

OPTION E

Participation by the Following:

The Lower Colorado River Authority

**AGREEMENT REGARDING THE CITY OF DRIPPING SPRINGS'
APPLICATION NO. WQ001448803 FOR A TPDES PERMIT**

The City of Dripping Springs, Texas ("Dripping Springs"), the Lower Colorado River Authority ("LCRA"), (collectively, Dripping Springs and LCRA are herein referred to as the "Parties") enter this Agreement concerning Dripping Springs' application for a Texas Pollutant Discharge Elimination System ("TPDES") permit No. WQ0014488003 from the Texas Commission on Environmental Quality ("TCEQ").

RECITALS

WHEREAS, on October 20, 2015, Dripping Springs submitted an application, TPDES No. WQ0014488003, to the TCEQ requesting a permit to allow discharge of treated wastewater at a volume not to exceed 995,000 gallons per day to the Onion Creek Watershed ("Application"); and

WHEREAS, in 2016, TECQ issued a draft permit that would authorize Dripping Springs to discharge up to 995,000 gallons per day of treated wastewater into a tributary known as Walnut Springs that feeds into Onion Creek; and

WHEREAS, Dripping Springs intends to beneficially reuse the effluent generated from its wastewater treatment facility as evidenced by its contracts with surrounding developments, its ordinance that promotes beneficial reuse, and commitment to maintain irrigation fields as set-forth in this Agreement ("Reuse Program"); and

WHEREAS, the Parties agree that beneficial reuse of effluent promotes conservation of raw water resources and protects natural resources consistent with sustainable economic development; and **NOW, THEREFORE**,

AGREEMENT

The Parties agree as follows

1. Definitions. The following terms shall be defined as follows for purposes of this Agreement:

"Beneficial Reuse": The beneficial use of reclaimed water (treated effluent) from Dripping Springs' Wastewater Treatment Plant which may be substituted for potable water and/or raw water (a) pursuant to Chapter 210 of Title 30 of the Texas Administrative Code, (b) as a direct potable reuse system, or (c) pursuant to any other legal method that does not result in the discharge of effluent from a permitted outfall authorized pursuant to TPDES No. WQ0014488003 into Walnut Springs. The term "Beneficial Reuse" does not include any treated effluent from the Dripping Springs' wastewater plant that is discharged from a permitted outfall authorized pursuant to TPDES No. WQ0014488003 into Walnut Springs.

"Beneficial Reuse Infrastructure": Infrastructure that is fully constructed and operational and that allows for the Beneficial Reuse.

“Complete Operational Control”: The ability to make all decisions regarding the management of Beneficial Reuse. With respect to Effluent Storage, it means the ability to determine how much treated effluent will be stored in that facility and when effluent should be placed or removed from the facility. With respect to infrastructure on Irrigable Land, it means the ability to determine when to irrigate and how much to irrigate.

“Dripping Springs’ Wastewater Treatment Plant”: the wastewater plant that processes wastewater pursuant to TPDES No. WQ0014488003.

“Irrigable Land”: Land, including land to be irrigated pursuant to a Chapter 210 authorization, that can be irrigated with treated effluent from Dripping Springs’ Wastewater Treatment Plant. The land need not be contiguous or a single parcel.

“Effluent Storage”: ponds, storage tanks, or other facilities that store treated effluent from Dripping Springs’ Wastewater Treatment Plant for Beneficial Reuse. These may be comprised of multiple facilities.

“Stage 1A”: The time period between when Dripping Springs begins operation of Dripping Springs’ Wastewater Treatment Plant under authority of TPDES No. WQ0014488003 until Dripping Springs’ Wastewater Treatment Plant processes 200,000 gallons of wastewater per day as a three-month average rate.

“Stage 1A Beneficial Reuse Infrastructure”: Beneficial Reuse Infrastructure consisting of (1) infrastructure on at least 25 acres of Irrigable Land that are under the City’s Complete Operational Control, (2) at least 174 acres of Irrigable Land controlled by others, and (3) Effluent Storage with a total capacity of 12 million gallons that are under the City’s Complete Operational Control.

“Stage 1B”: The time period between the end of Stage 1A until Dripping Springs’ wastewater plant processes 399,000 gallons per day as a three-month average rate.

“Stage 2”: The time period between the end of Stage 1B until the first day that Dripping Springs’ wastewater plant processes 497,500 gallons per day as a three-month average rate.

“Stage 3”: The time period between the end of Stage 2 (497,500 gallons per day as a three-month average rate) until the first day that Dripping Springs’ wastewater plant processes 995,000 gallons per day as a three-month average rate.

“Unavoidable Discharge”: a discharge from the Dripping Springs’ Wastewater Plant from a permitted outfall into Walnut Springs that occurred because

- (a) Irrigable Land is frozen or saturated due to chronic wet weather conditions or frozen soil;

- (b) Reasonably unplanned and unforeseen operational or maintenance issues associated with the beneficial reuse system or the wastewater system requires discharge of the treated effluent; or
- (c) the actions or omissions of parties who do not have Complete Operational Control of the Beneficial Reuse Infrastructure or an act of God requires discharge of the treated effluent;¹ or
- (d) a reasonably unexpected or unanticipated occurrence requires discharge of the treated effluent.

In any of these cases, the discharge is considered “unavoidable” only for the time period in which Dripping Springs uses its best efforts to cease the discharge in a reasonably prudent manner.

“Avoidable Discharge”: a discharge from a permitted outfall of the Dripping Springs’ Wastewater Treatment Plant into Walnut Springs that was not an Unavoidable Discharge.

“Unacceptable Discharge Percentage”: the percentage calculated by dividing the amount of Avoidable Discharges (as measured by gallons) by the Amount of Beneficial Reuse (as measured by gallons) during the same time period. By way of example, if there were 7 gallons of Avoidable Discharges and 100 gallons of Beneficial Reuse during the same time period, the Unacceptable Discharge Percentage would be 7%. The word “unacceptable” does not signify a breach of this Agreement, but is merely descriptive of a percentage calculation that will be used to require additional actions as set-forth herein.

- 2. Purpose and Goal of the Agreement: The purpose and goal of this Agreement is to protect the water quality of Onion Creek and the Barton Segment of the Edwards Aquifer and the Trinity Aquifer, if any, from adverse impacts due to Dripping Springs’ discharge of treated wastewater effluent and to minimize or eliminate the need to discharge effluent into Walnut Springs and Onion Creek. Dripping Springs will construct or have access to beneficial reuse systems as set-forth herein and will discharge to Walnut Springs only after its beneficial reuse options are exhausted.
- 3. Beneficial Reuse of Effluent:
 - a. Dripping Springs will maximize its beneficial use of effluent by constructing or having constructed infrastructure as described in this Section 3, and by utilizing Chapter 210 Beneficial Reuse Authorizations and, if constructed, utilizing a direct potable reuse system to minimize discharge of its treated wastewater effluent into Walnut Springs.

¹ For purposes of this subsection, the refusal to accept Beneficial Reuse reclaimed water by a person, including a user under a Chapter 210 authorization, who has Complete Operational Control over Beneficial Reuse Infrastructure, Irrigable Land, or Effluent Storage does not constitute an act or omission of a third party that makes a discharge “unavoidable.”

- b. Dripping Springs will reuse the effluent that results from its treatment of wastewater as set out below:
- i. Dripping Springs will sell or otherwise provide wastewater to surrounding residential and commercial developments consistent with their stated Reuse Program including, but not limited to: Caliterra and Howard Ranch;
 - ii. **Stage 1A:** Dripping Springs will not begin processing wastewater pursuant to TPDES No. WQ0014488003 until Stage 1A Beneficial Reuse Infrastructure has been designed, constructed, and is operational. Throughout Stage 1A and the life of TPDES Permit No. WQ0014488003, Dripping Springs will maintain and operate the Stage 1A Beneficial Reuse Infrastructure. The Parties understand and acknowledge that during Stage 1A, Dripping Springs will convert the Irrigable Land that under its Complete Operation Control from drip irrigation to spray irrigation. It will not be a violation of this Agreement for Dripping Springs to take this Irrigable Land off-line during this conversion process, but Dripping Springs will do so at its own risk and taking such action will not justify an Avoidable Discharge.
 - iii. **Stage 1B:** Prior to processing any wastewater during Stage 1B, Dripping Springs will calculate the Unacceptable Discharge Percentage that occurred during Stage 1A. Within 365 days of beginning Stage 1B, Dripping Springs shall acquire and maintain Complete Operational Control over additional Beneficial Reuse Infrastructure for Effluent Storage over which it has Complete Operational Control or Irrigable Land over which it has Complete Operational Control in an amount that is equal to the Unacceptable Discharge Percentage during Stage 1A. By way of example, if the Unacceptable Discharge Amount is 10% during Stage 1A, then Dripping Springs will increase its Beneficial Reuse Infrastructure during Stage 1B for Effluent Storage over which it has Complete Operational Control or Irrigable Land over which it has Complete Operational Control by 10% (increasing the Stage 1A Beneficial Reuse Infrastructure for Effluent Storage to 13,200,000 gallons or the Irrigable Land to 27.5 acres), Nothing in this paragraph or Agreement prevents Dripping Springs from connecting to or utilizing Beneficial Reuse Infrastructure over which it does not have Complete Operational Control.
 - iv. **Stage 2:** When daily average flows for three consecutive months exceeds 447,750 gallons, Dripping Springs will calculate the Unacceptable Discharge Percentage that has occurred within Stage 2. Within 365 days of the date the Unacceptable Discharge Percentage is calculated, Dripping Springs shall, in addition to the Complete Operational Control over the Stage 1A Beneficial Reuse Infrastructure and any additional Beneficial Reuse Infrastructure resulting from the Stage 1A and 1B Unacceptable Discharge Percentage calculations, acquire and maintain Complete Operational Control over additional Beneficial Reuse Infrastructure for Effluent Storage over which it has Complete Operational Control or Irrigable Land over which it has Complete Operational Control in an amount that is equal to the Unacceptable Discharge Percentage during Stage

2. Dripping Springs will calculate the Unacceptable Discharge Percentage every four years thereafter and, if necessary, within 365 days acquire and maintain additional Complete Operational Control over additional Beneficial Reuse Infrastructure for Effluent Storage over which it has Complete Operational Control or Irrigable Land over which it has Complete Operational Control in an amount that is equal to the Unacceptable Discharge Percentage calculations during this stage Nothing in this paragraph or Agreement prevents Dripping Springs from connecting to or utilizing Beneficial Reuse Infrastructure over which it does not have Complete Operational Control.
- v. **Stage 3:** When the City enters Stage 3 (i.e. when average flows for three consecutive months are greater than 497,500), Dripping Springs will calculate the Unacceptable Discharge Percentage every four years from the date that average flows for three consecutive months are greater than 497,500. Within 365 days of finishing each calculation of the Unacceptable Discharge Percentage, Dripping Springs shall, in addition to the Complete Operational Control over the Stage 1A Beneficial Reuse Infrastructure and any additional Beneficial Reuse Infrastructure resulting from the Stage 1A, Stage 1B, and Stage 2 Unacceptable Discharge Percentage calculations, acquire and maintain Complete Operational Control over additional Beneficial Reuse Infrastructure for Effluent Storage over which it has Complete Operational Control or Irrigable Land over which it has Complete Operational Control in an amount that is equal to the respective Unacceptable Discharge Percentage during the prior four years. Nothing in this paragraph or Agreement prevents Dripping Springs from connecting to or utilizing Beneficial Reuse Infrastructure over which it does not have Complete Operational Control.
 - vi. Dripping Springs will maintain documentation to demonstrate and support the available Irrigable Land and Effluent Storage in each phase of the Permit. Dripping Springs will make such documentation available to the Parties upon request.
- c. Dripping Springs will encourage Beneficial Reuse of its effluent by its utility customers and citizens.
 - d. Dripping Springs will utilize its ordinance that requires development to reuse its effluent or pay a fee for reuse projects.
4. Phasing of Beneficial Reuse Infrastructure :
- a. When daily average flows for three consecutive months exceeds 75 percent of the capacity of the current Stage, Dripping Springs will initiate planning to increase the available Beneficial Reuse Infrastructure.

5. TPDES Permit Requirements: Dripping Springs agrees to comply with the following requirements and to add to Permit No. WQ001448803 as additional permit terms and conditions.

- a. All permit phases shall include a daily average total nitrogen limit that is the lesser of 10.0 mg/L or the limit determined by TCEQ and a total phosphorous limit that is the lesser of .15 mg/L or the limit determined by TCEQ. The total nitrogen and phosphorous limit shall only apply when there is a discharge to the waters of the State;
- b. Dripping Springs shall use ultraviolet light disinfection in accordance with TCEQ requirements or will dechlorinate prior to discharge.
- c. The wastewater treatment plant shall be operated at all times by an operator holding a "Category A" wastewater operator license.
- d. If any of the provisions in this paragraph cannot be included in the Permit due to TCEQ limitations, Dripping Springs still agrees to abide by those provisions and all terms in this Agreement. Any of the provisions in this Agreement that is included in the Permit shall be subject to enforcement by TCEQ only and not any Party to this Agreement.

6. Operations

Dripping Springs will use its best efforts to minimize occurrence of discharge to Walnut Springs. Discharge of treated effluent to Walnut Springs will occur only when:

- i. (a) Irrigable Land under the Dripping Springs' Complete Operational Control are frozen or saturated; and (b) other beneficial use options that have been established by Dripping Springs are exhausted; and (3) Effluent Storage under Dripping Springs' Complete Operational Control are filled to their designed capacity; or
- ii. (a) Unplanned operational or maintenance issues associated with the beneficial reuse system or the wastewater system requires discharge of the treated effluent, or (b) the actions or omissions of third parties or an act of God requires discharge of the treated effluent, or (c) an unexpected or unanticipated occurrence requires discharge of the treated effluent.

7. Dripping Springs agrees it will not adopt an ordinance, resolution or other local law contradicting the terms of this Agreement or allowing it to breach or violate the terms of this Agreement.
8. Reports. Dripping Springs will maintain documentation to show compliance with the agreements set-forth in paragraph 3 of this Agreement and make such documentation available to any of the Parties upon request.

9. Records. Dripping Springs will maintain the following records during each Stage and for at least three years after that Stage:
 - a. Records showing whether discharges from a permitted outfall of the Dripping Springs' Wastewater Treatment Plant into Walnut Springs was an Avoidable Discharge or an Unavoidable Discharge. To the extent that a discharge was an Unavoidable Discharge, Dripping Springs shall identify facts in writing to support its conclusion.
 - b. Records showing the amount of treated effluent that is discharged from a permitted outfall of the Dripping Springs' Wastewater Treatment Plant into Walnut Springs on a daily basis.
 - c. Records showing the amount of Beneficial Reuse on a daily basis.
 - d. Records showing Unacceptable Discharge Percentage for the prior Stage (or, in the case of Stage 3B for the previous two-year period).
 - e. Records showing the amount of Irrigable Land and Effluent Storage over which Dripping Springs was required to maintain Complete Operational Control for the prior Stage (or, in the case of Stage 3B for the previous two-year period).
10. Contested Case Hearing. Because of Dripping Springs' commitments and agreements to beneficially reuse the effluent that results from its treatment of wastewater, the Parties agree not to protest or otherwise oppose the Dripping Springs application, filed with the TCEQ on October 20, 2015, for TPDES permit No. WQ0014488003 described in this Agreement in a contested case hearing or other proceeding related to the permit sought by the October 20, 2015 application.
11. The Parties agree that, unless ordered to do so pursuant to subpoena or court order, they and any of their employees and contractors shall not provide financial or technical support to any person or entity that obtains standing to contest Dripping Springs' request for the TPDES permit described in this Agreement, nor will it provide financial or technical support to any person or entity that indirectly or directly supports or provides information to any person or entity that obtains standing to contest Dripping Springs' request for the TPDES permit described in this Agreement.
12. Nothing in this agreement shall be construed to require or authorize a violation of local, state, or federal law or regulation.
13. Sovereign Immunity: Dripping Springs knowingly and expressly waives governmental immunities that could be asserted by it in any cause of action or proceeding brought by the Settling Parties to enforce the terms of or determine the Settling Parties' rights under this Agreement. Dripping Springs acknowledges that:

- a. Dripping Springs' is not entitled to assert governmental immunity in a contested case hearing before the TCEQ or the State Office of Administrative Hearings ("SOAH") involving the Application;
- b. The Settling Parties are required by Dripping Springs to forego participation in a contested case hearing as a term of this settlement; and
- c. The Settling Parties enter into this agreement based upon the representation and acknowledgement of, and inducement by Dripping Springs that it waives governmental immunity as a defense to enforcement of this Agreement.

14. NOTICE. Any notice required or permitted to be delivered under this Agreement shall be forwarded via hand delivery or the United States Postal Service, postage prepaid, to the addresses shown below:

To the City:

City of Dripping Springs, Texas
Attn: City Secretary
P. O. Box 384
Dripping Springs, Texas 78620
FAX: (512) 858-5646

and

City of Dripping Springs, Texas
Attn: City Administrator
P. O. Box 384
Dripping Springs, Texas 78620
FAX: (512) 858-5646

To LCRA:

Lower Colorado River Authority
Attn: Bryan Cook
P.O. Box 0220
Austin, Texas 78767-0220

15. TERM. This Agreement shall remain effective while TPDES Permit No. WQ0014488003 is in effect. This Agreement shall terminate upon the termination of TPDES Permit No. WQ0014488003 or upon agreement by the Parties.

16. Assignment.

- a. This Agreement is binding upon and inures to the benefit of the Parties and their respective successors and assigns. The Parties agree any future owner, transferee, operator, or assignee of TPDES Permit No. WQ0014488003 and the facilities

applied for and described in the Application will be required to comply with this Agreement.

- b. In the event Dripping Springs transfers or changes control or ownership of facilities authorized in TPDES Permit No. WQ0014488003, it will notify LCRA in writing within 10 days of the transfer or change.

17. MISCELLANEOUS.

- a. The Parties agree that this Agreement is for the benefit of the signatories only. There are no third party beneficiaries. No Person other than the Parties themselves has any rights or remedies under this agreement.
- b. This Agreement may be executed in multiple originals any copy of which shall be considered an original.
- c. This Agreement shall be governed by the law of the State of Texas.
- d. Venue for any suit arising under this Agreement is in Hays County.
- e. This agreement shall become effective immediately upon signature by both parties and immediately after ratification by the City Council of the City of Dripping Springs, Texas.

CITY OF DRIPPING SPRINGS, TEXAS

Attest:

Linda G. Lents
City Secretary

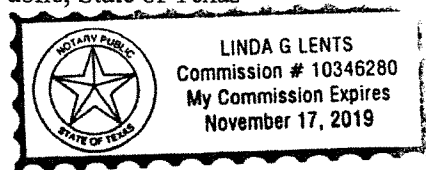
By: Bill Fowles
~~Todd Purcell~~ Mayor - pro-tem
Bill Fowles

Date: November 3, 2017

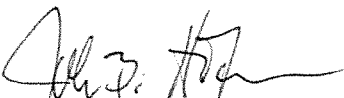
STATE OF TEXAS
COUNTY OF Texas

This instrument was executed by ~~Todd Purcell~~ ^{Bill Fowles} before me on this the 3 day of November, 2017.

Linda G. Lents
Notary Public, State of Texas



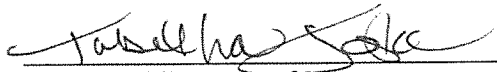
LOWER COLORADO RIVER AUTHORITY

By: 
John Hofmann, Exec. VP, Water

Date: 10/27/2017

STATE OF TEXAS
COUNTY OF TRAVIS

This instrument was executed by **John Hofmann** before me on this the 27th day of October, 2017.


Notary Public, State of Texas

