

Attachment E

Executed Indemnity Agreement

INDEMNITY AGREEMENT

This Indemnity Agreement (this “**Agreement**”) is made this 21 day of April, 2016 by Indemnitor, Rochester Gauges Inc. (“**RGI**”), in favor of Indemnatee, the City of Carrollton, Texas (“**Carrollton**”).

RECITALS

WHEREAS, Chapter 361, Subchapter W, of the Texas Solid Waste Disposal Act authorizes the Texas Commission on Environmental Quality (“**TCEQ**”) to certify a Municipal Setting Designation (“**MSD**”) for property upon receipt and approval of a properly submitted application to the TCEQ;

WHEREAS, RGI is seeking a MSD for property located at the southwest corner of Forest Lane and Denton Drive in Dallas, Texas, more fully described in Exhibit “A” (the “**Designated MSD Property**”);

WHEREAS, applicants for a MSD must obtain approval from all municipalities that own or operate a groundwater supply well within five miles of a property for which a MSD is sought;

WHEREAS, Carrollton owns a groundwater supply well identified with TCEQ Water System Source Number G0570034A and State Well Number 33-02-102 and located on Country Club Drive in Carrollton, approximately 0.75 miles west of the intersection of Country Club Drive and Columbian Club Drive (the “**Carrollton Well**”);

WHEREAS, the Carrollton Well is located within five miles of the Designated MSD Property;

WHEREAS, Carrollton agrees to provide a resolution in support of RGI’s MSD application to the TCEQ in exchange for this Agreement;

AGREEMENT

NOW THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, RGI and Carrollton hereby agree as follows:

1. **Recitals.** The foregoing recitals are hereby incorporated into the Agreement.

2. **Definitions.** As used in this Agreement, the following terms are hereby defined as follows:

(a) **Contaminants.** “Contaminants” means tetrachloroethylene (PCE), trichloroethylene (TCE), cis-1,2-dichloroethylene (cis-1,2-DCE), vinyl chloride (VC), 1,1-dichloroethylene (1,1-DCE), benzene, methyl tertiary-butyl ether (MTBE), and total petroleum hydrocarbons (TPH) (C06-C12) that are present in the Carrollton Well in excess of applicable standards of the Texas Risk Reduction Program.

(b) **Date of Resolution.** “Date of Resolution” means the date the City of Carrollton approves and passes an ordinance or resolution in support of RGI’s MSD application to the TCEQ.

(c) **Remediation Costs.** “Remediation Costs” means costs incurred in connection with remediation of the Carrollton Well required under the Texas Risk Reduction Program, including, but not limited to, the costs of defending and resolving any and all third party claims related to same.

3. **Representation and Warranty by Carrollton.** Carrollton represents and warrants that, as of the date of this Agreement, it has no knowledge of and no reason to know of the presence of tetrachloroethylene (PCE), trichloroethylene (TCE), cis-1,2-dichloroethylene (cis-1,2-DCE), vinyl chloride (VC), 1,1-dichloroethylene (1,1-DCE), benzene, methyl tertiary-butyl ether (MTBE), or total petroleum hydrocarbons (TPH) (C06-C12) in the Carrollton Well or in the aquifer in which the Carrollton Well is completed. In the event of a breach of the representation and warranty in this section 3 of this Agreement, this Agreement shall be null and void, of no force and effect, and RGI will have no obligation to indemnify Carrollton.

4. **Indemnification Agreement.** Subject to the terms and conditions contained in this Agreement, RGI agrees to indemnify and hold Carrollton harmless from and against any and all claims for Remediation Costs arising or resulting from, but only to the extent arising or resulting from, the migration of Contaminants from the MSD Designated Property to the Carrollton Well (individually an “**Indemnified Claim**” and collectively the “**Indemnified Claims**”) on or after the Date of Resolution.

5. **Timely Notice of Indemnified Claim.** Within ten days of the date Carrollton obtains knowledge of an Indemnified Claim, Carrollton must deliver written notice of the Indemnified Claim to RGI. Notwithstanding anything to the contrary contained in this Agreement, if Carrollton fails to deliver timely written notice of an Indemnified Claim to RGI, such Indemnified Claim will not be covered by this Agreement. Notice of an Indemnified Claim must be provided by Carrollton to RGI via certified mail, return receipt requested or via a nationally recognized overnight delivery service to the address set forth in section 10 of this Agreement. Notice under this section 5 shall be deemed received upon the earlier of (a) the date of actual receipt, (b) three business days after mailing by certified mail, or (c) one business day after sending by a nationally recognized overnight delivery service.

6. **Procedure for Indemnification.** Within 30 days of providing notice of an Indemnified Claim under section 5 of this Agreement, Carrollton must provide a written explanation of its basis for concluding that an Indemnified Claim exists. The explanation must include how Carrollton determined that the Carrollton Well has been affected by Contaminants arising or resulting from migration from the MSD Designated Property. After receiving the written explanation from Carrollton, RGI will provide a response. RGI will indicate in the response whether it agrees that an Indemnified Claim exists and the basis for its response. In setting forth the basis for an Indemnified Claim, or in any suit, action, or proceeding involving RGI and Carrollton arising out of or relating to this Agreement, the burden to demonstrate that the Carrollton Well has been

affected by Contaminants lies solely with Carrollton; that is, Carrollton must demonstrate that the Carrollton Well has been affected by Contaminants originating from historical operations on the MSD Designated Property, that the Contaminants migrated to the Carrollton Well, and that the Contaminants did not arise from any other source or property.

7. **Covenant to Provide Resolution.** In exchange for this Indemnity, Carrollton agrees to pass a resolution in support of RGI's MSD application to the TCEQ. The passage of such a resolution is a condition precedent for any claim made under this Agreement. In the event that Carrollton does not pass a resolution in support of RGI's MSD application to the TCEQ, this Agreement shall be of no force and effect and RGI will have no obligation to indemnify Carrollton.

8. **Termination.** This Agreement will terminate when the TCEQ issues a letter or certificate confirming that no further response actions are required to remove, decontaminate, or control environmental impacts to groundwater from the Designated MSD Property based solely on potential potable water use.

9. **No Third Party Beneficiary.** The terms of this Agreement are for the sole and exclusive protection and use of Carrollton. No party shall be a third-party beneficiary hereunder, and no provision hereof shall operate or inure to the use and benefit of any third party.

10. **Notices.** All notices required or permitted to be given or made under this Agreement shall be addressed to the following as appropriate:

If to: **Rochester Gauges, Inc.**

Kevin LaDue
Rochester Gauges, Inc.
11637 Denton Drive
Dallas, TX 75229

With a copy to:

Jeff Civins
Haynes and Boone, LLP
600 Congress Ave. Suite 1300
Austin, TX 78701

If to: **City of Carrollton**

Mr. Marc Guy
City of Carrollton
1945 E. Jackson Rd
Carrollton, TX 75006

With a copy to:

Meredith Ladd
City of Carrollton
1945 E. Jackson Rd
Carrollton, TX 75006

Mr. Scott Hudson
City Hall, 2nd Floor

1945 E. Jackson Road
Carrollton, Texas 75006

11. **Captions.** The captions used in this Agreement are for convenience of reference only and may not be used in the interpretation of any of the terms contained in this Agreement.

12. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which will constitute one and the same agreement.

13. **Severability.** If any provision of this Agreement is held to be invalid or unenforceable, such invalidity of unenforceability will not affect the validity or enforceability of the remaining provisions of this Agreement.

14. **Amendment.** This Agreement may be amended only by a written instrument executed by RGI and Carrollton.

15. **Gender and Number.** Within this Agreement, words of any gender shall be construed to include any other gender, and words in the singular shall be construed to include the plural, and words in the plural shall be construed to include the singular, unless in each instance the context otherwise requires.

16. **APPLICABLE LAW.** THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF RGI AND CARROLLTON HEREUNDER SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS.

17. **CONSENT TO FORUM.** RGI AND CARROLLTON HEREBY IRREVOCABLY SUBMIT TO THE NON-EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT SITTING IN DALLAS COUNTY, TEXAS OVER ANY SUIT, ACTION, OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT.

18. **REVIEW OF COUNSEL.** CARROLLTON REPRESENTS AND WARRANTS THAT IT HAS READ EACH AND EVERY PROVISION OF THIS AGREEMENT, HAS BEEN GIVEN THE OPPORTUNITY TO HAVE THIS AGREEMENT REVIEWED BY, AND HAS CONSULTED WITH, COMPETENT LEGAL COUNSEL SELECTED BY CARROLLTON AND THAT CARROLLTON UNDERSTANDS, AGREES TO, AND ACCEPTS ALL PROVISIONS OF THIS AGREEMENT.

19. **Waiver.** The failure of RGI to insist upon strict compliance with any of the terms hereof shall not be considered to be a waiver of any such terms, nor shall it prevent RGI from insisting upon strict compliance with this Agreement at any time thereafter.

20. **Assignability.** This Agreement may not be assigned by RGI without the express written consent of Carrollton. This Agreement may not be assigned by Carrollton without the express written consent of RGI.

21. **Execution of Agreement.** Each of the undersigned persons hereby represents and warrants that he is authorized and competent to execute this Agreement on behalf of the party he purports to represent.

IN WITNESS HEREOF, this Agreement has been executed by RGI and Carrollton effective as the date first set forth above.

Rochester Gauges, Inc.



By: Skeeter LaDue

Title: V.P.

CITY OF CARROLLTON, TEXAS

By: _____

Title: _____

EXHIBIT “A”

Map and Legal Description of the MSD Designated Property.

THENCE: North 89 deg. 47 min. 59 sec. East, along the common line of said Lot 55 and Lot 56, at 396.11 feet passing the Northeast corner of said Lot 55 and the Southeast corner of said Lot 56 on the West right-of-way line of said Denton Drive and continuing on across said Denton Drive for a total distance of 478.68 feet to a point for corner on the East right-of-way line of said Denton Drive and the West right-of-way line of said DART Railway;

THENCE: South 14 deg. 32 min. 00 sec. East, along the common line of said Denton Drive and DART Railway, a distance of 400.00 feet to a point for corner;

THENCE: South 89 deg. 47 min. 59 sec. West, departing from the common line of said Denton Drive and DART Railway, across said Denton Drive, at 82.57 feet, passing the West right-of-way line of said Denton Drive at the Southeast corner of the above described Lot 52, Block 6568 and same being the Northeast corner of Lot 51, Block 6568 as described in a deed to REZ Enterprises, Inc., recorded in Instrument No. 200900123110, O.P.R.D.C.T. and continuing along the common line of said Lot 52 and Lot 51 for a total distance of 308.35 feet to the Northwest corner of said REZ Enterprises tract and same being an inside ell corner for the above described tract of land conveyed by deed to Gas Equipment Company, recorded in Volume 89185, Page 3209, D.R.D.C.T.;

THENCE: South 14 deg. 21 min. 35 sec. East, along the common line of said Gas Equipment Company and REZ Enterprises tracts, at 158.29 feet, passing the Southerly Southeast corner of said Gas Equipment Company tract and the Southwest corner of said REZ Enterprises tract, on the North line of a 25' wide Reservation for Road as per the above described plat recorded in Volume 6, Page 173, M.R.D.C.T. and continuing across said road reservation for a total distance of 184.10 feet to a point for corner on the South line of said 25' road reservation;

THENCE: North 89 deg. 59 min. 00 sec. West, along the South line of said 25' road reservation, at 566.42 feet, passing the East right-of-way line of the above described Harry Hines Boulevard and continuing across said Harry Hines Boulevard for a total distance of 735.85 feet to a point for corner on the West right-of-way line of said Harry Hines Boulevard and the East line of City Block 6567;

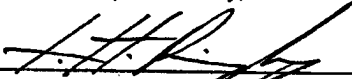
THENCE: North 14 deg. 32 min. 00 sec. West, along the common line of said Harry Hines Boulevard and Block 6567, a distance of 781.37 feet to a point for corner;

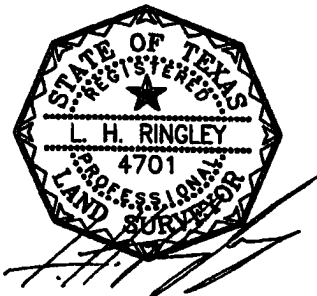
THENCE: North 89 deg. 47 min. 59 sec. East, across said Harry Hines Boulevard, a distance of 169.27 feet to the POINT OF BEGINNING and containing 993,014 square feet or 22.797 acres of land.

Note:

1. The Reference Bearing for the above prepared metes & bounds description is South 14 deg. 32 min. 00 sec. East along the West right-of-way line of Denton Drive as described in the Dedication of the Plat, Denton Road Estates, recorded in Volume 6, Page 173, Map Records of Dallas County, Texas.
2. This document was prepared under 22 TAC 683.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.
3. A drawing exhibit of equal date, accompanies this metes & bounds description

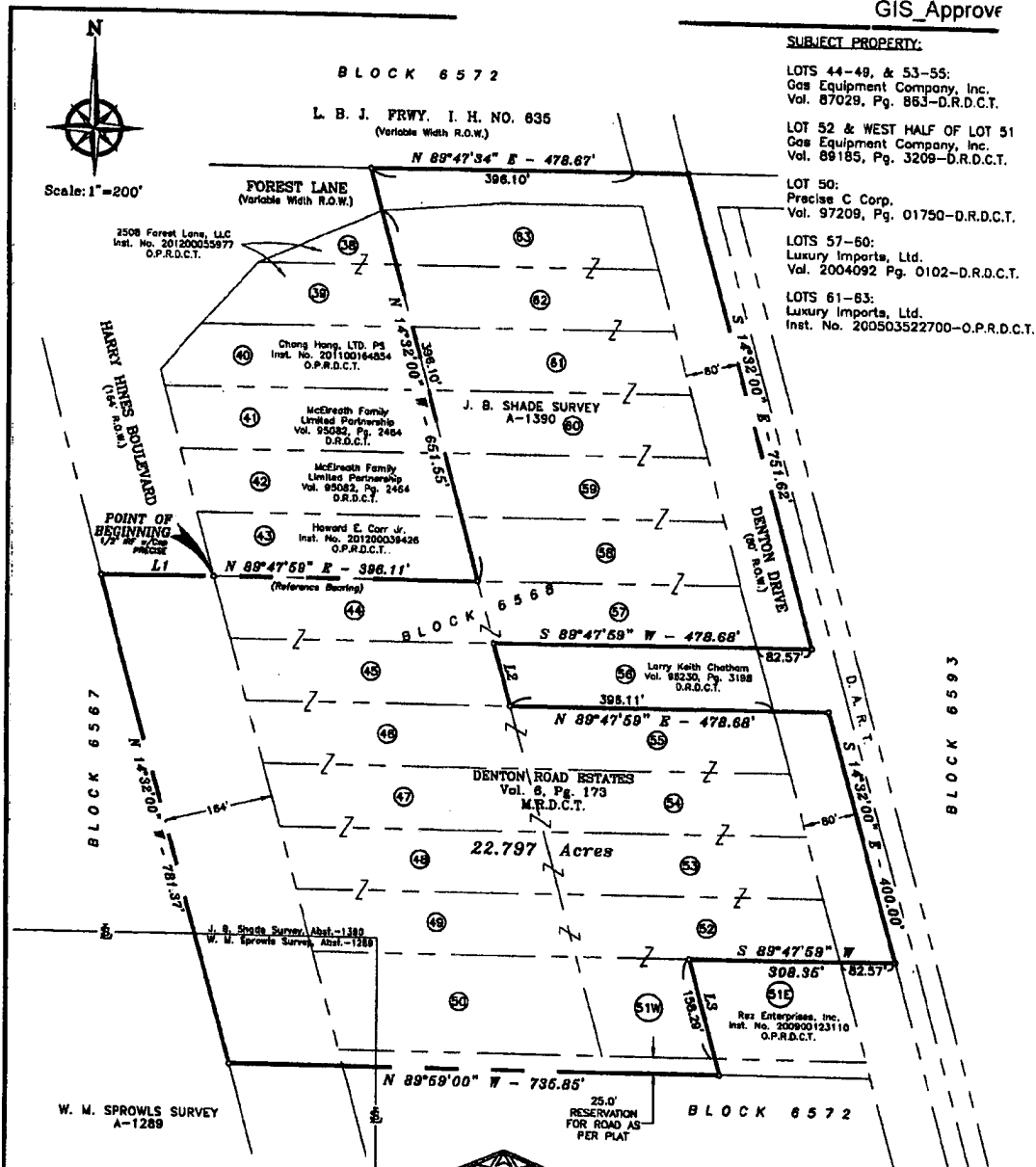
Prepared Under My Hand and Seal,
This 20th Day of February, 2013.


Lawrence H. Ringley, R.P.L.S.
State of Texas, No. 4701



Prepared By:

RINGLEY & ASSOCIATES, INC.
701 S. Tennessee Street
McKinney, Texas 75069
972-542-1266



SUBJECT PROPERTY:

LOTS 44-49, & 53-55:
Gas Equipment Company, Inc.
Vol. 87029, Pg. 863-D.R.D.C.T.

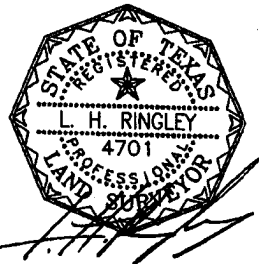
LOT 52 & WEST HALF OF LOT 51
Gas Equipment Company, Inc.
Vol. 88185, Pg. 3209-D.R.D.C.T.

LOT 50:
Precise C Corp.
Vol. 97209, Pg. 01750-D.R.D.C.T.

LOTS 57-60:
Luxury Imports, Ltd.
Vol. 2004092 Pg. 0102-D.R.D.C.T.

LOTS 61-63:
Luxury Imports, Ltd.
Inst. No. 200503522700-O.P.R.D.C.T.

A metes & bounds description
of equal date accompanies this
drawing exhibit.



REFERENCE BEARING:

The Basis of Bearings for this Exhibit is South 14 deg. 32 min. 00 sec.
East, along the West right-of-way line of Denton Drive as described in
the Dedication of the Plat, Denton Road Estates, recorded in Volume 6,
Page 173 of the Map Records of Dallas County, Texas.

CERTIFICATION

I, Lawrence H. Ringley, Registered Professional Land Surveyor in
and for the State of Texas, hereby certify that this document
was prepared under 22 TAC 683.21, does not necessarily reflect
all the results of an on the ground survey, and is not to be
used to convey or establish interests in real property except
those rights and interests implied or established by the creation
or reconfiguration of the boundary of the political subdivision
for which it was prepared this 20th Day of February, 2013.

LAWRENCE H. RINGLEY, R.P.L.S. No. 4701

LINE	BEARING	DISTANCE
L1	N 00°15'02" W	169.27'
L2	S 14°32'00" E	100.00'
L3	S 14°21'35" E	184.10'

EXHIBIT A

PAGE 3 OF 3

22.797 ACRES
Part of Block 6568
DENTON ROAD ESTATES
J.B. Shade Survey, A-1390
Wm. Sprowls Survey, A-1289
City of Dallas
Dallas County, Texas

RINGLEY & ASSOCIATES, INC. SURVEYING - MAPPING - PLANNING 701 S. Towerwood - McKinney, Texas 75069 (972) 547-1266		
Drawn by	Date	Scale
Mark Stahl	02/20/13	1"=200'
Job	Title	Sheet
13009	13009-EX DWG	3 of 3