

CITY OF HIGHLAND HAVEN, TEXAS

ORDINANCE NO. 029 (REVISION #2)

AN ORDINANCE WHEREBY THE CITY OF HIGHLAND HAVEN, TEXAS, AND HIGHLAND UTILITIES INC., AGREE THAT, FOR THE PURPOSE OF OPERATING ITS WATER SUPPLY AND DELIVERY BUSINESS, HIGHLAND UTILITIES SHALL, CONSTRUCT, ERECT, BUILD, EQUIP, OWN, MAINTAIN AND OPERATE IN, ALONG, UNDER, OVER AND ACROSS, THE STREETS, AVENUES, ALLEYS, BRIDGES, VIADUCTS, AND PUBLIC GROUNDS OF THE CITY, SUCH PIPE LINES AND OTHER EQUIPMENT AS NECESSARY OR CONVENIENT FOR WATER DELIVERY SERVICES IN SAID CITY, PRESCRIBING THE CONDITIONS GOVERNING THE USE OF PUBLIC RIGHTS-OF-WAY FOR HIGHLAND UTILITIES WATER SUPPLY BUSINESS, PRESCRIBING THE COMPENSATION DUE THE CITY UNDER THIS ORDINANCE; PROVIDING AN INDEMNITY CLAUSE; SPECIFYING GOVERNING LAWS; PROVIDING FOR ASSIGNMENT; PRESCRIBING THE TERM AND EFFECTIVE DATE OF SAID AGREEMENT; PROVIDING FOR NOTICE; PROVIDING FOR BINDING EFFECT; PROVIDING THAT THE ORDINANCE BE CUMULATIVE; PROVIDING FOR GOVERNMENTAL IMMUNITY; PROVIDING FOR CONSENT AND ACCEPTANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CHOICE OF LAW AND VENUE; PROVIDING FOR FUTURE CONTINGENCIES; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR RELEASE OF ALL CLAIMS UNDER PRIOR ORDINANCES; PROVIDING FOR ALTERNATE DISPUTE RESOLUTION; AND PROVIDING FOR METHOD OF ACCEPTANCE.

WHEREAS, HIGHLAND UTILITIES, hereinafter referred to as the "Company" is now and has been engaged in the business of supplying water within the City and has constructed a water supply system, water plant, and installed and maintained a customer distribution system within the City for many years by and under the laws of the State of Texas; and

WHEREAS, it is to the mutual advantage of both the City and the Company that an agreement be entered into between the City and Company establishing the conditions under which the Company shall construct, maintain and operate its water customer distribution system in the public rights-of-way within the **City's** corporate limits in the future;

WHEREAS, the Highland Haven Property Owners Association own the property on which the Highland Utilities Inc. water plant is located and has a separate agreement governing the use of that property.

Revision #1: Add to Section 3 landscaping regulations.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF HIGHLAND HAVEN, TEXAS, THAT:

SECTION 1.

DEFINITIONS

Whenever used in this Ordinance, the following words and terms shall have the definitions and meanings provided in this section:

- (a) The **City of Highland Haven**, Texas.
- (b) **WATER**: Public drinking water as defined by the appropriate agency of the State of Texas.
- (c) **WATER SUPPLY SYSTEM**: Consists of, but not limited to all water wells used as a source of raw water supply, all lines transporting water into the Company's storage plant, and all line valves, which are located in the **City Rights-of-Way**. A water supply system is also considered a facility.
- (d) **WATER PLANT**: Consists of, but not limited, to storage tanks, distribution line pressure equipment, transfer pumps, raw water treating chemicals and related raw water treating equipment, building and testing laboratory which may be located in the **City Rights-of-Way**. A water plant is also considered a facility.
- (e) **DISTRIBUTION SYSTEM**: **Consist** of, but not limited to all lines from the "water plant" to all sale meters or deliver points, line valves, fire hydrants, structures and appurtenances, and all associated items which are located in the **City Rights-of-Way**. A distribution system is also considered a facility.
- (f) **RAW WATER**: Water in its natural state as collected and before filtration or chemical treatment.
- (g) **PUBLIC RIGHTS-OF-WAY**: All present and future public streets, avenues, highways, alleys, bridges, viaducts, public thoroughfares, public utility easements, public ways, public grounds, and without limitation by the foregoing enumeration, other public property within the city limits of the **City**. As used herein, the term "Rights-of-Way" does not include facilities dedicated to the provision of electrical power to citizens of the **City** to the extent the **City** may own the power utility providing electrical power in the **City**. A public right-of-way

does not include the airways above a public right-of-way.

(h) **HIGHLAND UTILITIES:** A private **Company**

(i) **Texas Commission on Environmental Quality (TCEQ):** a State of Texas agency.

(j) **Highland Haven Property Owners Association (HHPOA):** A Texas nonprofit corporation

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SECTION 2.

CONSTRUCTION AND MAINTENANCE OF A WATER SUPPLY AND DISTRIBUTION SYSTEM

(a) Pursuant to the laws of the State of Texas and this Ordinance, the **Company** has the nonexclusive right and privilege to use and occupy the public rights-of-way in the **City** for the purpose of maintaining and operating its water supply and distribution system used in the provision of potable water to the citizens of the **city**, subject to the terms, conditions, and stipulations set forth in this Ordinance, the Constitutions and laws of the United States and the State of Texas, the TCEQ, and the City's Ordinances to the extent such Ordinances are not in conflict herewith. The water distribution system within the **City** shall remain as now constructed, subject to changes as prescribed in this Ordinance that may be determined necessary for the public health and safety by the City in the exercise of its lawful police powers and such changes and extensions as may be considered necessary by the **Company** in the pursuit of its water supply business. The **Company** shall at all times during the term of this Ordinance be subject to all lawful exercise of the police power by the City and to such reasonable and lawful regulation as the City shall hereafter by resolution or ordinance provide. The terms of this Ordinance shall apply throughout the **City** and shall apply to all the **Company's** facilities used, in whole or part, in the provision of water supply services, and shall include the provision of water supply services in any newly annexed areas of the City upon the effective date of such annexation or the date the **City** provides the **Company** notice of such annexation, whichever occurs later. The **Company** shall maintain its water supply facilities in a reasonable operating condition at all normal times during the term or any extension of this Ordinance. An exception to this condition is automatically in effect when service furnished by the **Company** is interrupted, impaired or prevented by fires, strikes, riots, or other occurrences beyond the control of the **Company**, or by storms, floods, or other casualties, in any of which events the **Company** shall do all things reasonably within its power to do to restore normal service as soon as practicable. The company has exclusive right to provide water to the City as provided herein.

SECTION 3.

SUPERVISION BY CITY OF LOCATION OF FACILITIES

(a) The **Company** shall lay, maintain, construct, operate, and replace its line, valves, meters, fire, and appurtenances used, in whole or part, to provide water supply services so as to interfere as little as possible with traffic and shall promptly clean up and restore, at its sole cost, all thoroughfares and other surfaces which it may disturb to as good a condition as before such disturbance. The location of all **Company** water supply and distribution facilities shall be fixed under the supervision of the City's governing body or an authorized committee or agent appointed by said governing body. All lines, valves, storage tanks, meters to be placed shall be of sound material and located so as to not interfere with the flow of water in or to any gutter or drain, and so that the same will interfere as little as practicable with the ordinary travel on the streets, alleys, highways, public thoroughfares, public utility easements, public ways or sidewalks and so that they will not compromise public safety.

(b) Placement of lines, valves, appurtenances etc. shall be agreed upon by the City and The Company.

(c) The **Company** shall maintain an eight (8) foot fence of chain link or cedar around the well on Lot 409 and there shall be no overhead wires. Other landscape regulations are contained in the letter from the **Company** dated August 21, 2001. A copy of this letter is attached to this Ordinance and will be enforced along with the Ordinance.

(d) Nothing in this Ordinance is intended to add or to detract from any authority granted by federal or state law to the **City** or the **Company**.

SECTION 4.

RIGHTS-OF-WAY TO BE RESTORED TO GOOD CONDITION

The **Company** shall restore the surface of any and all Rights-of-Way within the **City** disturbed by the **Company** in building, constructing, renewing, or maintaining its facilities within a reasonable time after completion of the work to at least as good a condition as before commencement of the work and in compliance with the applicable provisions of the Code of Ordinances of the **City** and shall further maintain the work to the satisfaction of the **City's** governing body, or of any **City** official to whom such duties have been or may be delegated, for a period of one (1) year following completion of the restoration, after which time responsibility for the maintenance shall revert to the **City**. During that one (1) year period, the **Company** shall be responsible for all maintenance costs incurred as a result of any defects, impairments or substandard condition in the Rights-of-Way caused by the construction, maintenance or restoration work of the **Company**. The **Company** shall comply with all reasonable rules and regulations of the **City** relative to street excavations, and permits therefore; provided that **Company** shall not be required to pay any fees required by such rules, regulations and permits. No such Rights-of-Way shall be encumbered for a longer period than shall be necessary to execute the work.

The **Company** shall submit, in a format prescribed by **City** and reasonably related to the purpose here stated, information describing the general nature, location, and estimated duration of any activity, which will result in the disturbance of any Rights-of-Way. The **Company** shall not be required to divulge proprietary or confidential information in such submission. Proprietary or confidential information may include, but is not limited to, type and size of facility and sub-routes onto private property. This information shall be submitted prior to the activity except in the case of emergencies, in which case the information shall be submitted as soon as practical. This information requirement shall not apply to the **Company's** installation of service serving a single residence or business. When the **Company** shall make or cause to be made excavations, or shall place obstructions in any street, alley, highway, public thoroughfare, public utility easement or public way, the **Company** shall protect the public by barriers and lights placed, erected and maintained by the **Company**.

SECTION 5.

RIGHTS-OF-WAY MANAGEMENT

(a) The **City** has exclusive responsibility for regulating the use of its Rights-Of-Way. In consideration of the compensation received for the use of its Rights-Of-Way, the **City** will make every reasonable effort to ensure that the rights of all authorized users of the Rights-Of-Way are adequately protected. In the granting of consent, franchises, and permits for the use of public streets, alleys or Rights-Of-Way within its corporate municipal limits, the **City** will require all grantees to adhere to all requirements as may be provided by the **City** in any ordinance, law or regulation regarding prevention and/or avoidance of damage to other entities which have facilities in **City** Rights-of-Way.

(b) **City** to the fullest extent permitted by law, including the Texas Tort Claims Act, will indemnify and hold harmless **Company**, its directors, officers, agents, and officials, against any and all claims, losses, penalties, damages, expenses, causes of action, suits, and liability of every kind, including all reasonable expenses of litigation, court costs, and attorney fees, arising out of damage, breakage, or dislocation of facilities or disruption of services caused by the negligence or intentional acts or omissions of **City** employees.

(c) **Company** to the fullest extent permitted by law, including the Texas Tort Claims Act, will indemnify and hold harmless **City**, its directors, officers, agents, and officials, against any and all claims, losses, penalties, damages, expenses, causes of action, suits, and liability of every kind, including all reasonable expenses of litigation, court costs, and attorney fees, arising out of damage, breakage, or dislocation of facilities or disruption of services caused by the negligence or intentional acts or omissions of **Company** employees.

SECTION 6.

COMPENSATION TO THE CITY

(a) As compensation for the **Company's** use and occupancy of the **City's** Rights-of-Way and for the **City's** oversight, regulation and supervision of such use and occupancy, in consideration for all other agreements and promises made herein by the **City** and in lieu of and in full compensation for any lawful tax, license, charge, right-of-way permit fee or inspection fee, whether charged to the **Company** or its contractor(s), or any right-of-way easement or street or alley rental or corporate franchise tax or other character of charge for the use and occupancy of the Right-of-Way within the **City**, except the usual general ad valorem taxes and special assessments in accordance with State law, and sales taxes now or hereafter levied by the **City** and in accordance with State law, the **City** hereby imposes upon the **Company** and the **Company** agrees to pay, an annual right-of-way user fee (the "Annual Fee"). The Right-of-way use fee shall be \$1.00 per year, payable on January 1 of each year.

(b) The compensation provided for herein constitutes reasonable compensation for the consideration granted to the **Company** herein.

(c) Payment of the "Annual Fee" shall not relieve the **Company** from paying all applicable municipally owned utility service charges, ad valorem and sales taxes adopted by the city.

SECTION 7.

SUCCESSORS AND ASSIGNS

The rights, powers, limitations, duties and restrictions herein provided for shall inure to and be binding upon the parties hereto and upon their respective legal and *bona fide* representatives, successors and assigns.

SECTION 8.

PERIOD OF AGREEMENT

This agreement shall be in full force and effect for the period beginning with the effective date of the original agreement between the **Company** and the **Highland Haven Property Owners Association** and ending forty years after that date (May 16, 1989). This Agreement and the terms and provisions herein shall be extended automatically for successive forty (40) year periods, unless earlier terminated according the terms herein or by agreement of the parties. However this agreement may be terminated upon the happening of any one or more of the following:

(i) The breach by either party of any provision of this ordinance applicable to such party, and the failure of such party to remedy such breach in full within thirty (30) days following receipt of written notice of such breach from the other party hereto.

SECTION 9.

FUTURE CONTINGENCIES

Notwithstanding anything contained in this Ordinance to the contrary, in the event that this Ordinance or any section, sentence, clause, phrase, or part thereof, providing any compensation due the **City** under this Ordinance, becomes, is held to be, or is declared or determined by judicial, administrative or legislative authority exercising its jurisdiction to be excessive, unrecoverable, unenforceable, void, unconstitutional, unlawful, invalid or otherwise inapplicable, in whole or in part, the **Company** and the **City** shall meet and negotiate in good faith to obtain a new ordinance that is in compliance with the authority's decision or enactment and in which the **Company** shall pay to **City** a reasonable but constitutional and valid compensation.

SECTION 10.

GOVERNING LAW AND VENUE

(a) This Ordinance shall be construed in accordance with the law of the State of Texas and the **City** Ordinances in effect on the date of passage of this Ordinance to the extent that such Ordinances are not in conflict with or in violation of the Constitution and laws of the United States or of the State of Texas.

(b) Venue for any dispute arising under this Agreement shall be in Burnet County, Texas.

(c) This Ordinance shall be construed and deemed to have been negotiated at arms length and drafted by the combined efforts of the **City** and the **Company**.

SECTION 11.

DISPUTE RESOLUTION

(a) Notwithstanding any other provision of this Ordinance, the Parties hereto agree that any claim, cause of action or other dispute based upon or arising out of this Ordinance (a "dispute") shall be conducted, decided, determined and/or resolved pursuant to and in accordance with the provisions of this Section. The parties desire to resolve disputes arising out of this Ordinance without litigation. Accordingly, in the event of any dispute hereunder, the Parties hereto agree to attempt in good faith to resolve their dispute between themselves. Within ten (10) days after receipt of the written request of a party, each party will appoint a knowledgeable, responsible representative or representatives to meet and negotiate in good faith to resolve any dispute arising under this Ordinance. The parties' representatives will meet within ten (10) days after the appointment of such representatives and negotiate in good faith to resolve any such dispute.

(b) Except for action seeking a temporary restraining order or injunction related to the purposes of this Ordinance, or suit to compel compliance with this dispute resolution process, the parties agree to use the following alternative dispute resolution procedure, and also agree not to sue any party to this Ordinance with respect to controversy or claim arising out of or relating to this Ordinance or its breach prior to exhausting the procedures set out in this section.

(c) If the parties are unable to settle their dispute at the meeting of representatives provided for in subsection (a), either party may, on written notice to the other party, initiate non-binding mediation of the dispute before a single mediator affiliated with Judicial Arbitration and Mediation Services, Inc. (JAMS) or another mediation service mutually agreeable to the parties. Mediation is a forum in which an impartial person, the mediator,

facilitate communication between the Parties to promote reconciliation, settlement, or understanding among them. A mediator may not impose his own judgment on the issues for that of the parties. Unless expressly authorized by the parties, the mediator may not disclose to either party information given in confidence by the other and shall at all times maintain confidentiality with respect to communications relating to the subject matter of the dispute. Unless the parties agree otherwise, all matters, including the conduct and demeanor of the parties and their counsel during mediation, are confidential and shall be inadmissible as settlement discussion pursuant to Rule 408 of the Federal Rules of Evidence or the applicable state rules. The mediator shall be selected by agreement of the parties within thirty (30) days after either party first requests mediation of the other. If a single mediator cannot be agreed upon, then each party shall select its own mediator from those on the JAMS approved list; those two mediators will then select a third independent mediator who will conduct the mediation session(s). The mediator's fees will be borne equally by both parties. In the event mediation is requested, any applicable statutes of limitations shall be automatically tolled until the mediator declares an impasse. If either party desires to request the production of information for its use in the mediation, it shall deliver such request to the other party within five (5) days of the selection of the mediator. Any objection to such production shall be delivered to the mediator and the requesting party within five days of receipt of the request, and the mediator shall issue an opinion within five (5) days of such objection, as to whether the information is relevant to the issues presented for mediation and should be produced. If either party refuses to proceed with the mediation in accordance with the ruling of the mediator, the mediation shall be deemed to be at impasse, and the parties may then resort to any other available recourse. In the event mediation occurs but fails to resolve the dispute, the parties may then resort to means outside the scope of this Section including filing suit.

(d) Neither the **City** nor the **Company** by accepting this Ordinance waives its right to seek all appropriate legal and equitable remedies as allowed by law upon violation of the terms of this Ordinance by the other party, including seeking injunctive relief in a court of competent jurisdiction. Such right to seek injunctive relief is expressly reserved and all terms and provisions hereof shall be enforceable through injunctive relief.

SECTION 12.

GOVERNMENTAL IMMUNITY

All of the regulations provided in this Ordinance are hereby declared to be for a public purpose and the health, safety, and welfare of the general public. Any member of the governing body or **City** official or employee charged with the enforcement of this Ordinance, acting for the **City** in the discharge of his duties, shall not thereby render himself personally liable; and he is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

SECTION 13.

GRANTING POWER

(a) The **City** has the power to grant or deny consent to the **Company's** occupancy and use of the Rights-Of-Way within the **City**.

(b) Nothing in this section affects the authority of the **City** to manage the public Rights-Of-Way or to require a fair and reasonable compensation from all who use the public Right-of-Way for the purpose of operating a business for a profit, on a competitively neutral and nondiscriminatory basis, and the compensation will be publicly disclosed by the City.

SECTION 14.

INDEMNITY

(a) The **Company** shall protect, indemnify, and hold the **City** harmless from all costs, expenses (including reasonable attorney's fees) and claims for damages to persons or property arising directly or indirectly out of the construction, maintenance or operation of the **Company's** Facilities to the extent of the **Company's** negligence or intentional acts. This provision is not intended to create a cause of action or liability for the benefit of third parties but is solely for the benefit of the **Company** and the **City**. The **Company** reserves the right to select and retain counsel of its choice and at its own expense, without the approval of the **City**, Mayor or Aldermen.

(b) The **City**, Mayor, and the Aldermen specifically reserve the right to retain counsel of their choice, at their own expense. The **City** will promptly notify the **Company** of any litigation, subpoenas or actions pursuant to which the **Company's** obligation to indemnify might arise.

SECTION 15

INSURANCE

The **Company** agrees to obtain and to maintain in force at its expense, public liability and property damage insurance, the limits thereof to be \$1,000,000/\$500,000. The **Company** shall include the **City** as an additional insured on all such insurance policies.

SECTION 16.

REPEAL OF CONFLICTING PROVISIONS

All other ordinances and agreements and parts of agreements and ordinances in conflict with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency.

SECTION 17.

NOTICE

For any purposes related to this Ordinance, notice to the **City** shall be to:

Mayor
City of Highland Haven
510 - A, Highland Drive
Highland Haven, TX 78654

Notice to the **Company** shall be to:
Highland Utilities Inc.
P. O. Box 790
Marble Falls, TX 78654

Notice will be effective upon delivery at the above addresses until the **City** or the **Company** notifies the other, in writing, of a change of address.

SECTION 18.

PARTIAL INVALIDITY AND REPEAL PROVISIONS

If any section, sentence, clause or phrase in this Ordinance is for any reason held to be illegal, ultra vires, unconstitutional, void, or unenforceable such invalidity shall not affect the validity of the remaining portions, it being the intent of the **City** in adopting this Ordinance and the **Company** in accepting and agreeing to it that no portion hereof or provision hereof shall be inoperative or fail by reason of any unconstitutionality or invalidity or any other portion, provision, or regulation, and to this end, all provisions of this Ordinance are declared to be severable. This Ordinance shall be and is hereby declared to be cumulative of all other ordinances of the **City**, and this Ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this Ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed to the extent of such inconsistency. All ordinances and agreements and parts of ordinances and agreements in conflict herewith are hereby repealed to the extent of such inconsistency. Provided all other ordinances, rules, regulations, and agreements which are not in conflict with this Ordinance and which in any manner relate to the regulation of the **City** streets, alleys, and public places or the business of the **Company** shall remain in full force and effect.

SECTION 19.

EFFECTIVE DATE AND ACCEPTANCE OF AGREEMENT

The **Company** shall have sixty (60) days from and after the passage and approval of this Ordinance to file its written acceptance thereof with the **City** Secretary. Upon such filing, this Ordinance shall take effect and the effective date of this Ordinance shall be **July 19, 2005** and it shall be in force from and after such date, and shall effectuate and make binding the agreement provided by the terms hereof. All costs of any publication required by law shall be at the expense of the **Company** in addition to other charges provided for herein.

SECTION 20.

TRANSFER OR ASSIGNMENT

This Ordinance shall not be transferred or assigned by the **Company** except with the approval of the governing body of the **City** expressed by ordinance and subject to all terms of such ordinance, which shall not be unreasonably withheld.

SECTION 21.

OPEN MEETING

It is hereby officially found and determined that the meeting at which this Ordinance is passed is open to the public as required by law and that public notice of the time, place and purpose of said meeting was given as required.

SECTION 22

DIVISION OF RESPONSIBILITY

The original agreement between **Company** and **Highland Haven Property Owners Association (HHPOA)** is superceded by this revision of Ordinance 29 and a concurrent revision of the agreement between **Company** and **Highland Haven Property Owners Association**. All regulation of **Company** as provided by law and not specifically related to use of HHPOA land or specifically contained in the concurrent agreement between **Company** and **HHPOA** is the responsibility and authority of the **City**.

SECTION 23

WATER RATES

(a)The TCEQ governs water rates, fees and charges.

(b) Changes to rates, fees and charges shall be approved by the **TCEQ** and **City** as provided by law.

(c) Water rates for water metered through other than the **Company's** standard residential meters will be such as may be approved by the **TCEQ** and **City**, using rate design methodologies commonly used by the **TWC**.

(d) Tap fees with respect to meters larger than the **Company's** standard residential meters will be based upon the **Company's** full cost of making the taps, including meter installation, subject however, to approval by the **TCEQ** and **City**.

(e) Other non-service charges shall be comparable to those approved by the **TCEQ** for similarly sized, private water utilities.

(f) Any fees, rates and charges to be made by the **Company** with respect to the System that are not subject to regulatory control shall be just and reasonable, and the **Company** shall be entitled to establish and collect only such fees, rates and charges for water service in the **City** that will permit the **Company** a reasonable opportunity to earn a reasonable return on its invested capital used and useful in rendering service to the public over and above its reasonable and necessary operating expenses.

SECTION 24

SERVICE OUTSIDE THE CITY

The **Company** may provide water service outside the **City** from **Company** facilities within the **City** only if such services outside the **City** will not operate as a detriment to service the **City**.

SECTION 25

WATER SYSTEM MAINTENANCE

The **Company** shall maintain, operate and repair the System at all times in compliance with all applicable federal, state and local statutes, rules and regulations and all applicable ordinances of the **City** and **TCEQ** to provide an uninterrupted water supply available to customers of the **Company**.

SECTION 26

TITLE TO SYSTEM

Except as otherwise provided by **City** ordinances, agreement with **HHPOA** or other applicable agreements, the **Company** shall hold title to the System and all component parts thereof, and as between the parties hereto, the **Company** if not in default under the provisions of applicable agreements and ordinances while this ordinance remains in effect, shall have the right to own and operate a water utility within the boundaries of the **City**.

SECTION 27

REPAIR SERVICE

Company agrees to notify all customers of the System of the **Company's** office hours and telephone number from time to time in effect and agrees to provide 23-hour response to repair calls. In addition, whether or not required by any regulatory authority having jurisdiction, the **Company** shall construct and maintain in good condition at all times an intruder-resistant fence around all **Company** facilities.

SECTION 28

PRIOR AGREEMENTS

This ordinance contains all agreements of the **City** and **Company** with respect to any matter mentioned herein. No prior agreements or understanding pertaining to any such matter shall be effective. This agreement may be modified, altered, amended or changed as provided herein and applicable law.

PASSED and APPROVED by the **BOARD OF ALDERMEN** of the **City of Highland Haven, Texas**, this the 21st day of June, 2005.

Attest

Jeanne Ormiston – City Secretary

Roscoe L. Holt – Mayor

George Burris – President – Highland Utilities