



**PUBLIC SERVICE BOARD MEETING  
AGENDA ITEM**

**REGULAR MEETING  
Wednesday, January 11, 2017**

**SUBJECT**

License Agreement for the City of Dell City

**BACKGROUND**

The City of Dell City (Dell City) recently lost one of its water wells utilized for watering its parks, gardens, and right-of-ways. Dell City requested to utilize an El Paso Water (EPWater) well.

**EVALUATION PROCESS**

EPWater will not incur any costs by allowing Dell City to utilize its well. Any water drawn from the EPWater well shall not count against EPWater's permit issued by the Hudspeth County Underground Water Conservation District No. 1. The license agreement is for a period of ten years.

**FINANCIAL IMPLICATIONS**

N/A

**PROPOSED ACTION REQUESTED**

Approve a license agreement between El Paso Water and the City of Dell City to authorize use of an El Paso Water water well located in Dell City.

**SUPPORTING DOCUMENTATION PROVIDED**

- License Agreement

STATE OF TEXAS           §  
                                          §           **LICENSE AGREEMENT**  
COUNTY OF EL PASO   §

**THIS LICENSE AGREEMENT** (“Agreement”) is entered into on this the day of, 2017, (“Effective Date”) by and between the City of El Paso on behalf of the El Paso Water Utilities – Public Service Board (“Licensor”) and the City of Dell City (“Licensee”).

**WHEREAS**, Licensee desires to utilize a water well owned by Licensor for municipal purposes including watering parks, right-of-ways, and gardens; and

**WHEREAS**, the Parties desire to enter into a License Agreement whereby Licensee will be permitted use of El Paso Water Utilities managed City property for the purpose of accessing the water well.

**NOW, THEREFORE, THE LICENSOR AND LICENSEE HEREBY ENTER INTO THIS AGREEMENT UNDER THE FOLLOWING TERMS AND CONDITIONS:**

**1.0 LICENSOR PROPERTY**

Licensor is the manager of those certain lands and premises owned by the City of El Paso, located in Dell City, as shown on the attached **Exhibit “A”** and referred to and incorporated herein for all purposes (the “Property”).

**2.0 LICENSE**

2.1 Licensor hereby grants to Licensee and Licensee hereby accepts a license to use and occupy the Property for the purpose of drawing water from the well located on the Property in accordance with the terms and conditions of this License.

2.2 **Permitted Use.** Licensee’s use of the Property shall be exclusively for the drawing of water from the well located on the Property. **Licensee shall bear all costs and expenses associated with the Permitted Use.**

This License is strictly limited to the use of the Property by the Licensee for the Permitted Use during the License Period and does not extend to use of any of other Licensor facilities

2.3 **Water Permits** Any water drawn from the Property shall count against permits issued by the Hudspeth County Underground Water Conservation District No. 1 (HCUWCD) held by Licensee and not that of Licensor. Licensee shall appropriately report its usage in accordance with HCUWCD rules and obtain, without cost to Licensor, any authorizations required to effectuate the intent of this section.

2.4 **Acceptance of Property.** Licensee accepts the Property in its present condition as suitable for the purpose for which the License is being granted. Licensee shall not make or cause to be made any improvements to the Property. Licensee shall

occupy the Property and conduct its activities pursuant to the Permitted Use in a manner to prevent damage or destruction to the Property and facilities. Should any damage occur, Licensee shall be fully responsible for the repair of such damage

- 2.5 **Restoration of Property.** Prior to the expiration of the License Period, the Licensee shall restore the Property to substantially the same condition as found prior to commencement of its occupancy, normal wear and tear excepted, and shall immediately remove its equipment or Licensee's personal property from the Property.
- 2.6 **Access by Licensor.** Licensor and its authorized agents shall have the right to enter the Property at any time during the License Period for any purpose.
- 2.7 **No Property Interest.** Except for the rights granted by execution of this instrument and reasonable access, and or ingress and egress to the Property, Licensor does not convey any other right, title or interest in the Property herein.

### **3.0 LICENSE PERIOD**

The rights granted herein shall commence on the Effective Date of this Agreement and shall expire ten years therefrom, at which time the Property shall be fully restored in accordance with Section 2.5.

### **4.0 CONSIDERATION**

In Consideration for the use of the Property as set forth in this Agreement, the Licensee shall pay Ten and 00/100 Dollars (\$10.00) per annum. Any payment made under this Agreement must be made from current revenues available to the paying party.

### **5.0 COMPLIANCE WITH ALL RULES AND REGULATIONS**

Licensee shall comply with all applicable Federal, State and Local rules and regulations with regard to use of the Property including, but not limited to, the HCUWCD Rules.

### **6.0 TERMINATION**

The parties agree that either party may terminate this Agreement in whole or in part by 24 hour written notice to the other party. Except as otherwise provided herein, all duties and obligations of the Licensor and Licensee shall cease upon termination or expiration of this Agreement.

### **7.0 INSURANCE.**

Licensee shall procure and maintain at its sole cost and expense, during the License Period, and keep in force for the benefit of Licensor , with Licensor as additional insured, comprehensive general liability insurance in an amount not less than:

\$1,000,000 - Per Occurrence  
\$1,000,000 – General Aggregate

\$1,000,000 – Products/Completed Operations – Occurrence & Aggregate

The following endorsements shall be added to the policy: A Waiver of Subrogation in favor of the Licensor of El Paso.

Prior to occupying the Property, Licensee shall provide Licensor with a certificate or certificates of insurance and the policies showing coverage for the required insurance. Licensee shall maintain said insurance with a solvent insurance company authorized to do business in Texas. All policies shall name Licensor, its officers, agents, servants and employees as additional insured, except worker's compensation. Licensee shall provide a copy of the policy and certificate(s) of insurance to the Real Estate Manager and Counsel for the El Paso Water Utilities prior to commencement of operations on the Property. Such policy or certificate shall provide that the insurance cannot be cancelled or the amount of coverage changed without written notice to the Real Estate Manager and Counsel for the El Paso Water Utilities. It is understood and agreed that failure to provide the required insurance or evidence of insurance coverage shall preclude the use of the property, as otherwise agreed herein.

If Licensee is self-insured, a letter from the Licensee indicating that the level of self-insurance meets the requirements set forth in this Agreement shall be acceptable.

## **8.0 NO JOINT VENTURE / PRESERVATION OF IMMUNITY**

Except as may be expressly and unambiguously provided in this Agreement, no partnership or joint venture is intended to be created by this Agreement. Nothing in this Agreement is intended to waive any party's immunity under the Law.

## **9.0 GENERAL PROVISIONS**

9.1 Complete Agreement. This Agreement, together with the Attachment(s) attached hereto, constitutes the entire agreement between the parties relating to the terms and conditions of the Agreement. The parties expressly acknowledge and warrant that there exists no other written or oral understanding, agreements or assurances with respect to such matters except as are set forth herein. Unless expressly stated, this Agreement confers no rights on any person(s) or business entity(s) that is not a party hereto. This Agreement shall not be construed against or unfavorably to any party because of such party's involvement in the preparation or drafting of this Agreement.

9.2 Governing Law and Venue. This Agreement shall be construed and interpreted and shall be governed in accordance with the laws of the State of Texas, along with any applicable provisions of the federal law, the El Paso City Charter and/or any ordinance of the City of El Paso. For the purpose of determining place of this Agreement and the law governing the same, this Agreement is entered into in the City and County of El Paso, the State of Texas. Venue shall be in the County of El Paso, State of Texas.

- 9.3 Survival. Each party shall remain obligated to the other under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement.
- 9.4 Assignment, Amendments and Waiver. The services to be provided under this Agreement by parties cannot be assigned or delegated without the prior written consent of the other party. The parties may amend this Agreement at any time by mutual consent. Unless otherwise provided herein, this Agreement may be amended only by written instrument duly executed on behalf of the Licensor and Licensee. No claim or right arising out of a breach of this Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.
- 9.5 Severability. All agreements and covenants contained in this Agreement are severable. Should any term or provision of this Agreement be declared invalid by a court of competent jurisdiction, the parties intend that all other terms and provisions of this Agreement should be valid and binding and have full force and effect as if the invalid portion had not been included.
- 9.6 Notices. All notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received via personal delivery with signed receipt or via United States Postal Service post office or certified mail, return receipt requested addressed to the respective other party at the address provided below or at such other address as the receiving party may have theretofore prescribed by written notice to the sending party. The initial addresses of the parties, which one party may change by giving written notice of its changed address to the other party, are as follows:
- LICENSOR: El Paso Water Utilities  
Attention: Marcela Navarrete  
VP, EPWU  
1154 Hawkins Blvd.  
El Paso, Texas 79925
- LICENSEE: The City of Dell City  
Attention: Dale Flach  
102 Dodson St.  
Dell City, TX 79837
- 9.7 Warranty of Licensor to Execute Contract. The person signing this Agreement on behalf of Licensee warrants that he/she has the authority to do so and to bind Licensee to this Agreement and all the terms and conditions contained herein.

[SIGNATURES BEGIN ON NEXT PAGE]

Each person signing below represents that he or she has read this Agreement in its entirety; understands its terms; and agrees on behalf of such party that such party will be bound by those terms.

**EXECUTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2017

**LICENSOR  
EL PASO WATER UTILITIES –  
PUBLIC SERVICE BOARD**

\_\_\_\_\_  
John E. Balliew, President/CEO

\_\_\_\_\_  
**LICENSEE  
CITY OF DELL CITY**

\_\_\_\_\_  
By: \_\_\_\_\_  
(Printed Name)  
Title: \_\_\_\_\_

**EXHIBIT A**  
**DESCRIPTION OF PROPERTY**