

AGREEMENT FOR WHOLESALE POTABLE WATER SERVICE

THIS AGREEMENT FOR WHOLESALE POTABLE WATER SERVICE ("Agreement") is made and entered into effective on December 12, 2017 (hereinafter referred to as the "Effective Date"), by and between the CITY OF REEDLEY, a California municipal corporation ("City"), and Darrell Lee Cox, Trustee of the George and June Cox Grantor Trust Dated August 25, 2011 ("Owner"). The City and Owner are collectively referred to herein as the "Parties".

RECITALS

WHEREAS, the Owner is the legal property owner of parcel numbers 370-370-44, 370-370-45, 370-370-46, and 370-060-19 (hereinafter "Owner's Property") as well as Public Water System ID # 1000407, in an unincorporated area of Fresno County as depicted in Exhibit A; and

WHEREAS, Owner maintains nineteen (19) residential rental units and Owner's residence on the Owner's Property; and

WHEREAS, Public Water System ID # 1000407 owned and operated by Owner is unable to continue providing safe drinking water to the tenants and occupants on Owner's Property; and

WHEREAS, the Owner has the authority to act on behalf of his tenants and occupants in matters of potable water service, and consistent with that authority seeks to provide an alternative to the failing Public Water System ID # 1000407; and

WHEREAS, City owns and operates a municipal water system, and by virtue of its municipal water system City is capable of supplying potable water to Owner so that Owner can provide potable water to the tenants and occupants of Owner's Property; and

WHEREAS, Owner is willing to pay for all water provided by the City and be responsible for making all necessary improvements on Owner's Property to be able to connect to the City's

water system and accept water from City's water system, in order to make water available to his tenants and occupants; and

WHEREAS, Owner's Property is adjacent to City water lines; and

WHEREAS, in accordance with Government Code Section 56133, the City's request for Extension of Services to serve Owner's Property has been coordinated with the Fresno Local Agency Formation Commission (Fresno LAFCo) and this agreement is subject to final LAFCo approval; and

WHEREAS, City has potable water capacity and is willing to extend water service to serve Owner's Property, including the tenants and occupants of Owner's Property; and

WHEREAS, City intends to pursue funding from the State of California to construct necessary improvements and complete the water system consolidation described herein; and

WHEREAS, necessary improvements include connection to an existing City water main in Duff Avenue, installation of a backflow prevention device, and installation of plumbing necessary to connect existing private water lines to the new service connection; and

WHEREAS, Owner shall be solely responsible for all water connections to individual housing units on Owner's Property, and all such connections shall comply with all applicable local, state and federal requirements.

AGREEMENT

NOW THEREFORE, in consideration of the terms and conditions set forth herein, the Parties agree as follows:

1. **Incorporation of Recitals.** The recitals set forth above are true and correct, and are hereby made a substantive part of this Agreement

2. **Governmental Compliance.** Upon the Owner's full and complete performance of all of the Owner's obligations and responsibilities pursuant to this Agreement, the City agrees to provide the Owner with potable water from the City's municipal water system. The City's obligation to provide water to the Owner from the City's municipal water system is conditioned upon the City and the Owner obtaining the consent and approvals of all applicable governmental agencies necessary for compliance with this Agreement.
3. **Compensation.** The City shall deliver potable water to the Owner and the Owner shall compensate the City pursuant to its established Non-Residential Water Rate Structure as set forth in the City's Master Fee Schedule, adopted by City Council resolution, which is incorporated herein by reference, and as amended from time to time by City Council Resolution.
4. **Extension of City's Potable Water Service.** Owner agrees to abandon, which includes cutting, capping, and disconnecting all power sources from all wells associated with Public Water System ID #1000407 per County of Fresno well abandonment standards and requirements. Owner's Property includes nineteen (19) rental units and Owner's residence. All drinking water connections shall comply with all applicable local, state and federal requirements. Owner's Property shall remain independent of City government, i.e. shall remain unincorporated and subject to County of Fresno codes, zoning restrictions, and services, except as otherwise provided herein or the City and Owner mutually agree to pursue annexation of Owner's Property into the City limits. The total number of water service connections on Owner's Property receiving City water may not exceed twenty (20), and there may be no more than one (1) connection for each dwelling unit. The City does not intend, pursuant to this Agreement, to provide water for any commercial use or purpose on Owner's Property. If any portion of Owner's Property is entitled for a

commercial use, this Agreement shall be subject to renegotiation to determine if and under what terms such commercial use may be eligible to receive water. If the Parties cannot arrive upon mutually agreeable terms after such renegotiation, then the City may terminate this Agreement by providing ninety (90) days written notice to Owner.

5. **Project Funding.** If State grant funds are not awarded for construction of the project improvements, this Agreement shall terminate and be considered null and void.
6. **Billing and payment.** The Owner will be billed as a single utility account holder. The amounts due must be paid by the Owner to the City. The Owner shall be charged according to the applicable billing schedule based on the monthly meter reading at the end of each billing period. The Owner agrees to be subject to all applicable City ordinances, resolutions, and policies with regard to water service, including without limitation water conservation ordinances, utility billing policies regarding delinquent accounts, late payments, noticing, disconnection and returned payments, as detailed in the attached Exhibit "B", and as amended from time to time. Owner assumes all responsibility and liability for notification of tenants on the Owner's Property in the event of a service disconnection due to non-payment.
7. **No Representation Regarding Water Service, Pressure or Volume For any Private Portion of the Owner's Water System.** The City does not make any representation, warranty or guarantee of any kind or nature and hereby specifically disclaims any kind of representation, warranty or guarantee of any specific amount or yield of specific volume of water or provide any specific water pressure to the Owner under static or demand scenarios or for any use by the Owner and its customers, purchasers, successor or assigns. The Owner assumes full responsibility for the adequacy of the volume of water and water

pressure from the point of connection from the City's municipal water system to the Owner's system for any and all purposes.

8. **Operation and Maintenance of the Owner's Water System.** During the life of this Agreement, the Owner shall continue to be the provider of water services to his tenants and shall have sole responsibility for any billing, collections and maintenance and operation of the water delivery system on the Owner's Property side of the metered connections to the City system. Owner shall also be responsible for maintenance and annual testing of the backflow device, consistent with City policy.
9. **Maintenance and Repair of the Owner's Private Water System.** The Owner shall, at his sole cost and expense, maintain, repair and replace any portion of the Owner's private water system. Under no circumstances shall the City be required or accountable to maintain, repair or replace any of the Owner's water system during the life of this Agreement. The City's responsibility for water service and water line maintenance shall terminate at the Owner's water meter, consistent with City utility customers. Should the Owner fail to operate, maintain, repair and replace any portion of the Owner's water system in a timely manner and that failure results in the City's inability to provide the Owner with water or significant water leakage resulting in excess water use by the Owner, the City may notify the Owner of the specific nature of the failure and inform the Owner of its intention to cease provision of water to the Owner should the Owner not correct the failure. The notice shall state the date and time that the City intends to cease provision of water to the Owner if the failure is not corrected. The notice shall provide the Owner with a reasonable amount of time to correct the failure given the extent of the impact of the failure to operate, maintain, repair or replace any portion of the Owner's system or on the City's ability to efficiently provide water to the Owner and the amount of time required to

correct the failure. If the Owner does not correct the failure within a reasonable amount of time following notice by the City, the City shall have the right, but not the obligation, to stop providing water to the Owner on or after the date and time indicated in the notice.

Upon correction of the failure by the Owner, the City shall promptly resume service to the Owner.

a. **Leak repair.** It is the sole responsibility of Owner to respond to and repair leaks or damage to the Owner's water system, including those caused by the Owner, other parties or acts of God. As part of the duty to maintain the Owner's water system, the Owner shall promptly repair all leaks, no matter how said leak may be caused, at its sole cost and expense.

b. **Right to Inspect and have Access to the Water System.** The City shall have the right to inspect and examine the Owner's water system at any time. Upon reasonable notice to the Owner, the City shall have the right of access to the water system and any other portions of the system for the purpose of conducting reasonable inspections of the Owner's system.

10. **Exclusive Use.** Water provided by the City pursuant to this Agreement may not be supplied, sold, or used outside the boundaries of Owner's Property. Owner shall be responsible for enforcing this prohibition. Any prohibited supply, sale, or use of the water is grounds for termination of this Agreement. The City shall provide Owner written notice to cease the prohibited supply, sale, or use, and if not ceased within five (5) days after City's notice, the City may immediately stop providing water to the Owner and terminate this Agreement.

11. **Compliance with Law.** In performance of the duties and obligations required under this Agreement, the City and the Owner shall at all times comply with all applicable laws of the United States and the State of California, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement.
12. **Waiver.** The waiver by either party of a breach by the other of any provisions of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless it is in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.
13. **Indemnity of City.** To the greatest extent allowed by law, the Owner shall indemnify, hold harmless and defend the City and its officers, officials, employees, agents, attorney, and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by the City, the Owner or any other person, and from any and all claims, demands, liabilities, damages and actions in law, equity or CEQA litigation (including attorney's fees and litigation expenses), arising directly or indirectly out of the performance of this Agreement or arising directly or indirectly in any way related to the operation of the Owner's water system, including, without limitation, any such claims, causes of action, damages, liabilities, fees, costs, expenses and attorney fees arising from water quality compliance, a lack of volume of water, inadequate fire flow, or lack of water pressure in, from or delivered to the Owner's system. The Owner's obligations under the preceding sentence shall apply regardless of

whether Owner or any of its officers, officials, boards, employees, agents or volunteers are passively or actively negligent but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active negligence or the willful misconduct of the City or any of its officers, officials, employees, agents or volunteers.

14. **Attorney's Fees.** Should any litigation be commenced between the parties concerning this Agreement, or the rights and duties of either party under this Agreement, the prevailing entity in such litigation shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for attorney's fees in such litigation, which shall be determined by the court in such litigation or in a separate action brought for that action.
15. **Term.** This Agreement shall become effective upon its execution, and shall remain in effect until such time as terminated as provided herein or the City and Owner mutually agree to pursue annexation of Owner's Property into the City limits.
16. **Notices.** Any and all notices or other matters required or permitted by this Agreement or by law to be served on, given to, or delivered to either party by the other party to this Agreement shall be in writing and shall be deemed duly served, given, or delivered when personally delivered to the party to whom it is directed or to a supervisory employee of that party, or, in lieu of personal service, when deposited in the United States mail, first-class postage prepaid, and addressed as follows:

City: City of Reedley, Attn: Nicole R. Zieba, City Manager, 1717 9th
Street Reedley, CA 93654

Owner: Darrell Lee Cox, Trustee, 9727 Zumwalt Ave, Reedley, CA 93654

Either party may change its address for purposes of this Paragraph by giving written notice of this change to the other party in the manner prescribed by this Paragraph.

17. **Binding on Heirs and Successors.** This Agreement shall inure to the benefit of and be binding on the heirs, executors, administrators, successors, and assigns of each party to this Agreement.
18. **Subject to Valid Law and Venue.** This Agreement is subject at all times to any and all applicable laws, ordinances, and governmental regulations whether federal, state, county, or city, and any modification made to this Agreement by any such law or ordinance or regulation or to the conduct of the parties under this Agreement shall not impose liability on either party for breach of their duties under this Agreement. Venue for purposes of the filing and duties hereunder shall be Fresno County, California.
19. **Public Health, Safety and Welfare.** Nothing contained in this Agreement shall limit the City's authority to exercise its police powers, governmental authority or take other appropriate actions to address threats to public health, safety and welfare, including temporarily suspending water services as deemed appropriate by the City in its sole determination and discretion.
20. **Heading.** The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.
21. **Severability.** The provisions of this Agreement are severable. The invalidity or unenforceability of any one provision in this Agreement shall not affect the other provisions.
22. **Interpretation.** The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by

construing this Agreement in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.

23. **Exhibits.** Each exhibit and attachment referenced in this Agreement is, by this reference, incorporated into and made a part of this Agreement.
24. **Precedence of Documents.** In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment. Furthermore, any terms or conditions contained within any Exhibit or Attachment hereto which purport to modify the allocations of risk between the parties, provided for within the body of this Agreement, shall be null and void.
25. **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.
26. **No Third-Party Beneficiaries.** The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties, including any tenants or occupants on Owner's Property.
27. **Extent of Agreement.** Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both the City and the Owner.


28. **Execution.** This Agreement may be executed in a number of counterparts and each counterpart signature shall, when taken with all other signatures, be treated as if executed upon one original of this Agreement. A facsimile signature of any party shall be binding upon that party as if it were an original.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date.

CITY OF REEDLEY

By: 
Nicole R. Zieba, City Manager

The George and June Cox Grantor Trust
Dated August 25, 2011

By: 
Darrell Lee Cox, Trustee

ATTEST

By: 
Sylvia B. Plata, City Clerk

APPROVED AS TO FORM


Scott G. Cross, City Attorney

EXHIBIT "A"

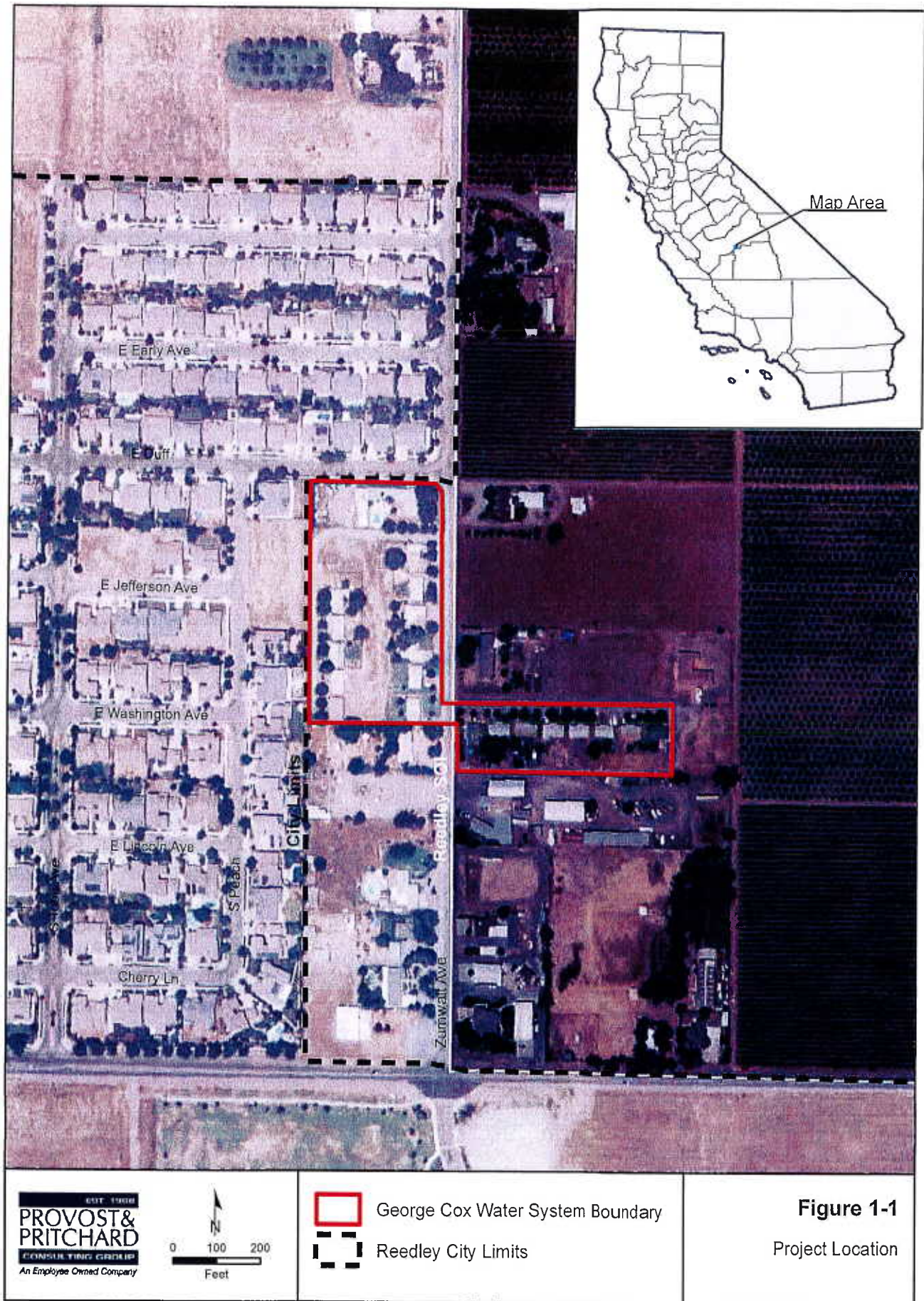


EXHIBIT "B"

Current Accounts

Each month a utility bill will be sent to the postal address or e-billing e-mail address on file for each customer's utility account. Payments are due each month on or before the 14th day of the month. If the 14th day of the month falls on a weekend, holiday or other day that the City of Reedley is closed, the due date shall be the next normal business day. Payments that are received during the last week of the month may not be reflected on the next printed bill.

Delinquent Accounts – Notices

Courtesy Notice (1st Disconnect Notice) – Customers with an outstanding account balance in a 60-day status will be mailed a courtesy notice to the postal address on file for the account. This notice will provide the customer with the minimum payment due and it must be made by 4:00 p.m. on the 15th of each month (if the 15th day of the month falls on a weekend, holiday, or other day that the City of Reedley is closed, the deadline shall be 4:00 p.m. on the next normal business day). If the total minimum payment is not made by the due date, a \$25 late fee will be added to the account balance. Accounts are then considered to be in a pending shut-off status and the entire account balance must be paid by a time and date established by the City in order to avoid disconnection and termination of services. THERE WILL BE NO EXTENSIONS AND NO EXCEPTIONS.

Final Disconnection Notice (Door Hanger) – The City will make every effort to deliver a 24-hour notice to accounts that are in a pending shut-off status. This notice will be left at the front door of the service address. The entire account balance must be paid by a time and date established by the City. Failure to do so will result in an additional \$100 Late/Service/Disconnect Fee being added to the account balance and water service will be immediately turned off. Payment of the account balance in full will be required to reinstate services. If the utility account is closed and terminated as a result of non-payment, a deposit may be required to re-establish services. THERE WILL BE NO EXTENSIONS AND NO EXCEPTIONS.

The City of Reedley makes every effort to mail and deliver monthly bills and courtesy notices. However the City of Reedley is not responsible for lost bills/notices or bills/notices not delivered due to postal issues. Prompt address updates are the responsibility of the account holder. The account holder is also responsible for insuring that payment is made by the due date regardless of whether a bill/notice has been received or not. Time sensitive payments should be made in person inside our office prior to any deadline.

Returned Payment Policy

Any payment (check, e-check, etc.) returned back to the City of Reedley for any reason will result in a Returned Payment Fee of \$35 being added to the account balance. If a second returned payment occurs, the account will be placed in a cash or money order only payment status for a minimum of one year. After one year, the customer may submit a request in writing to the Finance Director asking for reinstatement of check writing privileges.

Any payment (check, e-check, etc.) that is returned for any reason that was made on an account in a 60-day status or a pending shut-off status will result in services for the account being immediately disconnected, a \$35 Returned Payment Fee, a \$25 Late Fee (a returned check, e-check results in a failure to make payment by the deadline rendering any payment thereafter delinquent) and a \$100 Service/Disconnect Fee being added to the account balance. There will be no advance notice for this action. Payment of the account balance in full plus all fees listed in this paragraph will be required to reinstate services.

For recorded payment instructions, call (559) 637-4200 extension 555. For customer service, call (559) 637-4200 extension 253.