

**LICENSE AGREEMENT BETWEEN
RCH WATER SUPPLY CORPORATION AND
THE CITY OF MCLENDON-CHISHOLM, TEXAS**

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"), which created the Sonoma Verde Public Improvement District ("PID") on September 9, 2007 by Resolution No. 2007-21. The City and WSC may be collectively referred to herein as the "Parties."

RECITALS

WHEREAS, MC 550 Investors, L.P., hereinafter referred to as "Developer," and WSC are entering a Water Service Agreement; ("Water Service Agreement");

WHEREAS, Developer is engaged in developing that certain 550.39 acres of land in City (the "Property") as shown in the Water Service Agreement, for a project called Sonoma Verde ("Sonoma"); and Phase I of Sonoma is depicted in the Water Service Agreement;

WHEREAS, WSC owns and operates a water system which supplies potable water for human consumption and other domestic uses to customers within its service area;

WHEREAS, WSC owns and operates two 8" water lines in the vicinity of the Property;

WHEREAS, Developer has requested WSC to provide water service to Phase I in the amount of the water needed for the uses in Phase I; Developer has also requested WSC to provide water service to the remainder of Sonoma, which WSC will do if it has the water capacity to do so at the times that service is requested for additional phases of Sonoma ("Phases");

WHEREAS, the Water Service Agreement addresses the provision of water service to the Property;

WHEREAS, Developer has requested the City to provide wastewater service to the Property; and

WHEREAS, the Property is being developed in part with financing from the PID; and the PID funds will be used for the Sonoma Verde Improvements, which public financing requires that the Sonoma Verde Improvements be owned by the City; and the City is willing to grant a license to the WSC for use of the Sonoma Verde Improvements on terms mutually acceptable to the parties, so that WSC has the right to use the Sonoma Verde Improvements to provide water service to Phase I on WSC's standard terms as provided herein;

NOW, THEREFORE, for and in consideration of the foregoing mutual benefits, covenants, and agreements herein expressed and other good and valuable consideration, the receipt of which is hereby acknowledged, the City and WSC agree as follows:

TERMS OF AGREEMENT

(1) The Sonoma Verde Improvements shall mean those water system improvements that are part of the Authorized Improvements as defined by Resolution 2007-21 of the City and whose design, acquisition and construction are funded with the use of PID Assessments. The Sonoma Verde Improvements shall be engineered and designed by a Texas Registered Professional Engineer in accordance with the applicable specifications of the City and WSC and all governmental agencies having jurisdiction. All plans and specifications must be reviewed and approved by WSC's consulting engineer prior to the issuance of any request for bids for the construction of the Sonoma Verde Improvements, which approval will not be unreasonably withheld, delayed or conditioned. After such approval of the plans and specifications by the WSC's consulting engineer, the plans and specifications shall become part of this Agreement by reference and shall more particularly define "the Sonoma Verde Improvements." Any future improvements to the Sonoma Verde Improvements shall become part of the Sonoma Verde Improvements as defined in this paragraph.

(2) **Oversizing Lines**

A. The Sonoma Verde Improvements will be sized to provide continuous and adequate water service to the applicable Phase of the Property based on plans for the development of the applicable Phase provided to WSC by the Developer. WSC may oversize the Sonoma Verde Improvements to serve other customers of WSC outside of the Property, subject to the obligation to reimburse the Developer for any such oversizing as provided below. WSC shall not bear any costs of construction of the Sonoma Verde Improvements. All costs for the Sonoma Verde Improvements shall be paid in accordance with the Water Service Agreement.

B. If WSC has required the Sonoma Verde Improvements to be oversized in anticipation of the needs of the other customers of WSC, WSC shall reimburse Developer for the additional costs of construction attributable to the oversizing in accordance with the Developer's agreement with WSC.

(3) **Repairs and Maintenance.**

A. Once constructed and after a one year warranty period, WSC shall have full responsibility for the operation and maintenance of the Sonoma Verde Improvements. WSC shall be responsible for any normal repairs from normal system operations to the Sonoma Verde Improvements, such as leak repairs, motor replacements due to ordinary wear and tear, and tank painting. Notwithstanding the foregoing, and except as provided herein, expenses for capital improvements, system failures, extraordinary repairs, or line replacement costs for the Sonoma Verde Improvements shall be at the sole cost of the City. For purposes hereof, if a before described expense is greater than or equal \$1,500, it will be deemed a capital cost borne by the City ("Capital Cost Threshold"), and if such expense is less than \$1,500 it will be deemed an operation expense borne by the WSC. If the WSC elects to oversize any Sonoma Verde Improvements as provided by Paragraph 2.B, the WSC shall pay to the City the WSC's pro rata share of any expenses from capital improvements to those oversized Sonoma Verde Improvements exceeding the Capital Cost Threshold.

B. By July 31st of each year, the WSC shall provide the City with a report listing the repairs that were made to the Sonoma Verde Improvements during the previous twelve (12) month period and describing any capital improvements, extraordinary repairs, or line replacements that the WSC anticipates will need to be made during the next twelve month period. In the event the WSC determines that a capital improvement must be made that was not anticipated in the annual report, the WSC shall supplement the annual report as soon as practicable. The WSC shall work with the City in prioritizing the capital improvement projects proposed, and in developing plans to complete the capital improvements in a cost-effective manner and in a time period that is mutually agreeable to the parties and that ensures continuous and adequate service is provided to the customers served by the Sonoma Verde Improvements. Any capital improvements shall be engineered and designed by a Texas Registered Professional Engineer in accordance with the applicable specifications of the City and WSC and all governmental agencies having jurisdiction. The plans and specifications must be reviewed and approved by WSC's consulting engineer prior to the issuance of any request for bids for the construction of the capital improvements, which approval will not be unreasonably withheld, delayed or conditioned.

C. In the event the WSC must make capital improvements to the Sonoma Verde Improvements not anticipated in the annual report in order to protect with integrity water system or protect the public health and safety, the WSC shall notify the City Administrator of the City, or his or her designee, as soon as practicable, but no later than twenty-four (24) hours after determining the repairs are required. The City will reimburse the WSC for these costs of these repairs.

D. The City and the WSC shall comply will applicable procurement requirements and bidding requirements for any capital improvements made to the Sonoma Verde Improvements.

(4) **Consideration.** The parties stipulate that the obligations, rights, and benefits provided herein are mutual and supported by adequate consideration.

(5) For and in consideration of the mutual agreements contained herein, the City hereby grants WSC the right to use the Sonoma Verde Improvements for the provision of water service to its customers served from the Sonoma Verde Improvements. WSC agrees to execute a written agreement with the City, on terms mutually agreeable to the Parties, providing that WSC will disconnect water to a customer within the PID for non-payment of sewer service. The Parties shall execute such agreement prior to any customers within the PID being connected to the water or sewer systems.

(6) **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 service to customers in any Phase of the Property.

(7) **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.

(8) **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

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.

(9) **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.

(10) **Indemnification of City.** The WSC and the City agree to indemnify and hold harmless each other and their respective officers, employees, agents and other licensees from any liability, damage, claims, costs and demands whatsoever, including reasonable attorney's fees and expenses, arising out of the conduct of, or the use of the Sonoma Verde Improvements by the other party, or their respective employees, agents, or contractors.

(11) **Exclusive Rights.** This rights granted to the WSC hereunder shall be on an exclusive basis.

(12) **Entire Agreement.** This Agreement, including any exhibits attached hereto and made a part hereof, 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.

(13) **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.

(14) **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.

(15) **Venue.** Venue for any suit arising hereunder shall be in Rockwall, County, Texas.

(16) **Successors and Assigns.** This Agreement shall be binding on and shall inure to the benefit of the successors and assigns of the parties.

(17) **Assignability.** This License is not transferable and may not be assigned.

(18) **Effective Date.** This Agreement shall be effective from and after the date of due execution by all parties.

(19) **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: Gay Z. Moody
Mayor of McLendon-Chisholm

Date: 12/10/13

ATTEST:

[Signature]
City Secretary

RCH WATER SUPPLY
CORPORATION

By: Jackie Pullen

Date: 1-8-14

ATTEST:

[Signature]
RCH Water Supply Corporation
Secretary

