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January 6, 2014

Tammy Benter
TCEQ Utilities and Districts
12100 Park 35 Circle, Bldg. F
Austin, Texas 78753

Via Email: Tammy.benter@tceq.texas.gov

RE: TCEQ Docket No. 2013-2211-UCR; La Villa Independent School District vs. City of La Villa, Texas; Before the Texas Commission on Environmental Quality.

Dear Ms. Benter:

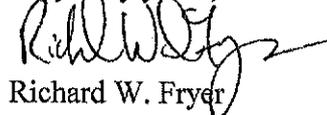
Attached, please find **La Villa Independent School District's First Amended Application for Emergency Order** for filing with the Texas Commission on Environmental Quality.

Please file the Application and contact me at the number listed above to confirm your receipt of the Application. By copy of this letter, all parties of record have been provided with a copy of same.

Further, I am requesting to attend the hearing pertaining to this matter via telephonically as I will not be able to attend in person due to my schedule. Therefore, please advise when the hearing is scheduled and any call in number for me to call in to attend the hearing.

Thank you for your attention to this matter. If you should have any questions, please do not hesitate to call.

Very truly yours,


Richard W. Fryer

RWF/kb
Enclosure

cc: **Via U. S. Postal Service:**
Miguel A. Saldana
Walsh, Anderson, Gallegos,
Green & Trevino, P.C.
105 E. 3rd Street
Weslaco, Texas 78596
*Attorney for La Villa Independent
School District Board of Trustees*

Via U. S. Postal Service:
Roberto J. Salinas
Attorney At Law
2101 Wood Avenue
Donna, Texas 78537
Attorney for City of La Villa, Texas

TCEQ DOCKET NO. 2013-2211-UCR

LA VILLA INDEPENDENT SCHOOL DISTRICT,	§	BEFORE THE TEXAS
Applicant	§	
VS.	§	
CITY OF LA VILLA, TEXAS	§	COMMISSION ON
Respondent	§	
	§	ENVIRONMENTAL QUALITY

**LA VILLA INDEPENDENT SCHOOL DISTRICT'S
FIRST AMENDED APPLICATION FOR EMERGENCY ORDER**

COMES NOW, Applicant, La Villa Independent School District (herein "*Applicant*"), by and through its attorney of record and complains of Respondent, City of La Villa, Texas (herein "*Respondent*") and for cause would respectfully show the Commission the following:

I. PARTIES

1. Applicant is the governing board of an independent school district and political subdivision of the State of Texas, established in accordance with the Texas Education Code and the Constitution of the State of Texas, having its principal offices in Hidalgo County, Texas. Applicant's address is 500 East 9th Street, La Villa, Texas. The telephone number of Applicant is (956) 262-4755. The person signing this Application for Emergency Order on Applicant's behalf is Narciso Garcia, Superintendent of Schools for La Villa Independent School District.

2. Respondent is a Type A, general-law municipality operated under the Aldermanic form of government, organized under Chapter 6 of the Texas Local Government Code, and is a city of Hidalgo County, Texas. Respondent may be served with citation by serving its Mayor, Hector Elizondo, at the offices of the City of La Villa, 916 Mike Chapa Drive, La Villa, Texas 78562.

II. NATURE OF THIS APPLICATION

3. As recognized by the Texas Legislature, “[c]ontinuous service by a public utility is essential to the life, health and safety of the public. A person’s willful interruption of that service is a calamity that cannot be endured.” TEX. UTIL. CODE § 186.002(a) (emphasis added). Applicant brings this Application for emergency action before the Texas Commission on Environmental Quality (“TCEQ”) as the result of Respondent’s willful interruption of Applicant’s retail water and sewer service. More particularly, Applicant seeks an emergency order from the TCEQ declaring that certain past, present, and threatened future actions of Respondent are unlawful insofar as they violate the provisions of TEX. WATER CODE § 13.250(b-d) and 31 TAC § 291.88.¹ In short, Applicant seeks an emergency TCEQ order compelling Respondent to provide it with continuous and adequate water and sewer service until further order of the Commission.

III. JURISDICTION AND VENUE

4. Respondent, through its efforts to collect on contested, discriminatory amounts for water and sewer service, threatened to and has disconnected water and sewer service to Applicant.

5. Respondent has a Sewer Certificate of Convenience and Necessity (“CCN”), number 20803, and is recognized as a Public Water System, number P1401.

6. The Commission has jurisdiction over the subject matter of this case because Respondent is a regulated by TCEQ through Respondent’s Sewer CCN and through its Public Water System classification. In addition, TCEQ has jurisdiction pursuant to TEX. WATER CODE §13.041(d)(1) and §13.042 in that it may issue an emergency order to compel a sewer service

¹ As a regulated utility, Respondent’s ability to interrupt water service is limited to those situations prescribed by the provisions of Tex. Water Code § 13.250(b-d) and 31 TAC § 291.88 (a portion of the TCEQ’s Administrative Rules).

provider that has obtained or is required to obtain a CCN to provide continuous and adequate water and sewer service. All conditions precedent to bringing this action, and to recovery, have been performed or have occurred.

7. Moreover, pursuant to 30 TAC § 291.14(a), the TCEQ maintains jurisdiction to issue emergency orders in this matter, with or without hearing, because of the threatened termination of water and sewer service by Respondent.

IV. NOTICE BEFORE FILING NOT GIVEN

8. There is good cause to believe that further immediate and irreparable injury, loss, and/or imminent harm to the public health and safety would occur as a result of a delay in obtaining an emergency order from the TCEQ compelling Respondent to restore water service to Applicant and enjoining said water service provider from continued violations of the Texas Water Code, and the provisions of its Sewer Certificate of Convenience & Necessity and its requirements as a Public Water Supplier.

9. If Respondent is not immediately compelled to provide continuous and adequate service to Applicant, it will continue to engage in unlawful water service interruptions and thereby cause immediate and irreparable injury, loss, and/or imminent harm to the health and safety to Applicant's students and faculty, whose water service has been wrongly disconnected. Namely, Applicant's 688 students, faculty, and staff will continue to be deprived of the use of water for sanitation, food preparation, personal hygiene, water for drinking, and the use of its facilities due to disconnected water and sewer service.

V. APPLICABLE FACTS

10. Applicant encompasses an early college high school, alternative high school, middle school and elementary school located in the corporate limits of La Villa, Texas.

11. Respondent operates a city water and sewer system as authorized by statute, and

regulated by the TCEQ, for the purpose of providing water to the residents and businesses of Respondent.

12. Since its inception, Respondent has provided water and sewer service to Applicant, and has billed Applicant for such service based upon a flat fee plus per gallon fee after maximum usage was exceeded.

13. During Summer of 2012, Applicant and Respondent agreed on a new rate structure. Not only did this rate structure increase the flat fee and the per gallon fee, it added a per capita fee for water at a rate of \$3.00 per person and for wastewater at a rate of \$3.00 on each Applicant's four campuses.

14. On or about December 14, 2012, Respondent, without formal notice, increased its per gallon fee by one dollar and its per capita rate from \$3.00 for water service and \$3.00 for sewer service to \$7.00 for water service and \$7.00 for sewer service. This new rate increase targeted Applicant with a new total rate for water and sewer that equated to an average rate of \$24.00 per person per month, totaling nearly \$16,512.00 per month for Applicant. This more than doubled the estimated \$8,000.00 per month water and sewer bill under the originally agreed rate structure.

15. Applicant objected to the increased amount and refused to pay the increased rates, because it did not agree to the increase, and it knew from prior negotiations that it could not afford the new rate without fully depleting its funds. Once Applicant's reserves are depleted, it will not have sufficient funds to support its primary mission of educating the children of the community, much less continuing to pay Respondent's exorbitant water and sewer bills. Also, Applicant recognizes that even if it reduced its water usage to zero, an unrealistic number but used to demonstrate the absurdity of the current rates, it will still have to pay an average of an \$18.00 per person per month water and sewer bill, totaling over \$12,000.00 per month for its

combined campuses.

16. Nonetheless, Applicant, in good faith, has continuously paid its water bills at the originally agreed amount while trying to work with Respondent to establish a mutually beneficial rate that would not bankrupt Applicant.

17. In July of 2013, Respondent made its first threat to terminate water service to Applicant. On July 15, 2013, Applicant filed its Original Petition for Temporary and Permanent Injunction and for Declaratory Judgment in the 93rd District Court in Hidalgo County.

18. The court granted the temporary restraining order (“TRO”) in favor of Applicant. The court then extended the TRO until September 11, 2013 to consider Applicant’s Motion for Temporary Injunction after a court-ordered mediation between the parties had occurred.

19. On September 17, 2013, the court dissolved the TRO and denied District’s motion for Temporary Injunction after an unsuccessful mediation.

20. District has subsequently appealed the court’s denial of its motion for temporary injunction. This appeal is pending before the Thirteenth (13th) Court of Appeals.

21. Despite the pending appeal, Respondent issued a 10-day Disconnection Notice on or about December 10, 2013, threatening to disconnect Applicant’s water and sewer service on December 20, 2013 by 5:00 pm, which coincidentally was the last day of the Fall Semester. See attached **Exhibit “A.”**

22. Respondent ultimately terminated water and sewer service to Applicant on or before December 25, 2013. While Respondent did not expressly notice Applicant of its intention to terminate its sewer service, sewer service has effectively been terminated by Respondent’s failure to provide water to the schools.

23. Since that time, Applicant has scrambled to remove the animals kept at its Agriculture Barn to prevent harm to the animals and minimize the possibility of an unsanitary

condition on campus due to the terminated water service. It has also been forced to create contingency plans for other ongoing and future student and faculty programs.

24. School is scheduled to begin on January 13, 2013, but will not if this Emergency Order is not granted. The Applicant's four schools will remain shut down and its 688 students, faculty, and staff will not be able to attend classes or go to work.

25. Applicant attaches the verification of the Superintendent of La Villa Independent School District, Narcisa Garica, that proves the allegations in this Application for Emergency Order and incorporates it by reference.

VI. APPLICATION FOR EMERGENCY ORDER

26. Applicant therefore requests that this Commission issue this Emergency Order pursuant to TEX. WATER CODE §13.041 and 30 TAC § 291.14(a) in response to Respondent's termination of water and sewer service to Applicant. Respondent's actions have disrupted continuous and adequate water and sewer service to the students and faculty of Applicant in violation of Respondent's Sewer CCN, its Public Water System Certificate, as well as applicable law.

27. Applicant seeks this Emergency Order, without a hearing, immediately compelling Respondent and its agents, servants, employees, representatives, and those in active concert or participation with Respondent, to provide continuous and adequate water and sewer service, restoring water and sewer service, and restraining Respondent from directly or indirectly terminating water and sewer service to the various schools under Applicant located in La Villa, Texas for a period of at least **90 days and** until further order of the Commission.

28. This Application for Emergency Order is based on the unique set of extreme circumstances set forth in this Application and will not create a broad precedent nor broaden the jurisdiction of the TCEQ more than its current jurisdiction over Respondent's Sewer CCN as it is

highly unusual for a city to shut down its own school as a result of its own rate-gouging practices. These practices have been brought about by and are an extension of Respondent's gross mismanagement of the water and sewer utility as described in detail below.

29. If Applicant's application is not granted, harm is imminent because Respondent has terminated water and sewer service to Applicant, placing Applicant in an untenable situation. Not only is the terminated water service a threat to public health and safety, but is a threat to the financial viability of Applicant.

30. Once water and sewer service has been restored, this will maintain the status quo prior to notice and hearing on this matter, due to the nature of potential irreparable harm to Applicant, its students, and employees. It will also allow the parties the time to reach an amicable solution to this dispute because judicial and political remedies are still sought.

There is an Imminent Threat to Public Health and Safety

31. Immediate and irreparable injury, loss, damage and/or imminent harm to health and safety will result if this Emergency Order is not issued due to the following reasons:

A. By law, school-aged children must attend school. However, the Texas Legislature, through the Health and Safety Code in Section 341.065, recognizes a health and safety risk to schools without water and sewer facilities and requires that water and sewer facilities be available for a school to remain open. Without adequate water and sewer facilities, Applicant will be forced to close the schools to comply with the statute and avoid the risk of a public health and safety hazard to the 688 students and faculty attending and working in Applicant's facilities. The children will be unable to continue their education during this time.

B. Not only will students miss vital instruction time, but many will miss the meals obtained through Applicant's breakfast and lunch program. The balanced meals

provided through Applicant's program provides, in an area plagued with poverty, diabetes, and obesity, food unavailable outside of school.

C. Applicant's facilities are also designated shelters for local residents in the event of cold weather. This will most certainly affect the health and safety of the public in time of a weather emergency because such shelters will be unavailable for homeless residents and residents without heat. In the event of a freeze, or low temperatures, these people will literally be left out in the freezing cold.

Increased Rates Demonstrate Underlying Mismanagement of The Water and Sewer Utility

32. In addition to the imminent threat to public health and safety created by Respondent, Respondent has initiated a campaign to loot the school's reserves through an unlawful taking, disguised as a rate increase, to subsidize its poorly managed and maintained water and sewer plant. This is nothing more than a money grab by Respondent to artificially resuscitate its terminally ill water and sewer system that is on the verge of collapse.

33. Over the last decade, Respondent has repeatedly violated TCEQ regulations. More recently, its day-to-day operations have been under increased TCEQ oversight due to many health and environmental violations. Respondent continues to experience irregular outages, to issue regular "Boil Notices," and distributes health warnings regarding the potential health risks of consuming water treated by Respondent's facilities, thereby exposing Respondent's inability to properly operate a water and sewer utility. Many of these same situations ultimately resulted in the Agreed Final Judgment and Permanent Injunction issued in 2008, ("Judgment"). See attached **Exhibit "B."** Respondent's current water and sewer issues coupled with its desperate attempt to ransack Applicant's coffers demonstrates that Respondent has not been and may no longer be in substantial compliance with the Judgment, the Health and Safety Code, the Water Code, and rules of the TCEQ at the water plant and sewer plant, as required by the Judgment.

34. Furthermore, Respondent's discriminatory rates, targeting Applicant, further expose the depth of its mismanagement and shortsightedness and shows that Respondent is willing to bankrupt Applicant, its own community's public school, so that it can merely operate its water and sewer plant a bit longer. Due to its last-ditch attempts to comply with TCEQ requirements for its crumbling facilities, Respondent has singled out Applicant, not for its large water use, but for its perceived access to unlimited State funds and is charging a rate that is unsustainable while keeping the rates of its other ratepayers unrealistically low.

35. The vast disparity of Respondent's rates are revealed when compared to other water and sewer suppliers in the immediate area. For example, North Alamo Water Supply Corporation, who has over 37,000 water and sewer connections and is known for its comparatively low water and sewer rates, charges a reasonable yet higher residential rate for water and sewer service than Respondent. Moreover, when studying Respondent's bills, North Alamo Water Supply Corporation would charge Applicant a rate for comparable usage that is **nearly 10 times lower** than what Respondent is currently charging Applicant. This is disconcerting.

36. Respondent, through its disproportionate rate structure, has shown that it does not have a sustainable plan to operate its water and sewer plant. Instead of spreading the burden of its TCEQ imposed responsibilities across its citizens through a responsible, long-term move to improve the reliability of Respondent's facilities, it is only focused on the current short-term extortion of Applicant's school funds. Respondent certainly isn't demonstrating that it is a fair and reliable steward of the public's trust in the treatment of water and sewer.

Applicant Has Exhausted All Available Remedies

37. Other than the pending appeal, Applicant has exhausted its legal remedy in district court and does not otherwise have an adequate remedy at law except through the instant

proceeding because there exists no alternate means of obtaining water service to its facilities. Moreover, a political remedy takes time to implement and may not be available before Applicant's financial situation is irreparably harmed, and the children of La Villa have been denied access to education.

38. Respondent will suffer no harm, cost, or burden associated with maintaining service to Applicant as its infrastructure is in place and will so remain. Only Respondent has access to and control over its infrastructure.

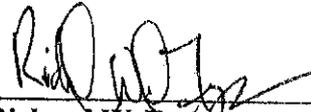
39. Even if Applicant starts to pay the increased rate, once it runs out of money, Respondent won't be any closer to upgrading its facilities and must rely on a more balanced and across-the-board rate structure that Applicant has been trying to negotiate with Respondent.

40. Therefore, Applicant asks the Commission to immediately issue an emergency order against Respondent compelling Respondent to restore continuous and adequate water and sewer service and restraining it from taking any action to turn off or interfere with Applicant's water and sewer service during the pendency of this order.

VII. PRAYER

WHEREFORE, PREMISES CONSIDERED, Applicant, La Villa Independent School District, prays that, in accordance with 30 TAC §291.14(a)(1), the TCEQ issue an emergency order, without hearing, compelling Respondent, the City of La Villa, to reconnect water and sewer service, to provide continuous and adequate water service, and to immediately cease and desist in all efforts to discontinue water and sewer service to Applicant; and adjudge against Respondent reasonable attorney's fees and costs, together with all relief to which Applicant may be entitled either at law or in equity.

Respectfully Submitted,



Richard W. Fryer
State Bar No. 24085316
Brian J. Hansen
State Bar No. 24072139

FRYER & HANSEN, PLLC
1352 West Pecan Boulevard
McAllen, Texas 78501
Telephone: (956) 686-6606
Facsimile: (956) 686-6601

**ATTORNEYS FOR LA VILLA
INDEPENDENT SCHOOL DISTRICT**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing **La Villa Independent School District's First Amended Application for Emergency Order** has been served on the 6th day of JANUARY, 2014 to the following in the manner indicated:

Via Email: Tammy.Benter@tceq.texas.gov

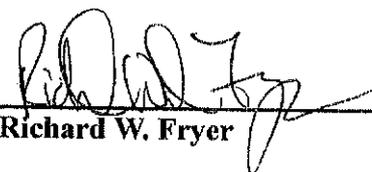
Tammy Benter,
TCEQ Utilities and Districts
12100 Park 35 Circle, Bldg F
Austin, Texas 78753

Via U. S. Postal Service:

Miguel A. Saldana
Walsh, Anderson, Gallegos,
Green & Trevino, P.C.
105 E. 3rd Street
Weslaco, Texas 78596
*Attorney for La Villa Independent
School District Board of Trustees*

Via U. S. Postal Service:

Roberto J. Salinas
Attorney At Law
2101 Wood Avenue
Donna, Texas 78537
Attorney for City of La Villa, Texas


Richard W. Fryer

TCEQ DOCKET NO. 2013-2211-UCR

LA VILLA INDEPENDENT SCHOOL DISTRICT,

Applicant

VS.

CITY OF LA VILLA, TEXAS

Respondent

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BEFORE THE TEXAS

COMMISSION ON

ENVIRONMENTAL QUALITY

VERIFICATION

STATE OF TEXAS

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COUNTY OF HIDALGO

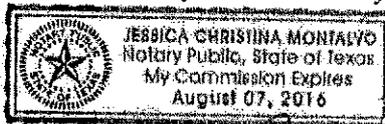
BEFORE ME, the undersigned Notary Public, in and for the State of Texas, on this day personally appeared **NARCISO GARCIA**, who being by me duly sworn on oath deposed and said that he is the Superintendent for La Villa Independent School District, Applicant in the above-entitled and numbered cause; that he has read the foregoing and that every factual statement contained in that document is within his personal knowledge and is true and correct.

Further affiant sayeth not."

Narciso Garcia

NARCISO GARCIA
La Villa ISD Superintendent

SWORN TO AND SUBSCRIBED BEFORE ME the undersigned authority by NARCISO GARCIA on this the 1st day of January, 2014 to certify and witness my hand and seal of office.



Jessica C. Montalvo
Notary Public, State of Texas
Printed Name: Jessica C. Montalvo
My commission expires: August 7, 2016

TCEQ DOCKET NO. 2013-2211-UCR

**LA VILLA INDEPENDENT SCHOOL
DISTRICT,**

Applicant

VS.

CITY OF LA VILLA, TEXAS

Respondent

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BEFORE THE TEXAS

COMMISSION ON

ENVIRONMENTAL QUALITY

**EMERGENCY ORDER AND ORDER SETTING HEARING
FOR TEMPORARY INJUNCTION**

On this the _____ day of _____, 2014, the Commission heard Applicant's Application for Emergency Order.

1. The Commission after examining the pleadings and evidence, finds there is evidence:
 - a. Applicant will probably recover from City of La Villa.
 - b. Harm is imminent to Applicant and if the Commission does not issue the Emergency Order, Applicant will be irreparably injured because the public health, safety and general welfare of students and faculty of La Villa Independent School District will be at risk if the City of La Villa does not restore water and sewer service or otherwise prevents water and sewer service to La Villa Independent School District.
 - c. An ex parte order is necessary without notice to City of La Villa because there is insufficient time to give notice to City of La Villa, hold a hearing, and issue an emergency order before the irreparable harm occurs.
2. Therefore the Commission:
 - a. Immediately compels City of La Villa, and its agents, servants, employees, representatives, and those in active concert or participation with the City of La Villa, to restore continuous and adequate water and sewer service to La Villa Independent School District, and restrains La Villa from further terminating water and sewer service to La Villa Independent School District for 90 days.
 - b. Orders the clerk to issue notice to City of La Villa, that the hearing on Applicant's Application for Emergency Order is set for the _____ day of _____, 201__ at _____ a.m./p.m. The purpose of the hearing shall be to determine whether this order should be affirmed pending a full consideration of the complaint on the merits.

This order expires on _____, 20__.

SIGNED on _____, 2014, at _____ a.m./p.m.

JUDGE PRESIDING

Mayor
Hector Elizondo

Mayor Pro-Tem
Jorge Lopez

City Administrator
Wilfredo Mata



Aldermen
Manuel Hinojosa

Joe Contreras

Mario Lopez

Rosa Perez

December 10, 2013

Mr. Narciso Garcia, Superintendent of Schools
La Villa Independent School District
P.O. Box 9
500 E. 9th St.
La Villa, TX 78562

LA VILLA ISD

DEC 10 2013

RECEIVED

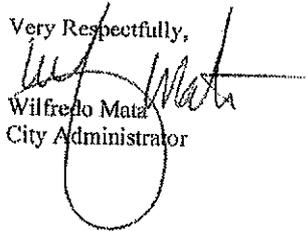
RE: Delinquent Accounts

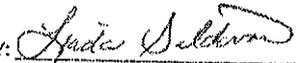
Dear Mr. Garcia,

The City is making an effort to collect on your delinquent water account. We have not received payments on accounts #58.0, 58.1, 58.2 and 16.0. The outstanding balance is \$57,212.69. Please submit payment in full for the outstanding balances to avoid disconnection on Friday, December 20, 2013 by 5:00 pm.

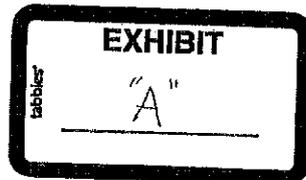
Should you have any questions regarding the status of the La Villa ISD delinquency status, please contact me at (956) 262-2122.

Very Respectfully,


Wilfredo Mata
City Administrator

RECEIVED BY:  12/10/13

P.O. Box 60 • La Villa, Texas 78562 • Office (956) 262-2122 • Fax (956) 262-2516



Filed in The District Court
of Travis County, Texas

LVI APR 30 2008

At 1:44 p.m.
Amalia Rodriguez-Mendoza, Clerk

NO. D-1-GV-06-000018

STATE OF TEXAS,
Plaintiff,

v.

CITY OF LA VILLA,
Defendant.

§
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§

THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

98th JUDICIAL DISTRICT

AGREED FINAL JUDGMENT AND PERMANENT INJUNCTION

On this day, the State of Texas and the City of La Villa submitted this Agreed Final Judgment and Permanent Injunction. By presenting this Judgment to the Court, the State of Texas announced that it published notice of this Judgment in the *Texas Register* for thirty days as required by Texas Water Code § 7.110 and received no comments that indicate the proposed settlement is inappropriate, improper, inadequate, or inconsistent with applicable law. Therefore, by the duly authorized signatures subscribed to this Judgment, all parties represent to the Court that they agree to the terms of this Judgment and that the Judgment represents the settlement of all matters in the Plaintiff's Original Petition and Application for Temporary and Permanent Injunctive Relief.

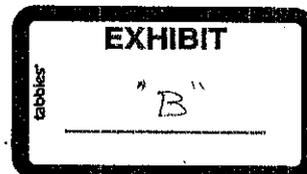
The Court finds it has jurisdiction over the subject matter of this action pursuant to Chapter 7 of the Texas Water Code. The Court finds this Judgment to be proper, necessary, and in the best interests of justice.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED as follows:

1. DEFINITIONS

1.1. As used in this Judgment the words and terms set forth below shall have the following meanings:

A. "State" shall mean the State of Texas.



- B. "TCEQ" shall mean the Texas Commission on Environmental Quality and its predecessor and/or successor agencies.
- C. "La Villa" shall mean the City of La Villa a municipal corporation formed under the laws of Texas and located in Hidalgo County, Texas.
- D. "PWS Facility" shall mean La Villa's public water supply located at the west side of Nogales Street approximately 0.25 mile west from the intersection of Farm-to-Market Road 491 and 3rd Street in La Villa, Hidalgo County, Texas. The PWS Facility is identified by the TCEQ with Public Water Supply Identification Number 1080023.
- E. "WWT Plant" shall mean La Villa's wastewater treatment facility located approximately 1,300 feet west of the western levee of the North Floodway and 2,500 feet north of State Highway 107, just east of La Villa, Hidalgo County, Texas. The WWT Plant is identified by the TCEQ with Wastewater Certificate of Convenience and Necessity Identification Number 20803.
- F. "Wastewater Permit" shall mean the Texas Pollutant Discharge Elimination System Permit No. WQ0014781001, Permit to Discharge Wastes, City of La Villa, which is attached hereto as Exhibit A and incorporated by reference for all purposes.
- G. "T.A.C." shall mean the Texas Administrative Code.
- H. "TPDES" shall mean the Texas Pollutant Discharge Elimination System.
- F. "Day" or "Days" shall mean calendar days.
- I. "Parties" shall mean La Villa and the State, collectively.

J. "Effective Date" shall mean the date the Court signs this Judgment.

K. "Judgment" shall mean this Agreed Final Judgment and Permanent Injunction.

2. NO ADMISSION OF LIABILITY

2.1 La Villa does not admit liability on any of the allegations in the Plaintiff's Original Petition but enters into this Judgment because of the uncertainty and costs of litigation. La Villa represents to the Court that it actively participated in the negotiations leading to this Judgment.

3. PARTIES BOUND

3.1 This Judgment applies to and is binding upon the Parties and their agents, employees, representatives, successors, predecessors, divisions, subsidiaries, present and former officers and managers, and all other persons acting in concert with them, on their behalf, or under their control, whether directly or indirectly, including any attorney.

3.2 Nothing in this Judgment shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Judgment.

4. COMMITMENTS BY LA VILLA

4.1 La Villa acknowledges receipt of a copy of this Judgment, is aware of the duties placed upon it by the injunctive provisions contained in this Judgment, and is desirous and capable of carrying out those duties in full.

4.2 La Villa waives the necessity of the issuance and service of a writ of injunction pursuant to Rule 692 of the Texas Rules of Civil Procedure.

5. PERMANENT INJUNCTION

TCEO Public Health Service and Water Quality Fees

5.1 La Villa shall pay all fees related to its PWS Facility and WWT Plant on or before the due date for such fees as set forth for the Public Health Service Fee in 30 T.A.C. § 290.51(a)(6), the Consolidated Water Quality Fee in 30 T.A.C. § 21.4(e), and the Rio Grande Watermaster Fee in 30 T.A.C. § 303.73(b).

PWS Facility

5.2 Within 120 Days after the Effective Date of the Judgment, La Villa shall paint all rust spots and other exposed areas on the elevated storage tank and its supporting structure and cables.

5.3 Within 365 days after the effective date of this Judgment, La Villa shall return to compliance with the running annual average maximum contaminant levels for trihalomethanes and haloacetic acids, in accordance with 30 T.A.C. § 290.113.

WWT Plant

A. Wastewater Permit

5.4 Immediately upon the Effective Date of this Judgment, La Villa shall comply with the terms of TPDES Permit No. WQ0014781001, Permit to Discharge Wastes, City of La Villa. La Villa shall comply with all terms of the Wastewater Permit including, but not limited to, the following:

- A. monitoring the WWT Plant effluent in accordance with the Wastewater Permit, Interim and Final Effluent Limitations and Monitoring Requirements, pages 2 and 2a;

- B. submitting to the TCEQ Harlingen Regional Office reports of all effluent violations that deviate from the permitted effluent limitations by more than 40%, in accordance with the Wastewater Permit, Monitoring and Reporting Requirements, page 6, ¶ 7(c); and
- C. meeting all effluent limitations as set forth in Wastewater Permit, Interim and Final Effluent Limitations and Monitoring Requirements, pages 2 and 2a.

5.5 La Villa shall meet all operational requirements in the Wastewater Permit, Operational Requirements, pages 9 through 11, and the rules of the Commission for wastewater treatment plants including, but not limited to, the following:

- A. Within 10 days after the Effective Date of this Judgment, La Villa shall remove and properly dispose of the excess scum and large solids from the two final clarifiers, in accordance with 30 T.A.C. §§ 305.125(1) and 317.4(d)(2) and the Wastewater Permit, Operational Requirements, page 9, ¶ 1;
- B. Within 30 days after the Effective Date of this Judgment, La Villa shall:
 - (1) Repair or replace the flow meter that measures effluent and recalibrate the flow meter, in accordance with 30 T.A.C. §§ 305.125(1) and 319.11(d) and the Wastewater Permit, Operational Requirements, page 10, ¶ 5;
 - (2) Repair or replace the audiovisual alarm at lift station number three, in accordance with 30 T.A.C. §§ 305.125(1) and 317.3(e)(5) and the Wastewater Permit, Operational Requirements, page 9, ¶ 1;

- (3) Repair or replace the sludge return pump to ensure that two sludge pumps are continuously in operation, in accordance with 30 T.A.C. §§ 305.125(1) and 317.4(g)(3) and the Wastewater Permit, Operational Requirements, page 9, ¶ 1; and
 - (4) Replace or repair all damaged and failing electrical wires to protect equipment from electrical outages from rainfall, in accordance with 30 T.A.C. §§ 305.125(1) and 317.7(o) and the Wastewater Permit, Operational Requirements, page 9, ¶ 1.
- C. Within 60 days after the Effective Date of this Judgment, La Villa shall provide a back up power generator or an alternate means to generate power should there be an electrical power failure at the Facility, as required by 30 T.A.C. §§ 305.125(1) and 317.4(a)(5) and the Wastewater Permit, Operational Requirements, page 10, ¶ 4;
- D. Within 90 days after the Effective Date of this Judgment, La Villa shall repair or replace the north rotor in the oxidation ditch, in accordance with 30 T.A.C. §§ 305.125(1) and 317.4(g)(1)(C) and the Wastewater Permit, Operational Requirements, page 9, ¶ 1;
- E. Within 180 days after the Effective Date of this Judgment, La Villa shall provide a laboratory capable for operational control and testing, an office adequate for the protection of operating personnel, including hand-washing facilities, toilets, showers, proper lighting, heating and ventilation, and a tool shed and workshop for the storage of tools and spare parts and equipment repair, in accordance with

30 T.A.C. §§ 305.125(1) and 317.8 and the Wastewater Permit, Operational Requirements, page 9, ¶ 1; and

- F. Within 180 days after the Effective Date of this Judgment, La Villa shall submit to the TCEQ an engineering and financial plan for expansion and/or upgrading the WWT Plant, in accordance with 30 T.A.C. § 305.126 and the Wastewater Permit, Operational Requirements, page 10, ¶ 8(a).

B. Quarterly Operational Reports

5.6 Beginning for the quarter ending on March 31, 2008, and continuing each quarter of the year, La Villa shall submit quarterly operational reports for the previous quarter to the TCEQ at the addresses listed in Section 16 of this Judgment. These reports shall be due thirty days from the end of the periods ending on March 31, June 30, September 30, and December 31 of each year. The reports shall detail all developments of importance that occur in the relevant quarter at the PWS Facility and the WWT Plant and shall include, but not be limited to, the following:

- A. Any change in the operational status of key equipment. Key equipment at the PWS Facility includes, but is not limited to, the mixers for the clarifiers, all sampling taps, the chlorine system, all flow measuring devices, the backwash filters, and the mixer control valve. Key equipment at the WWT Plant includes, but is not limited to, the wastewater bar screen, all flow meters, the clarifiers, the sludge drying beds, backup power generator, lift stations, the oxidation ditch wier, the sludge return pumps, and the oxidation ditch rotors. A change in operational should be reported even if the change has been corrected by the date of the report.
- B. Any new construction at the PWS Facility and the WWT Plant.

C. Any change in the management of the City of La Villa and its PWS Facility and WWT Plant, including a change in facility operators.

D. List of all submittals to the TCEQ including, but not limited to, discharge monitoring reports and sludge reports.

5.7 La Villa shall submit the quarterly reports ordered in paragraph 5.6 until the TCEQ sends La Villa a written approval to discontinue the submittals.

C. Sludge Reporting

5.8 Beginning on September 1, 2008, and annually by September 1 of each year, La Villa shall submit annual sludge reports to TCEQ, in accordance with 30 T.A.C. § 305.125(17) and the Wastewater Permit, Sludge Provisions, page 12, Section I.B.2.

D. Outstanding Items from the Temporary Injunction

5.9 Within 30 days after the effective date of this Judgment, La Villa shall submit documentation to the TCEQ Harlingen Regional Office regarding all effluent violations occurring prior to the Effective Date of this Judgment that deviated from the permitted effluent limitations by more than 40%, in accordance with the Wastewater Permit, Monitoring and Reporting Requirements, page 6, ¶ 7(c).

6. FORCE MAJEURE

6.1 La Villa shall not be liable to the State or to any other party for any delay or failure to perform the injunctive requirements of this Judgment due to circumstances beyond its control, including, without limitation, acts of God or the public enemy, flood, fire, natural disaster, war or preclusive acts of any governmental authority. Financial inability to complete the

requirements of the injunction shall not be considered a circumstance beyond La Villa's control for purposes of this Judgment.

7. ATTORNEY'S FEES

7.1 The State shall have judgment against the City of La Villa for attorney's fees and costs in the amount of \$3,500.00. La Villa shall make payment of this amount in accordance with Section 11.

8. CIVIL PENALTIES

8.1 The State shall have judgment against the City of La Villa for civil penalties in the amount of \$14,000.00. La Villa shall make payment of this amount in accordance with Section 11.

9. UNPAID ADMINISTRATIVE PENALTY

9.1 The State shall have judgment against the City of La Villa for \$18,025.00 for administrative penalties assessed by the TCEQ in Docket Number 2001-1374-PWS-E on April 30, 2004. La Villa shall make payment of this amount in accordance with Section 11.

9.2 The State releases La Villa from any claim it has for pre-judgment interest and late fees on the administrative penalty assessed by the TCEQ in Docket Number 2001-1374-PWS-E on April 30, 2004.

10. UNPAID FEES

10.1 The State shall have judgment against the City of La Villa for \$3,327.59 for unpaid Public Health Service Fees and Water Quality Fees and late fees on these fees. La Villa shall make payment of this amount in accordance with Section 11.

10.2 Payment of the amount set forth in paragraph 10.1 shall release La Villa for its outstanding fee liability to the TCEQ up to the Effective Date of this Judgment.

11. PAYMENTS

11.1 La Villa shall make payment on the amounts awarded the State in this Judgment as follows:

A. La Villa shall pay \$5,000.00 to the State of Texas no later than five Days after the Effective Date of the Judgment. This payment shall be applied to the amounts due under this Judgment as follows:

- (1) \$3,500.00 to the judgment for attorney's fees and costs; and
- (2) \$1,500.00 to the judgment for unpaid TCEQ fees.

B. La Villa shall pay an additional \$12,827.59 in twelve consecutive monthly payments. The first payment of \$1,068.59 shall be sent to the State on or before the 15th day of the month in which the sixtieth Day after the Effective Date of the Judgment occurs. The following eleven payments in the amount of \$1,069.00 each shall be sent to the State on or before the fifteenth of each consecutive month thereafter. These payments shall be allocated to the amounts due on the Judgment as they are received in the following order:

- (1) \$1,827.59 to unpaid TCEQ fees;
- (2) \$7,000.00 to the unpaid administrative penalty; and
- (3) \$4,000.00 to civil penalties.

11.2 The State shall have the right to initiate collection proceedings on any overdue amounts if a payment is more than fifteen days late. If a payment becomes late by more than thirty days

all remaining payments shall be immediately due and payable without notice and will be subject to all available collection processes.

11.3 All amounts required to be paid in accordance with this Judgment shall be paid by certified check made payable to the "State of Texas (AG# 05-2238698)." Checks shall be delivered to Division Chief, Natural Resources Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711.

12. RELEASE FOR COMPLIANCE

12.1 If La Villa remains in Substantial Compliance with this Judgment, the Texas Health & Safety Code, the Texas Water Code, and the rules of the TCEQ at both the PWS Facility and the WWT Plant for a period of five years to the Day from the Effective Date of this Judgment, the State agrees to release La Villa from payment of \$21,025.00 due on this Judgment.

12.2 The Parties agree that the State may immediately file an abstract of judgment for the remaining \$21,025 due on the Judgment. The State shall take no other action to collect on this portion of the Judgment, other than abstracting it, unless or until it has been determined, under the process set forth below, that La Villa is no longer in Substantial Compliance with the Judgment, the Health and Safety Code, the Water Code, or rules of the TCEQ at the PWS Facility or the WWT Plant.

12.3 On or after five years after the Effective Date of the Judgment, La Villa may in writing request a release from the remaining \$21,025 due on the Judgment. The State shall provide the release of judgment if La Villa has remained in Substantial Compliance with the Judgment, the Health and Safety Code, the Water Code, and rules of the TCEQ at the PWS Facility and WWT

Plant, for the entire five-year period from the Effective Date of this Judgment forward, La Villa shall be responsible for filing the release of judgment with the appropriate authority.

12.4 Substantial Compliance shall mean:

- A. Full compliance with the terms of this Judgment, the Texas Health & Safety Code, the Texas Water Code, and the rules of the TCEQ at both the PWS Facility and the WWT Plant; or
- B. Any noncompliance that does not present an unacceptable health and safety risk and is corrected by La Villa within ten (10) Days after notification from the TCEQ of the noncompliance.

12.5 It shall be in TCEQ's sole discretion to determine what violations present an unacceptable health and safety risk.

12.6 The TCEQ shall notify La Villa in writing when it believes that La Villa is not in Substantial Compliance. La Villa shall respond to the TCEQ in writing within ten Days of the receipt of the notice from the TCEQ with a full explanation for the noncompliance. The Parties agree to meet to discuss the noncompliance and attempt to resolve whether the noncompliance rises to a level sufficient to allow the State to begin collection of the remaining \$21,025 due on the Judgment.

12.7 After meeting with La Villa, if the TCEQ determines that La Villa is not in Substantial Compliance with this Judgment, the Texas Health & Safety Code, the Texas Water Code, or the rules of the TCEQ at either the PWS Facility or the WWT Plant, the State shall have the right to initiate collection proceedings on the entire \$21,025 due on the Judgment plus any post-

Judgment interest that has accrued. The State shall notify La Villa in writing at least 15 Days prior to beginning collection.

13. PLAINTIFF'S RESERVATION OF RIGHTS

13.1 Notwithstanding any other provision of this Judgment, the State reserves, and this Judgment is without prejudice to, all rights against La Villa with respect to all other matters, including but not limited to, the following:

- A. claims that are not within the enforcement authority of the TCEQ;
- B. claims based on a failure of La Villa to meet a requirement of this Judgment;
- C. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- D. criminal liability; and
- E. liability for violations of federal, state, or local law that occur on or after the Effective Date of this Judgment.

13.2 This Judgment shall not be construed in any way to relieve Defendants, or their agents or contractors, from the obligation to comply with any federal, state, or local law.

13.3 The State reserves its right to seek additional administrative and/or civil penalties for violations of the Health and Safety Code, the Water Code, and rules of the TCEQ that occur after the Effective Date of this Judgment.

13.4 La Villa acknowledges that in the event the State is entitled to collect the remaining \$21,025 due on the Judgment as set forth above that the \$21,025 is for violations that occurred prior to the Effective Date of Judgment and as such does not prevent the State from assessing

and/or collecting administrative or civil penalties for violations that occur after the Effective Date of the Judgment.

14. PUBLIC NOTICE

14.1 The signature on this Judgment for the State is subject to the public notice and comment required by Texas Water Code § 7.110. This Judgment will not be presented to the Court and the State's consent will not be effective until public notice of this Judgment has been published in the *Texas Register*, the public has been given thirty days during which to comment to the State on the terms of this Judgment, and the State has re-affirmed its consent, after considering any comments, by presenting the Judgment to the Court for signature and entry.

15. RETENTION OF JURISDICTION

15.1 This Court retains jurisdiction over both the subject matter of this Judgment and the Parties for the duration of the performance of the terms and provisions of this Judgment for the purpose of enabling the State or La Villa to apply to the Court at any time for such further direction or relief as may be necessary or appropriate for the construction or modification of this Judgment, to effectuate or enforce compliance with its terms, or to resolve disputes related to it.

16. SUBMISSION OF DOCUMENTS

16.1 All documents ordered by this Judgment to be sent to the TCEQ shall be submitted in duplicate to:

Executive Director
c/o Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

16.2 All documents ordered by this Judgment to be sent to the TCEQ shall also be sent to:

Jane E. Atwood
AG # 05-2238698
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548.

and

Manager, Water Section
TCEQ Harlingen Regional Office
Texas Commission on Environmental Quality
1804 West Jefferson Avenue
Harlingen, Texas 78550-5247

16.3 The Parties shall send all documents ordered by this Judgment to be sent to La Villa to:

Mr. Wilfredo Mata, City Manager
P.O. Box 60
La Villa, Texas 787562

17. MODIFICATIONS

17.1 With the exception of deadline extensions in accordance with Section 18 of this Judgment; this Judgment may only be modified upon the written consent of all of the Parties. All modifications of this Judgment shall become effective as of the date of approval by this Court.

17.2 No informal advice, guidance, suggestion, or comment (whether oral, written or electronic) by any representative of the State or the TCEQ regarding any requirement of this Judgment shall relieve La Villa of its obligation to obtain such formal written approval as this Judgment may require for a modification and to comply with all requirements of this Judgment.

18. DEADLINE EXTENSIONS

18.1 The State may grant an extension of any deadline in this Judgment. All requests for extensions by La Villa shall be made in writing to the TCEQ and the Office of the Attorney

General at the addresses listed in Section 16 of this Judgment. Such request must be sent to the TCEQ and the Office of the Attorney General at least fourteen days before the deadline La Villa seeks to extend. A deadline shall be extended by the TCEQ and/or the Office of the Attorney General upon a written and substantial showing that:

- A. La Villa has made and continues to make good faith efforts to meet the deadline;
- B. the failure to meet the deadline is due to events or persons beyond La Villa's reasonable control; and
- C. but for said events or persons, the deadline would be attained.

18.2 Extensions are not effective until La Villa receives written approval from the TCEQ or the Office of the Attorney General.

19. POST-JUDGMENT INTEREST

19.1 La Villa shall pay post-judgment interest on all amounts awarded herein at the legal rate of 6.00 per cent per annum from the date amounts are due under this Judgment until paid.

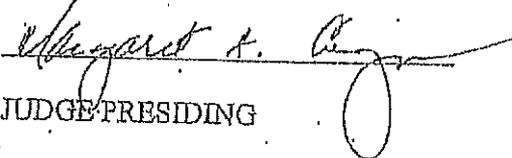
20. GENERAL PROVISIONS

20.1 This Judgment constitutes the entire agreement between the Parties, and supersedes any and all prior agreements or understandings between the Parties relating to the referenced cause, including but not limited to, Rule 11 agreements between the Parties prior to the signing of this Judgment.

20.2 This Judgment may be executed in multiple parts, which together shall constitute a single original instrument. Any executed signature page to this Judgment may be transmitted by facsimile transmission to the other party, which shall constitute an original signature for all purposes.

- 20.3 A transfer of ownership of any part of the PWS Facility or the WWT Plant shall not relieve La Villa from any of the provisions of this Judgment related to or dependant on property ownership.
- 20.4 La Villa acknowledges that its has a true and correct copies of Chapters 21, 290, 303, 305, and 312 of Title 30 of the Texas Administrative Code. La Villa also acknowledges that it is fully aware of the contents of said documents and their requirements. La Villa further agrees that the terms of said documents are hereby incorporated by reference and that it waives any objection that such document is not attached to this injunction.
- 20.5 The State shall be allowed such writs and processes as may be needed for the enforcement of this Judgment.
- 20.6 Each of the undersigned representatives of a party to this Judgment certifies that he or she is fully authorized to enter into the terms and conditions of the Judgment and to legally execute and bind that party to this Judgment.
- 20.7 La Villa hereby waives the right of appeal from this Judgment.
- 20.8 This Judgment finally disposes of all parties and all claims in this cause.

SIGNED ON April 30, 2008


JUDGE PRESIDING

AGREED AS TO FORM AND SUBSTANCE AND ENTRY REQUESTED:

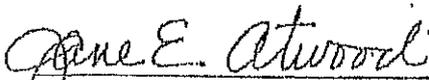
For the State of Texas:

GREG ABBOTT
Attorney General of Texas

KENT C. SULLIVAN
First Assistant Attorney General

JEFF L. ROSE
Deputy First Assistant Attorney General

DAVID PREISTER
Assistant Attorney General
Acting Chief, Natural Resources Division



DATE: 4/30/2008

JANE E. ATWOOD
State Bar No. 00796144
Assistant Attorney General

Natural Resources Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711

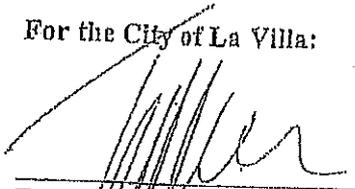
(512) 463-2012 (telephone)

(512) 320-0052 (telescoper)

ATTORNEYS FOR THE STATE OF TEXAS

AGREED AS TO FORM AND SUBSTANCE AND ENTRY REQUESTED:

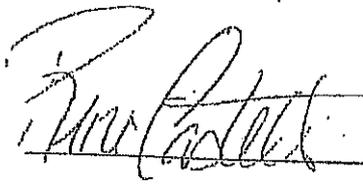
For the City of La Villa:



Terry Canales
State Bar No. 24052947

DATE: 3/17/2008

SOLIS & CANALES, P.L.L.C.
812 South Closner
Edinburg, Texas 78539
(956) 316-2223 (telephone)
(956) 316-2229 (telecopier)
ATTORNEY FOR THE CITY OF LA VILLA



RENE CASTILLO
Mayor of the City of La Villa

DATE: 3/19/2008