

MEMORANDUM

KINGSVILLE, TEXAS 78364-1701

TO: South Texas Water Authority Board of Directors
FROM: Kathleen Lowman, President
DATE: January 2, 2019
SUBJECT: Meeting Notice and Agenda for the South Texas Water Authority

A Special Meeting of the STWA Board of Directors is scheduled for:

Tuesday, January 8, 2019
5:30 p.m.
South Texas Water Authority
2302 East Sage Road, Kingsville, Texas

This meeting notice was posted on STWA's website, www.stwa.org, and on indoor and outdoor bulletin boards at STWA's administrative offices, 2302 East Sage Road, Kingsville, Texas at 2:30 pm on January 4, 2019.
Orlando De Leon
Assistant Secretary

The Board will consider and act upon any lawful subject which may come before it, including among others, the following:

Agenda

1. Call to order.
2. Citizen comments. This is an opportunity for citizens to address the Board of Directors concerning an issue of community interest that is not on the agenda. Comments on the agenda items must be made when the agenda item comes before the Board. The President may place a time limit on all comments. The response of the Board to any comment under this heading is limited to making a statement of specific factual information in response to the inquiry, or, reciting existing policy in response to the inquiry. Any deliberation of the issue is limited to a proposal to place it on the agenda for a later meeting.
3. Swearing in of Kleberg County Appointee to replace Chuck Schultz (Place 3).
4. License Agreement with City of Bishop for Pump Station Facilities – The South Texas Water Authority Board will meet with the Bishop City Council to discuss and take action on the License Agreement provided to the City's legal counsel on December 13, 2018. (Attachment 1)
5. Wholesale Water Supply Contract with the City of Bishop – The South Texas Water Authority Board will meet with the Bishop City Council to discuss and take action on the redline contract version of the Wholesale Water Supply Contract dated November 14, 2018 and provided to the City's legal counsel on December 13, 2018. (Attachment 2)
6. Adjournment.

The Board may go into closed session at any time when permitted by Chapter 551, Government Code. Before going into closed session a quorum of the Board must be assembled in the meeting room, the meeting must be convened as an open meeting pursuant to proper notice, and the presiding officer must announce that a closed session will be held and must identify the sections of Chapter 551, Government Code, authorizing the closed session.

KL/CGS/fdl
Attachments

ATTACHMENT 1

License Agreement
City of Bishop – Pump Station Facilities

LICENSE AGREEMENT

STATE OF TEXAS

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KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF NUECES

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The City of Bishop, Texas, a political subdivision of the State of Texas, situated in Nueces County, Texas (the "City"), and South Texas Water Authority, a governmental agency, conservation and reclamation district and body politic and corporate, having been created under Chapter 436 Acts of the 66th Legislature, Regular Session, 1979 of the Laws of the State of Texas, all pursuant to Article XVI, Section 59 of the Texas Constitution (the "Licensee"), hereby enter into this License Agreement (the "Agreement") effective as of the _____ day of _____, 2018, upon the terms and conditions set forth below.

I. PURPOSE OF LICENSE AGREEMENT

The City, for and in consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration paid to it by Licensee, the receipt and sufficiency of which is hereby acknowledged, does hereby grant to Licensee, its employees, members, invitees, guests, and contractors, a license to use the property at 333 North Birch Avenue, Bishop, Texas 78343 (the "Licensed Property"), only as follows:

For installation, construction, operation, maintenance, repair, replacement or removal of a building housing pumps, two (2) pumps currently not in service, a SCADA system, two small buildings with chlorination and LAS systems and all associated motors, controls, piping, valves, electrical wiring and equipment and other appurtenances (together, the "Licensed Improvements").

The City makes this grant solely to the extent of its right, title and interest in the Licensed Property, without express or implied warranties.

II. ANNUAL FEE

The City, its governing body, and its respective successors and assigns acknowledge and agree that an annual fee of \$1.00 shall be assessed for the license and permission herein granted to Licensee. Licensee agrees to pay such annual fee within thirty (30) days of receipt of an invoice for same.

III. CITY'S RIGHT TO LICENSED PROPERTY

This Agreement is expressly subject and subordinate to the present and future right of the City, its successors, assigns, lessees, grantees, and licensees, to enter upon the Licensed Property for any purpose including, but not limited to, the construction, installation, establishment, repair, maintenance, and/or operation and renewal of any public utilities.

Nothing in this Agreement shall be construed to limit, in any way, the City's ownership interest in the Licensed Property.

IV. INSURANCE

Licensee, shall, at its sole expense, provide a commercial general liability insurance policy, written by a company acceptable to the City and licensed to do business in Texas, with a combined single limit of not less than One Million and No/100 Dollars (\$1,000,000.00), which coverage may be provided in the form of a rider and/or endorsement to a previously existing insurance policy. Such insurance coverage shall specifically name the City as an additional insured. This insurance coverage shall cover all perils arising from the activities of Licensee, its officers, directors, employees, agents or contractors, relative to this Agreement. Licensee shall be solely responsible for the payment of any deductibles stated in the policy. A true copy of each instrument affecting such coverage shall be delivered to the City. So long as Licensee is using the Licensed Property, Licensee shall not cause such insurance to be cancelled nor permit such insurance to lapse. All insurance certificates shall not be reduced, restricted, or otherwise limited until ninety (90) days after the City has received written notice thereof as evidenced by a return receipt of registered or certified mail.

V. INDEMNIFICATION

To the extent permitted by Texas law, Licensee shall indemnify, defend, and hold harmless the City and its officers, agents, and employees against any and all claims, suits, demands, judgments, and expenses, including attorney's fees, including, but not limited to, liability for personal injury, death or damage to any person or property which is caused by Licensee's actions and inactions in installing, constructing, operating, maintaining, repairing, replacing, and/or removing the Licensed Improvements on the Licensed Property. This indemnification provision, however, shall not apply to any claims, suits, damages, costs, losses or expenses (i) for which the City shall have been, or is entitled to be compensated by insurance provided under Article IV above, or (ii) which are proximately caused by the sole negligent or willful acts of the City, its agents, employees, or contractors; provided, however, that for the purposes of the foregoing, the City's act of entering into this Agreement shall not be deemed to be a "negligent or willful act."

VI. CONDITIONS

- A. Licensee's Responsibilities. Licensee, at Licensee's sole cost and expense, shall be responsible for the installation, construction, operation, maintenance, repair, replacement, and removal of the Licensed Improvements and for any costs arising therefrom, including but not limited to relocation of Licensed Improvements. Further, in the event Licensee fails to maintain, repair or remove damaged Licensed Improvements (if beyond maintenance or repair), Licensee shall reimburse the City within ninety (90) days of written demand for all reasonable costs of maintaining, replacing, repairing, or relocating any Licensed Improvements. Notwithstanding the foregoing, no repairs or replacements will be made with respect to the pumps previously used to serve the City without payment of the costs thereof by the City.
- B. Maintenance. Licensee expressly agrees to maintain the Licensed Property at Licensee's sole cost and expense for the duration of the license.
- C. Modification. Licensee agrees that the modification of any improvements on the Licensed Property must be approved in writing by the City prior to any such modification.

- D. Default. In the event that Licensee fails to maintain the Licensed Property or otherwise comply with the terms or conditions as set forth herein, then the City shall give Licensee written notice thereof, by registered or certified mail, return receipt requested to the address set forth below. Licensee shall have thirty (30) days from the date of receipt of such notice to remedy the failure complained of and, if Licensee does not satisfactorily remedy the same within the thirty-day period, the City may perform the work or contract for the completion of the work. Licensee agrees to pay within thirty (30) days of written demand by the City, all costs and expenses incurred by the City in completing the work.

VII. TERM

This Agreement shall become effective on the date set forth in the introductory paragraph of this Agreement, and the Licensed Party shall continue thereafter for so long as the Licensed Property shall be used for the purposes set forth herein, or unless otherwise terminated in accordance with Article VIII.

VIII. TERMINATION

- A. Termination by Abandonment. If Licensee abandons the use of all or any part of the Licensed Property for such purposes set forth in this Agreement, this Agreement as to such portion or portions abandoned, shall expire and terminate following thirty (30) days' written notice to the Licensee. The City shall thereafter have the right to enter the Licensed Property and any rights of the Licensee shall be terminated as of the date of the abandonment. All installations of Licensee not removed shall be deemed property of the City as of the time abandoned, and all such direct or indirect costs and expenses incurred by the City shall be the obligation of Licensee to pay to the City in full within thirty (30) days of receipt of the City's statement.
- B. Termination by the Licensee. This Agreement may be terminated by the Licensee by delivering written notice of termination to the City not later than thirty (30) days before the effective date of the termination. If the Licensee so terminates, then Licensee may remove the Licensed Improvements installed by the Licensee. In the event the Licensee fails to remove such Licensed Improvements on or before the expiration of ninety (90) days after the effective date of such termination, the Licensed Improvements will be retained by the City, and all such direct or indirect costs and expenses incurred by the City shall be the obligation of Licensee to pay to the City in full within thirty (30) days of receipt of the City's statement.
- C. Termination by the City. This Agreement may be terminated by the City by delivering written notice of termination to the Licensee not later than thirty (30) days before the effective date of the termination. If the City so terminates, then the Licensee shall remove the Licensed Improvements installed by the Licensee. In the event the Licensee fails to remove such Licensed Improvements on or before the expiration of three (3) years after the effective date of such termination, the Licensed Improvements will be retained by the City, and all such direct or indirect costs and expenses incurred by the City shall be the obligation of Licensee to pay to the City in full within thirty (30) days of receipt of the City's statement.

IX. APPLICATION OF LAW; ENTIRE AGREEMENT & SEVERABILITY

This Agreement shall be governed by the laws of the State of Texas. This Agreement embodies the complete agreement of the parties hereto, superseding all prior oral and written agreements between the parties with respect to the subject matter in this Agreement. If the final judgment of a court of competent jurisdiction invalidates any part of this Agreement, then the remaining parts shall be enforced, to the extent possible, consistent with the intent of the parties as evidenced by this Agreement.

X. VENUE

Venue for all claims and lawsuits concerning this Agreement shall be in Nueces County Texas.

XI. COVENANT RUNNING WITH THE LAND: WAIVER OF DEFAULT

This License Agreement and all of the covenants herein shall run with the land; therefore, the conditions set forth herein shall inure to and bind each party's successors and assigns. Either party may waive any default of the other at any time, without affecting or impairing any right arising from any subsequent or other default.

XII. ASSIGNMENT

Licensee shall not assign, sublet or transfer its interest in this Agreement without the prior written consent of the City.

XIII. NOTICES

All notices, demands and requests for delivery of documents or information hereunder shall be in writing and shall be deemed to have been properly delivered and received as of the time of delivery if personally delivered, as if the date and time deposited in the mail system if sent by United States certified mail, return receipt requested, and postage paid, or as of the time of delivery by Federal Express (or comparable express delivery system) if sent by such method with all costs prepaid. All notices, demands, and requests shall be addressed:

To Licensee at: South Texas Water Authority
Attn: Executive Director
P.O. Box 1701
Kingsville, Texas 78364

To City at: City of Bishop
Attn: City Secretary
203 E. Main Street
Bishop, Texas 78343

Or to such other address which either party may so designate by sending notice as aforesaid.

XIV. EXECUTION IN COUNTERPARTS

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall be construed as one of the same instrument.

TERMS AND CONDITIONS ACCEPTED this the _____ day of _____, 2018.

CITY:

City of Bishop

Tem Miller, Mayor

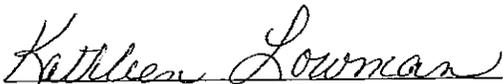
ATTEST:

Cynthia L. Contreras, City Secretary

[CITY'S SEAL]

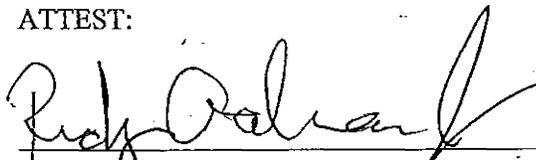
LICENSEE:

South Texas Water Authority



Kathleen Lowman, President, Board of Directors

ATTEST:



Rudy Galvan, Secretary, Board of Directors

[AUTHORITY'S SEAL]

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF NUECES §

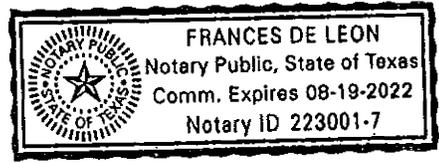
This instrument was acknowledged before me on the _____ day of _____, 2018, by Tem Miller, the Mayor of the City of Bishop, Texas, a political subdivision of the State of Texas, on behalf of said city.

Notary Public in and for the State of Texas

STATE OF TEXAS §
 §
COUNTY OF Kleberg §

This instrument was acknowledged before me on the 4th day of December, 2018, by Kathleen Lowman, the Board President of South Texas Water Authority, a governmental agency, conservation and reclamation district and body politic and corporate, on behalf of said authority.

Frances DeLeon
Notary Public in and for the State of Texas



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10/23/18 3:30 p.m.

ATTACHMENT 2

Water Supply Contract – City of Bishop

WATER SUPPLY CONTRACT

THE STATE OF TEXAS §
 §
COUNTY OF KLEBERG §

This Contract is by and between the South Texas Water Authority, a governmental agency, conservation and reclamation District and body politic and corporate, having been created under Chapter 436 Acts of the 66th Legislature, Regular Session, 1979, of the laws of the State of Texas, all pursuant to Article XVI, Section 59 of the Texas Constitution (hereinafter called the "Authority") and the City of Bishop, Texas, a general law city in Nueces County, Texas (hereinafter called the "Wholesale Customer"), and is as follows.

RECITALS

WHEREAS, the Authority owns a water transmission line extending from the City of Corpus Christi O.N. Stevens Water Treatment Plant to the Authority's offices at 111 E. Sage Road, Kingsville, Texas 78363; and

WHEREAS, the Authority has entered into that certain Water Supply Agreement by and between the Authority and the City of Corpus Christi dated October 14, 1980, pursuant to which the Authority purchases water for resale to its customers; and

WHEREAS, the Authority is willing to sell, and the Wholesale Customer is willing to buy, water available to the Authority from the City of Corpus Christi.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained the Authority and the Wholesale Customer agree as follows:

SECTION 1. DEFINITIONS. Terms and expressions as used in this Contract, unless the context clearly shows otherwise, shall have the following meanings:

(A) "Corpus Christi Water Supply Agreement" shall mean the Water Supply Agreement by and between the Authority and the City of Corpus Christi dated October 14, 1980, as amended and supplemented from time to time and as modified by the Settlement Agreement and Mutual Release between the Authority, San Patricio Municipal Water District and the City of Corpus Christi effective as of August 13, 2013.

(B) "Fiscal year" shall mean the twelve month period beginning on October 1 and ending September 30 or such other twelve month period as designated by the Authority.

- (C) "Maintenance and Operating Expenses" shall mean all costs of the Authority for operation, maintenance, repair and replacement of the System to the point of delivery for each Wholesale Customer, including, but not limited to, accounting, administration, engineering, and legal expenses and a reasonable reserve to pay for any extraordinary or nonrecurring expenses of operation or maintenance of the System and for replacements and repairs if such expenses should become necessary. Maintenance and Operating Expenses shall include payments under contracts for the purchase of water supply or ~~water supply or~~ other services for the System. Maintenance and Operating Expenses shall not include any costs or expenses incurred by the Authority in connection with Special Services.
- (D) "Maintenance and Operations Tax" shall mean the ad valorem tax levied by the Authority in accordance with Chapter 49 of the Texas Water Code as authorized by the election of August 11, 2001, at a rate not to exceed \$0.12 per \$100 taxable value.
- (E) "Special Services" shall mean services provided by the Authority to a Wholesale Customer or other entity for the operation, maintenance or management of any facilities or operations of such party that are not part of the Authority's System.
- (F) "System" shall mean the Authority's existing water supply and distribution system, together with all future extensions, improvements, enlargements and additions thereto, and all replacements thereof.
- (G) "System Operating Charge" shall mean the monthly charge, per 1,000 gallons described in Section 8 consisting of the "pass through charge" for the purchase of water from the City of Corpus Christi and the "handling charge" to pay Maintenance and Operating Expenses.
- (H) "Wholesale Customers" shall mean the Cities of Agua Dulce, Bishop, Driscoll and Kingsville, Nueces County Water Control and Improvement District No. 5, Nueces Water Supply Corporation and Ricardo Water Supply Corporation, and any other future contracting parties that purchase water from the Authority for municipal, industrial or agricultural purposes.

SECTION 2. QUANTITY. The Authority agrees to sell and deliver to Wholesale Customer at the delivery point hereinafter specified, and Wholesale Customer agrees to purchase and take at said delivery point, all water required by Wholesale Customer during the period of this Agreement for its own use and for distribution to all customers served by Wholesale Customer's water distribution system at a maximum authorized daily purchase rate which, together with the actual production capacity of the Wholesale Customer's system, is at least 0.6 gallon per minute per connection in the Wholesale Customer's water distribution system. The word "connection" as used in this paragraph shall have the same meaning as in Texas Administrative Code Title 30, Part 1, Chapter 290, Subchapter D, Section 290.38(14) in an amount up to 0.6 gpm per connection.

The Authority will use its best efforts to remain in the position to furnish water sufficient for the reasonable demands of Wholesale Customer, but its obligations shall be limited to the quantity of

water available to it under its contract with the City of Corpus Christi. If the Authority determines that it is not able to furnish the Wholesale Customer with the foregoing amount of water, the Wholesale Customer shall be authorized to obtain water in an amount equal ~~in an amount equal~~ sufficient to replace ~~that~~ which the Authority cannot provide from any other source.

SECTION 3. QUALITY. The water which will be delivered to the Wholesale Customer by the Authority will be as received from the City of Corpus Christi, as changed by the transportation process. The Authority may add additional disinfection. The Wholesale Customer has satisfied itself that this water will be suited for its needs.

SECTION 4. POINTS OF DELIVERY AND TITLE. Attached hereto as Exhibit "A" is a schematic diagram involving the transfer of water from the Authority to the Wholesale Customer's distribution system. The Point of Delivery of the water by the Authority to the Wholesale Customer shall be the outlet of the Authority's meter located immediately before the water enters the Wholesale Customer's ~~150,000~~^{125,000} gallon ground storage tank shown on Exhibit "A" attached hereto, and any other points of delivery mutually agreed upon by the Wholesale Customer and the Authority. The Wholesale Customer shall provide and maintain a clean air gap between the Authority's system and the Wholesale Customer's distribution system immediately downstream from the Point of Delivery shown on Exhibit "A," and any other points of delivery mutually agreed upon by the Wholesale Customer and the Authority.

The two pumps shown on Exhibit "A" have been replaced by the Authority pursuant to a letter of agreement between Wholesale Customer and the Authority, a copy of which is attached hereto as Exhibit "B." The Authority has executed the Utility Conveyance Agreement required by the letter agreement, conveying the two pumps and appurtenances described in the contract documents and technical specifications for Bishop Westside Water Treatment Plant renovations and modifications for the South Texas Water Authority prepared by LNV Engineering, March 2014, all the facilities shown on Exhibit "A" are owned by Wholesale Customer, and Wholesale Customer is responsible for the operation and maintenance of those facilities.

~~Following the execution of this Contract, the Parties intend to negotiate in good faith toward making a contract among themselves and third party Nueces Water Supply Corporation (NWSC) relating to the continued use by these parties of that tract of land owned by The City of Bishop and generally referred to as the Bishop East Side Water Station, which contains various facilities and equipment owned by these parties in connection with their respective water systems.~~

~~Wholesale Customer no longer uses what used to be its east side delivery facility, a copy of which is attached hereto as Exhibit "C." All the facilities shown on Exhibit "C" except for the building, the SCADA system and any equipment previously used to serve the City are owned by Nueces Water Supply Corporation by the Authority, and the Authority is responsible for the operation and maintenance of those facilities. The building, SCADA system and any equipment previously used to serve the City are owned by the Authority and the Authority is responsible for the operation and maintenance of those facilities. Those facilities owned by Nueces Water Supply Corporation and the Authority stand on land owned by Wholesale Customer. Therefore,~~

~~Wholesale Customer will execute a license agreements, in favor of Nueces Water Supply Corporation and the Authority and theirits assigns, substantially in the form of thoseat attached as Exhibits "D," and "E," authorizing the Authority to use of that land for thoseits delivery facilities. The Authority agrees to cooperate with the City on the possible use of the east side delivery facilities by the City as an emergency supply, so long as all costs associated with such use, including but not limited to repairs and upgrades are paid by the City and subject to any regulatory approvals or requirements.~~

Title to all water supplied hereunder shall remain in the Authority to the Point of Delivery, and upon passing through the Authority's meter or meters installed at the specified Point of Delivery such title to the water shall pass to the Wholesale Customer. Each of the parties hereto shall be responsible for and agrees to save and hold the other party harmless from all claims, demands and causes of action which may be asserted by anyone on account of the transportation, delivery and disposal of said water while title remains in such party.

SECTION 5. MEASURING EQUIPMENT.

(A) Authority shall furnish, install, operate and maintain at its own expense the necessary metering equipment of standard type for measuring properly the quantity of water delivered under this agreement. Such metering equipment shall be located on the Authority's supply main at a location already designated by Authority. Such meter or meters and other equipment so installed shall remain the property of Authority. The reading, calibration and adjustment of the meter equipment shall be done only by the employees or agents of the Authority. However, the Wholesale Customer shall have access to such metering equipment at all reasonable times. For the purpose of this Agreement, the original record or reading of the main meter shall be the journal or other record book of the Authority in its office in which the records of the employees or agents of the Authority who take the reading are or may be transcribed. Upon written request of Wholesale Customer, the Authority will give the Wholesale Customer a copy of such journal or record book, or permit the representative designated by Wholesale Customer Council's resolution to have access to the same in the office of the Authority during reasonable business hours.

(B) Not more than once in each calendar year, on a date as near the end of the Authority's fiscal year as practical, the Authority shall calibrate its main meter or meters and present to the Wholesale Customer accuracy certification. This calibration shall be performed in the presence of a representative of Wholesale Customer, and the parties shall jointly observe any adjustments which are made to the meter in case any adjustments shall be necessary, and if the check meter hereinafter provided for has been installed, the same shall also be calibrated in the presence of a representative of the Wholesale Customer and the parties shall jointly observe any adjustments which are made to the meter in case any adjustments shall be necessary. The Authority shall give Wholesale Customer notice of the time when any such calibration is to be made. If a representative of Wholesale Customer is not present at the time set, the Authority may proceed with calibration and adjustment in the absence of any representative of the Wholesale Customer.

(C) If either party at any time observes a variation between a main delivery meter and the check meter, if any such check meter shall be installed, such party will promptly notify the other party, and the meters shall then be adjusted to accuracy. Each party shall give the other party forty-eight (48) hours' notice of the time of any test of meter so that the other party may conveniently have a representative present.

(D) If, upon any test, the percentage of inaccuracy of metering equipment is found to be in excess of two percent (2%), registration thereof shall be corrected for a period extending back to the time when such inaccuracy began, if such time is ascertainable, and if such time is not ascertainable, then for a period extending back one-half (½) of the time elapsed since the last date of calibration, but in no event farther back than a period of six (6) months. If, for any reason, the main meter is out of service or out of repair so that the amount of water delivered cannot be ascertained or computed from the reading thereof, the water delivered, through the period such meter is out of service or out of repair, shall be estimated and agreed upon by the parties thereto upon the basis of the best data available. For such purpose, the best data available shall be deemed to be the registration of any check meter if the same has been installed and is accurately registering. Otherwise, the amount of water delivered during such period may be estimated (i) by correcting the error if the percentage of error is ascertainable by calibration tests of mathematical calculation, or (ii) by estimating the quantity of delivery by deliveries during the preceding periods under similar conditions when the meter was registering accurately.

(E) The Wholesale Customer may, at its option and its own expense, install and operate a check meter to check the meter installed by the Authority, but the measurement of water for the purpose of this agreement shall be solely by the Authority's meter, except in the cases hereinabove specifically provided to the contrary. Such check meter shall be of standard make and shall be subject at all reasonable times to inspection and examination by any employee or agent of the Authority, but the reading, calibration and adjustment thereof shall be made only by the Wholesale Customer, except during any period when a check meter may be used under the provisions hereof for measuring the amount of water delivered, in which case the reading, calibration, and adjustment thereof shall be made by the Authority with like effect as if such check meter had been furnished or installed by the Authority.

SECTION 6. MEASUREMENT AND UNIT OF MEASUREMENT. The volume of water that is billed to the Wholesale Customer shall be the amount of water delivered through the points of delivery described in the exhibits attached to this Agreement minus the amount of water delivered by the Authority through those points of delivery that is delivered to other customers, as shown in the exhibits attached to this Agreement. The unit of measurement for water delivered hereunder shall be 1,000 gallons of water, U.S. Standard Liquid Measure.

SECTION 7. DELIVERY PRESSURE. The water shall be delivered by the Authority at the point of delivery at the Wholesale Customer's system at "0" pressure.

SECTION 8. PRICES AND TERMS.

(A) **System Operating Charge.** The System Operating Charge shall be billed monthly as a price per 1000 gallons of water purchased by the Wholesale Customer. The System Operating Charge shall consist of the sum of (1) a “pass through charge” to recover the cost of water purchased pursuant to the Corpus Christi Water Supply Agreement at a rate equal to the cost of water, per 1000 gallons, from the City of Corpus Christi, and (2) a “handling charge” which shall be a rate equal to the estimated annual Maintenance and Operating Expenses per 1000 gallons, less the amount of Maintenance and Operations Tax revenues budgeted for payment of Maintenance and Operating Expenses. Maintenance and Operating Expenses shall not include any management fees or similar expenses related to Special Services. All rates charged for Maintenance and Operating Expenses shall be set to recover the cost of service, based on generally accepted rate making principles, including those set forth in Chapters I, II, III, IV and V.1 in the American Water Works Association (“AWWA”) Manual M1 (Sixth Edition) on water rates. The amount of the Maintenance and Operations Tax shall be determined by the board of directors of the Authority in its sole discretion.

Wholesale Customer shall be responsible for the cost of operation, maintenance, repair and replacement of the facilities located after the point of delivery.

Each year after the Authority receives its audit, the Authority will conduct a “true-up” for the year to which the audit applies; i.e., the prior year, using audited costs to determine if there was any over-recovery or under-recovery of costs during that year. Any over-recovery or under-recovery of costs will be carried over as a credit or debit, as appropriate, to the costs included in the budget that are considered to determine the price for the following year. (There will be a one-year delay in each “true-up”).

(B) **Authority Budget.** The Authority’s fiscal year shall be from October 1 through September 30 of each year, or such other period as the Authority, after sixty (60) days written notice to the Wholesale Customer, shall adopt. Not later than the forty-fifth (45th) day before the beginning of the Authority’s next fiscal year, commencing with the Authority’s fiscal year in which this Agreement becomes effective, the Authority shall provide the Wholesale Customer with a copy of the Authority’s proposed budget for the following fiscal year, showing the budgeted total annual rate, and the components thereof, to be paid by the Wholesale Customer to the Authority for the fiscal year of the Authority to which the budget applies for sale and purchase of water under this Agreement. The Wholesale Customer shall have thirty (30) days to review and provide written comment on the proposed budget. The Authority shall adopt its fiscal year budget as soon as practicable following the expiration of such thirty (30) day period and shall deliver to the Wholesale Customer a copy of the fiscal year budget within five (5) days after the adoption thereof.

(C) **Unconditional Obligation to Pay** - The Wholesale Customer shall be obligated to pay, each month, the payments required by this Agreement, without offset or counterclaim. This covenant shall be for the benefit of the holders of the Authority’s bonds, secured in whole or in part from the revenues of the System, **and shall be in effect only** if as and when any **such** bonds are outstanding.

(D) Billing and Payment - The Authority shall bill the Wholesale Customer monthly for the amounts due the Authority hereunder for the preceding billing period which bill shall disclose the nature of the amounts due. Such monthly bills shall be normally delivered to the Wholesale Customer within ten business days after the end of each calendar month. All such bills shall be paid by the Wholesale Customer at the office of the Authority in Kingsville, Texas by the dates provided in Section 2251.021, Texas Government Code, but, if there is a bona-fide dispute over an invoice, Wholesale Customer may withhold payment of the disputed amount subject to the requirements of Chapter 2251 of the Texas Government Code. Wholesale Customer shall pay interest to the Authority on any overdue payments in accordance with Section 2251.025, Texas Government Code.

(In the event any such payment is not made within sixty days from date such payment becomes due, the Authority may, at its option, discontinue the delivery of water to the Wholesale Customer until the amount then due the Authority is paid in full with interest as above specified.

SECTION 9. SPECIAL CONDITIONS.

(A) Wholesale Customer represents and covenants that the water supply to be obtained pursuant to this Contract is essential and necessary to the operation of its waterworks system, and that all payments to be made hereunder by it will constitute reasonable and necessary “operating expenses” of Wholesale Customer’s waterworks system, and that all such payments will constitute reasonable and necessary operating expenses of Wholesale Customer’s waterworks system under any and all revenue bond issues of Wholesale Customer, with the effect that the Wholesale Customer’s obligation to make payments from its waterworks revenues under this Contract shall have priority over its obligations to make payments of the principal of and interest on any and all of its revenue bonds.

(B) Wholesale Customer agrees to fix and collect such rates and charges for water and services to be supplied by its waterworks system as will make possible the prompt payment of all expenses of operating and maintaining its waterworks system, including all payments contracted hereunder, and the prompt payment of the principal of and interest on its obligations payable from the revenues of its waterworks system.

(C) During any period of time when, in the judgment of the Authority, there is a critical shortage of water in the sources of supply available to Authority, which makes it impractical or inadvisable for Authority to deliver to the Wholesale Customer and its other customers with whom it has water supply contracts the full amounts of water required to be delivered thereunder, the water deemed available by the Authority from its sources of supply, shall be rationed to the Wholesale Customer and the other customers during each month of such period of time, in accordance with the “Drought Contingency Plan for the South Texas Water Authority” adopted on May 28, 2013, as it may be amended from time to time. Such rationing shall also be subject to the requirements of Section 10 of this Contract.

(D) The Wholesale Customer is participating in the Federal Flood Insurance Program and will continue to do so during the term of this Contract.

SECTION 10. CORPUS CHRISTI CONTRACT AND DROUGHT CONTINGENCY PLAN.

The Wholesale Customer acknowledges that it is required by Sec. 11.1272, Water Code, to develop a drought contingency plan consistent with the appropriate approved regional water plan. Wholesale Customer also acknowledges that the Corpus Christi Water Supply Agreement requires that, if the City of Corpus Christi implements any measures under its Water Conservation and Drought Contingency Plan, the Authority shall within thirty (30) days of notice of the implementation of any restrictions, surcharges or rationing by the City of Corpus Christi, impose similar restrictions, surcharges or rationing measures on its Wholesale Customers. Any contract for the resale of water furnished by the Authority shall contain a similar condition.

Accordingly, the Wholesale Customer agrees that it will adopt a water conservation plan and drought contingency plan consistent with those of the City of Corpus Christi, as the latter may be amended from time to time.

Wholesale Customer understands and agrees that all Wholesale Customers shall be subject to and bound by the same provisions regarding priorities of user of water and that, therefore, should there be a shortage in the basic supply of water, from the City of Corpus Christi or otherwise, which requires the restriction or curtailing of any Wholesale Customer of water (a/k/a rationing of water), the Authority will limit and restrict all of its Wholesale Customers, to the same extent and on a pro rata basis, and will require its Wholesale Customers to treat all of their customers equally.

SECTION 11. FORCE MAJEURE. In case by reason of force majeure either party hereto shall be rendered unable wholly or partially to carry out its obligations under this Contract, then if such party shall give notice and full particulars of such force majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied on, the obligation of the party giving such notice, so far as it is affected by such force majeure, shall be suspended during the continuance of the inability then claimed, but for no longer period, and any such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "Force Majeure" as employed herein, shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of a public enemy, orders of any kind of the Government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipe lines or canals, partial or entire failure of water supply, or inability on the part of the Authority to delivery water hereunder on account of any other causes not reasonably within the control of the Authority. It is understood and agreed that the settlement of strikes and lockouts may be difficult, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable to it in the judgment of the party having the difficulty.

SECTION 12. TERM OF CONTRACT. The initial term of this Contract shall be for five (5) years (“Initial Term”) and will be automatically renewed for three (3) sequential terms of five (5) years each, unless one Party gives the other Party written notice of termination at least 365 days and not more than 545 days prior to the end of the Initial Term or any subsequent term.

SECTION 13. GUARANTEED PURCHASE

(A) During the first year of the Initial Term of this Contract the Wholesale Customer must purchase water from the Authority equal to at least 46% of the total water needs of Wholesale Customer. During the second year of the Initial Term of this Contract the Wholesale Customer must purchase water from the Authority equal to at least 47% of the total water needs of Wholesale Customer. During the third year of the Initial Term of this Contract the Wholesale Customer must purchase water from the Authority equal to at least 48% of the total water needs of Wholesale Customer. During the fourth year of the Initial Term of this Contract the Wholesale Customer must purchase water from the Authority equal to at least 49% of the total water needs of Wholesale Customer. During the fifth year of the Initial Term of this Contract the Wholesale Customer must purchase water from the Authority equal to at least 50% of the total water needs of Wholesale Customer. To assist the Authority in maintaining the chloramine residual in the Authority’s 42-inch transmission line at the level required by the TCEQ, Wholesale Customer agrees to use its best efforts to take the percentage of water set forth above, averaged on a weekly ~~on a daily~~ averaged on a quarterly basis based on the Weekly Usage Schedule attached hereto as Exhibit “C.”~~the Daily Usage Schedule attached hereto as Exhibit “C.”~~ After the Initial Term of this Contract, the Wholesale Customer must purchase water from the Authority equal to at least 50% of the total water needs of Wholesale Customer. Wholesale Customer may satisfy its remaining water needs by utilizing Wholesale Customer’s wells. Wholesale Customer agrees that it will not purchase wholesale water from any entity other than the Authority during the term of this Contract, except as provided in Section 2 above.

(B) The Authority and the Wholesale Customer shall cooperate to create, and to modify as appropriate from time to time, adjust the ~~Daily~~ Weekly~~quarterly~~ Usage Schedule to determine what best works to retain the chloramine residual at the level required by the TCEQ regulations. ~~When that~~ Weekly ~~minimum~~ ~~Daily~~ Usage Schedule has been determined, Wholesale Customer shall use its reasonable best efforts to purchase water as required by ~~the determined in the~~ ~~Daily~~ Weekly Usage Schedule. Revisions to the Weekly ~~Daily~~ Usage Schedule shall not increase the minimum volume of water to be purchased by the Wholesale Customer, except as to conform to the amounts set forth in Section 13 (A) above. Nothing in this Contract is intended to impose on Wholesale Customer, nor does Wholesale Customer assume, any obligation to satisfy any regulatory requirement applicable to the Authority. No relationship of agency, joint venture, or guarantor exists between these parties.

(C) This section is subject to other provisions of this Contract which may affect the amount of water available or distributed, such as the provisions dealing with the Corpus Christi Water Supply Agreement, force majeure, drought contingency plans, water rationing, and water conservation.

SECTION 14. REMEDIES UPON DEFAULT

(A) Remedies. The parties agree that the Authority's undertaking to provide water is an obligation, failure in the performance of which cannot be adequately compensated in money damages alone. Accordingly, the Authority agrees, in the event of any default on its part, that the Wholesale Customer shall be entitled to specific performance in addition to any other available legal or equitable remedies.

(B) Remedies Cumulative/Not Exclusive. The remedies provided for herein are not exclusive remedies. All other remedies at law or in equity may be availed of by either party and shall be cumulative except to the extent otherwise specifically provided, or limited, under this Agreement.

(C) CONSEQUENTIAL DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT OR AT LAW, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES OR LOST PROFITS WHETHER ARISING IN AGREEMENT, TORT, STRICT LIABILITY OR OTHERWISE.

(D) Jurisdiction. The Authority and the Wholesale Customer agree that, if either of them disputes the rate charged pursuant to this contract, either of them may appeal the rate to the Public Utility Commission ("PUC"). If the PUC for any reason refuses to hear the appeal for want of jurisdiction, or otherwise, and when any and all appeals of such determination by the PUC are final, exclusive venue of the dispute may be resolved by the District Court of Nueces County, Texas shall lie a State District Court sitting in Nueces County, Texas.

SECTION 15. GENERAL PROVISIONS

(A) Covenant of Good Faith and Fair Dealings. The Authority and the Wholesale Customer agree to cooperate and to deal with one another fairly and in good faith at all times to effectuate the purposes and intent of this Contract. They also agree to execute and deliver such further legal documents or instruments and to perform such further acts as are reasonably necessary to effectuate the purposes and intent of this Contract.

(B) TAX-EXEMPT BONDS. The Wholesale Customer understands that the Authority has issued or will issue bonds the interest on which is excludable from the gross income of the owners thereof for federal income tax purposes ("Tax-Exempt Bonds") for improvements to the System and that the federal income tax laws impose certain restrictions on the use of proceeds of any such Tax-Exempt Bonds and on the use of the facilities and property financed by the Tax-Exempt Bonds and the output produced from such facilities and property. Accordingly, the Wholesale Customer will not enter into a water supply contract or other agreement with a customer of such Wholesale Customer which contains take-or-pay, contract minimums, output requirements, special rates and charges or similar

provisions, unless it has notified the Authority in writing of the Wholesale Customer's intent to enter into such contract at least 60 days prior to the execution of such contract or agreement. The foregoing second sentence of this paragraph 14(B) does not apply to a schedule of standard rates and charges that is applied to all retail customers. The parties may rely on the opinion of nationally-recognized bond counsel to ensure compliance with this Section. This Section shall no longer apply to any Wholesale Customer if any of the outstanding bonds of the Authority allocable to the portion of the System used by the Wholesale Customer are not Tax-Exempt Bonds.

(C) Notices. Any notice to be given hereunder by either party to the other party shall be in writing and may be ~~effected~~delivered by personal delivery, by facsimile, or by sending said notices by registered or certified mail, return receipt requested, to the address set forth below. Notice shall be deemed given when received by facsimile or by personal delivery, or three days after deposited with the United States Postal Service with sufficient postage affixed.

Any such notice mailed to the Authority shall be addressed:

South Texas Water Authority
P.O. Box 1701
Kingsville, Texas 78364
Attn: Executive Director
Fax: (361) 592-5965

Any such notice mailed to the Wholesale Customer shall be addressed:

City of Bishop
P.O. Box 356
Bishop, Texas 78343
Attn: City Secretary
Fax: (361) 584-3253

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

(D) Approvals. Whenever the term “approve” or “approval” is used in this Contract, the party whose approval is required will not unreasonably withhold or delay it. Where approval is necessary, the party seeking approval may request approval in writing. If the party whose approval is requested fails to either approve the submittal or provide written comments specifically identifying the required changes within 21 working days, the submittal, as submitted by the requesting party, will be deemed to have been approved by the party whose approval is requested.

(E) Waiver. The failure on the part of either party to require performance by the other of any portion of this Contract shall not be deemed a waiver of, or in any way affect that party's rights to enforce such provision. Any waiver by either party or any provision of this Contract shall not be a waiver of any other provision hereof.

(F) Severability. The invalidity or unenforceability of any provision of this Contract shall not affect the validity or enforceability of any other provision of this Contract.

(G) Attorney's Fees. In the event either party shall become a party to any litigation against the other to enforce or protect any rights or interest under this Contract and shall prevail, the losing party shall reimburse the prevailing party for all ~~investigative and~~ court costs and attorney's fees incurred in such litigation.

(H) Governing Law. This Contract shall be governed by the laws of the State of Texas and exclusive venue shall lie in a State court sitting in Nueces County, Texas, subject to the provisions of Section 14(D) above.

(I) Binding Effect and Assignment of Contract. The Contract shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. Neither Party may assign its rights or obligations under this Contract without prior written consent of the other Party.

(J) Time. Time is of the essence. Unless otherwise specified, all references to "days" means calendar days. If the date for performance of any obligation falls on a Saturday, Sunday, or legal public holiday, the date for performance will be the next following regular business day.

(K) No Partnership, Agency or Third Party Beneficiaries Intended. Nothing in this Contract will be construed as creating any form of partnership or joint venture relationship between the parties, nor shall either party be authorized to act as an agent for the other party. Nothing in this Contract shall be construed to confer any right, privilege or benefit on, or to otherwise create any vested right or third-party beneficiary relationship with any person or entity not a party to the Contract.

(L) Authority. Each of the persons signing on behalf of the Wholesale Customer and the Authority hereby confirm that they have the authority to execute this Contract on behalf of the party indicated by their signature and have the authority to bind such party hereto.

(M) Headings. The captions and headings appearing in this Contract are inserted merely to facilitate reference and will have no bearing upon its interpretation.

(N) Entire Contract. This Contract contains all agreements between the parties hereto and any agreement not contained herein shall not be recognized by the parties. The captions used herein are for convenience only and shall not be used to construe this Agreement. Words of gender shall be construed to include any other gender, and words in the singular shall include the plural and vice versa unless the context requires otherwise.

(O) Counterparts. This Agreement may be executed by the parties in any number of counterparts, each of which when so executed and delivered shall be deemed an original instrument, but all such counterparts together shall constitute but one and the same instrument.

(P) Effective Date. The effective date of this Contract shall be the date on which it has been executed by both the Authority and the Wholesale Customer.

[Signatures to follow.]

SOUTH TEXAS WATER AUTHORITY

By: _____

President, Board of Directors

Date of execution: _____

ATTEST:

Secretary, Board of Directors

[AUTHORITY'S SEAL]

CITY OF BISHOP, TEXAS

By: _____
_____, Mayor
Date of execution: _____

ATTEST:

Secretary

[CITY'S SEAL]

LIST OF EXHIBITS

Exhibit “A” - Schematic diagram involving the transfer of water from the Authority to Wholesale Customer’s distribution system

Exhibit “B” - Letter agreement addressing construction of two pumps

~~Exhibit “C” – Former east side delivery facilities~~

~~Exhibit “D” – Draft License Agreement between the City and Nueces Water Supply Corporation~~

~~Exhibit “E” – Draft License Agreement between the City and the Authority~~

Exhibit “C” – Weekly Usage Schedule