreed upon by both parties. The cost of the mediator shall be shared equally by both parties.

IN WITNESS HEREOF, EXECUTED by WSC and the City under the authority of their respective governing bodies in Duplicate Originals on the dates indicated below,

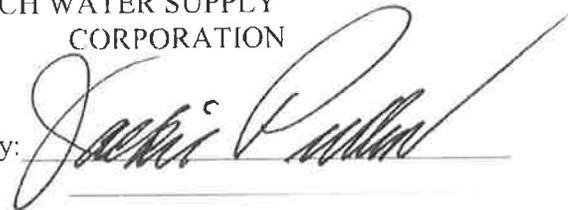
CITY OF MCLENDON-CHISHOLM,
TEXAS

By:


Mayor of McLendon-Chisholm

RCH WATER SUPPLY
CORPORATION

By:



Date: 12/9/14

Date: _____

ATTEST:

ATTEST:

D. Jensen
City Secretary

Chris A. Lowe
RCH Water Supply Corporation
Secretary

