



Control Number: 42946



Item Number: 3

Addendum StartPage: 0

House Bill (HB) 1600 and Senate Bill (SB) 567 83rd
Legislature, Regular Session, transferred the functions
relating to the economic regulation of water and sewer
utilities from the TCEQ to the PUC effective
September 1, 2014.

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WATER SUPPLY DIV.

**UPPER TRINITY REGIONAL WATER DISTRICT
REGIONAL TREATED WATER SYSTEM
PARTICIPATING CUSTOMER CONTRACT
WITH
DENTON COUNTY FRESH WATER SUPPLY DISTRICT NO. 9**

THE STATE OF TEXAS §
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COUNTY OF DENTON §

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This REGIONAL TREATED WATER SUPPLY CONTRACT (the "Contract" made and entered into as of the 29th day of August 2001 (the "Contract Date"), by and between UPPER TRINITY REGIONAL WATER DISTRICT, (the "District"), a conservation and reclamation district created pursuant to Article XVI, Section 59 of the Constitution of the State of Texas, and DENTON COUNTY FRESH WATER SUPPLY DISTRICT NO. 9 ("FWSD"), is a special district and political subdivision of the State of Texas, created, organized and operated pursuant to the Texas Water Code, Chapters 49, 51 and 53. FWSD also may be referred to herein as "Customer", and specifically as "Participating Customer."

WITNESSETH:

WHEREAS, FWSD, the boundaries of which are illustrated in Exhibit A to this Contract, is a conservation and reclamation district and a duly created and validly existing political subdivision of the State of Texas, operating under the constitution and laws of the State of Texas; and

WHEREAS, FWSD is a governmental entity in Denton County that is taking definitive steps satisfactory to the District to provide retail utility service to retail customers within its boundaries; and

WHEREAS, FWSD is authorized to provide both water and wastewater (sewer) service to retail customers within its boundaries and desires to enter into a separate contract with District for wastewater treatment service in addition to water supply under this Contract; and

WHEREAS, FWSD is wholly within the water service area of Mustang Water Supply Corporation (MWSC), an area for which MWSC has been granted a Certificate of Convenience and Necessity (CCN) by the State of Texas; and

WHEREAS, District and FWSD agree that the provision of retail water service for FWSD will be coordinated with MWSC in a manner satisfactory to the District and consistent with MWSC's separate contract with the District as a Participating Utility in the Regional Treated Water System; and

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WHEREAS, FWSD agrees to submit to the District for its review and approval a proposed contract between FWSD and MWSC for operation of FWSD's water distribution system to assure that such contract does not impair the tax exempt status of either District Bonds or FWSD bonds, notes or other obligations; and

WHEREAS, one of the purposes for which the District was created was to provide wholesale treated water services to cities and water distribution utilities of the Denton County area; and

WHEREAS, the District has a contract with City of Dallas dated February 12, 1992, under which the District has the right to purchase untreated surface water out of Ray Roberts Lake and Lewisville Lake to serve cities and utilities within the District's service area; and

WHEREAS, the District is developing a Regional Treated Water System for Participating Members and other Customers, including raw water transmission lines, water treatment plant, pump stations, treated water transmission lines, storage tanks and metering facilities, Phase 1 of which is operational and is currently serving Participating Members and Participating Utilities; and

WHEREAS, District has entered into prior contracts with Participating Members and Participating Utilities for participation in the Regional Treated Water System (herein "System"), under which contracts the District is authorized to enter into contracts with additional parties such as this Contract for wholesale treated water service; and

WHEREAS, FWSD is not a Member of the District; has not paid membership or System development fees prior to date of this Contract; and, is therefore willing to pay rates for water service which are reasonably higher than rates enjoyed by Members of the District; and

WHEREAS, District, in conjunction with MWSC, proposes to extend a major treated water transmission line generally along U.S. 380 in northeast Denton County as an expansion of the System, in general accordance with the January 2000 "Engineering Report for Upper Trinity Regional Water District and Mustang Water Supply Corporation and City of Celina", prepared by Hunter Associates, Texas LTD., consulting engineers, together with other facilities determined by District to be necessary to render the contracted services, collectively herein referred to as the "Project"; and

WHEREAS, FWSD desires that the District undertake steps to provide treated water service to FWSD as a "Participating Customer" in the Regional Treated Water System as defined in this Contract; and

WHEREAS, the District and FWSD are authorized to enter into this Contract pursuant to the District's enabling statute, Chapter 1053 Acts of the 71st Legislature, Regular Session 1989 as amended (the "Act"), the Texas Water Code, and other applicable laws; and

WHEREAS, the parties agree that the FWSD may own its internal water distribution system, and shall contract with MWSC to operate said distribution facilities for retail service within FWSD boundaries; and

WHEREAS, FWSD specifically agrees to respect the service area of MWSC for which it has been granted a CCN, providing herein for coordination with MWSC, with its service area and with services provided by MWSC to the balance of its service area; and

WHEREAS, FWSD acknowledges that the District may enter into similar contracts as this Contract with Additional Participating Members, additional Participating Utilities, and other Customers in the future; and

WHEREAS, the parties hereto acknowledge that a portion of the cost of the District's Regional Treated Water System has been funded by State of Texas through the "State Participation Program," administered by the Texas Water Development Board and that District is obligated to repurchase said portion in future years from the State; and

WHEREAS, District has established an "Equity Fee" to be paid by Customers who contract for capacity in the Regional Treated Water System to help repurchase State Participation, and FWSD is willing to pay the applicable "Equity Fee" as a condition of this Contract; and

WHEREAS, it is expected by the parties hereto that the District will issue an installment of Bonds to provide money to construct the Project, with said Bonds to be payable from and secured by Annual Payments made under this Contract and all other similar contracts for participation in the System.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the District agrees to provide treated water supply services under this Contract, and use its best efforts to issue its Bonds to acquire, construct and complete the Project and other facilities of the System upon and, subject to the terms and conditions hereinafter set forth, to-wit:

ARTICLE I **Preamble/Definitions**

Section 1.01. **Adoption of Preamble.** All of the matters stated in the preamble of this Contract are true and correct and are hereby incorporated into the body of this Contract as though fully set forth in their entirety herein.

Section 1.02. **Definitions.** The following terms and expressions as used in this Contract, unless the context clearly shows otherwise, shall have the following meanings:

1. **"Act"** means H.B. 3112, Chapter 1053, Acts of the 71st Legislature, Regular Session, 1989 (effective June 16, 1989) as amended (Chapter 494, 74th Legislature, Regular Session 1995), which amendment became effective August 28, 1995.
2. **"Additional Participating Member"** means any member of the District other than the existing Participating Members with which the District makes a contract for supplying treated water from the System.
3. **"Administrative Payment"** means the amount of money to be paid to the District by each of the Participating Members, Participating Utilities, and other Customers during each Annual Payment Period as their proportionate share of Administration and Planning Expenses of the District.
4. **"Adjusted Annual Payment"** means the Annual Payment as adjusted by the Board during or after such Annual Payment Period, as provided by this Contract.

5. **"Administrative and Planning Expenses"** means the general overhead cost and expenses of managing the District, but not including expenses related to capital projects financed by the District; such expenses shall include the administration of the District's general office, the activities and meetings of the Board and the planning activities of the District, to the extent such programs and activities shall be for the general welfare of the District; activities and programs for the benefit of specific parties and for specific capital projects shall, unless otherwise authorized, be the responsibility of the benefiting parties.
6. **"Annual Payment"** means the amount of money to be paid to the District by Customer during each Annual Payment Period as its proportionate share of the Annual Requirement.
7. **"Annual Payment Period"** means the District's fiscal year, which currently begins on October 1 of each calendar year and ends on September 30 of the following calendar year, but which may be any twelve consecutive month period fixed by the District; and the first Annual Payment Period under this Contract is estimated to be the period of October 1, 2000, through September 30, 2001. Any service provided during FY 2000-2001 for a partial year will be on a pro rated basis.
8. **"Annual Requirement"** means the total amount of money required for District to pay all Operation and Maintenance Expenses of the System, and to pay the Capital Component of the Annual Requirement as described hereinafter including debt service on its Bonds, and any sums required to pay or restore any amounts required to be deposited in any special or reserve funds required to be established and/or maintained by the provisions of the Bond Resolutions or by action of the Board.
9. **"Board"** means the governing body of the District. The governing body of each Member of the District and of the County are entitled to appoint a qualified person to serve on the Board.
10. **"Boardmembers"** means a member or members of the Board.
11. **"Bond Resolution"** means any resolution of the District, which authorizes any Bonds.
12. **"Bonds"** means all bonds issued by the District to construct the System, whether in one or more series or issues, and the interest thereon, and hereafter issued to acquire, construct and complete the Project, and all bonds issued subsequently to improve, extend, operate or maintain the System, and any bonds issued to refund any bonds or to refund any such refunding bonds.
13. **"County"** means Denton County, Texas.
14. **"Customer(s)"** means specifically FWSD, and according to context may refer to any wholesale user participating in the water services provided by the District from the System, which user provides retail utility service within its boundaries.
15. **"Customer Advisory Council" or "Council"** means the committee authorized to be created to consult with and advise the District with respect to the System as provided in this Contract.
16. **"Demand"** means the maximum rate of flow expressed in MGD mutually established by Customer and District that is or may be taken by Customer within a Water Year.

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17. **"District"** means the Upper Trinity Regional Water District, a conservation and reclamation district pursuant to Article XVI, Section 59 of the Constitution of the State of Texas created in accordance with the Act.
18. **"MGD"** is an abbreviation for "million gallons of water per day".
19. **"North Service Area"** means generally the northern portion of Denton County and more specifically any related service area designated by the District to be provided treated water service by the District from a water treatment plant other than the existing plant near Lewisville Lake in City of Lewisville, which service area may be separate from other service areas of the District for purposes of determining the Annual Requirement and for delivery of services and which may be modified from time to time by the District.
20. **"Operation and Maintenance Expenses"** means all costs and expenses of operation and maintenance of the System, including (for greater certainty but without limiting the generality of the foregoing) repairs and replacements, operating personnel, the cost of utilities, the amounts required to pay the U.S. Army Corps of Engineers or any other federal, state, or local agency for water storage rights or other interests in water in any reservoir, or for the purchase of water, or for the use or operation of any property or facilities; the costs of supervision, engineering, accounting, auditing, legal services, insurance premiums, supplies, services, administration of the System, Administrative and Planning Expenses, and equipment necessary for proper operation and maintenance of the System; and, payments made by District in satisfaction of judgments resulting from claims not covered by District's insurance arising in connection with the acquisition, construction, operation, and maintenance of the System. The term also includes the charges of the bank or banks acting as paying agents and/or registrars for any Bonds. The term does not include depreciation expense.
21. **"Participating Member"** (or **"Member"**) means a governmental entity who has met the membership requirements of the District, that provides retail utility service to customers within its boundaries, and that contracts with the District for the acquisition, construction, improvement, enlargement, and payment for the water projects to be financed from time to time by the District. A **Participating Customer** is required to meet similar requirements, except those related to "membership".
22. **"Participating Utility"** (or **"Utility"**) means a non-governmental entity, such as a water supply corporation who entered into an agreement with the District to be part of the District's regional program, that provides retail utility service to customers within its boundaries and that contracts with the District for the acquisition, construction, improvement, enlargement, and payment for the water projects to be financed from time to time by the District.
23. **"Point of Delivery"** means the point designated in this Contract where treated water will be delivered to FWSD from the System.
24. **"Project"** means the "Project" as defined in the Preamble of this Contract.
25. **"South Service Area"** means generally the southern portions of Denton County and more specifically any related service area designated by the District to be provided treated water service by the District, from the existing water treatment plant near Lewisville Lake in City of Lewisville, or from other sources, which service area may be separate from other water service areas of the District, for purposes of determining the Annual Requirement and for delivery of service, and which may be modified from time to time by the District.

26. "State" means the State of Texas.

27. "System" means the Project, Phase 1 of the Regional Treated Water System, together with all future improvements, enlargements, extensions and additions to any of the foregoing which are deemed necessary and feasible by the District to provide treated water service to Participating Members and other Customers and all future new facilities and/or water rights, which are acquired or constructed with the proceeds from the sale of any Bonds or revenues from the System, and any water supply or treatment facilities which are deliberately and specifically, at the option of the District, made a part of the System by resolution of the Board, and all repairs to or replacements of the System. Said term does not include any District facilities, which provide wastewater treatment or disposal services, or solid waste disposal services, of any kind. Said term does not include any facilities acquired or constructed by the District with the proceeds from the issuance of "Special Facilities Bonds," which are hereby defined as being revenue obligations of the District which are not secured by or payable from payments made under this Contract or similar contracts, and which are payable solely from sources other than revenues of the System.

28. "Water Year" means the period of June 1 of each calendar year through May 31 of the next following calendar year.

ARTICLE II Construction and Issuance of Bonds

Section 2.01. Board of Directors. The District is governed by a Board, the members of which are appointed by the governing bodies of Members and by the County. FWSD is not entitled to appoint a representative to the Board. However, Participating Customers shall be represented by a Boardmember serving Denton County at-large.

Section 2.02. Consulting Engineers. The District and Customer agree that the District will choose the Consulting Engineers for the Project and System and may change Consulting Engineers at the option of the District.

Section 2.03. Construction of Project and System. The District agrees to use its best efforts to issue its Bonds, payable from and secured by Annual Payments made under this Contract and other similar contracts, to acquire and construct the Project and other System facilities when and as needed, as determined by the District, to supply treated water to all Participating Members and other Customers. It is anticipated that such acquisition and construction of the System will be in phases and that each phase will be financed by the District through the issuance of one or more series or issues of its Bonds; and the District agrees to use its best efforts to issue its Bonds for such purpose. Also, at the discretion of the District, Bonds may be issued to refund any Bonds, and may be issued to extend, enlarge, repair, renovate, equip, operate, maintain and otherwise improve the System and any System facilities. District agrees that such improvements for the Project and System will be made in accordance with generally accepted engineering practices. It is anticipated that such improvements will be financed by the District through the issuance of one or more series or issues of its Bonds payable from and secured by Annual Payments made under this Contract and other similar contracts.

Section 2.04. **Bond Proceeds.** The proceeds from the sale and delivery of such Bonds may be used to fund, to the extent deemed advisable by the District, a debt service reserve fund, a contingency fund, and interest on the Bonds during construction; and, such proceeds also will be used for the payment of the District's expenses and costs in connection with the Project and System (including all engineering and design costs and expenses, and the cost of the land and interests therein related to the System) and the Bonds, including, without limitation, all financing, legal, printing, and other expenses and costs related to the issuance of such Bonds and the System.

Section 2.05. **Bond Resolution.** Each Bond Resolution of the District shall specify the exact principal amount of the Bonds to be issued thereunder, which shall mature within the maximum period, and shall bear interest at not to exceed the maximum rates then permitted by law. Each Bond Resolution shall create and provide for the maintenance of a revenue fund, an interest and sinking fund, a debt service reserve fund, and any other funds deemed advisable, all in the manner and amounts as provided in such Bond Resolution. Customer agrees that if and when such Bonds are actually issued and delivered to the purchaser thereof, either for the purpose of initially acquiring and constructing the Project, or subsequently for improving and/or extending the System, the Bond Resolution authorizing the Bonds shall for all purposes be deemed to be in compliance with this Contract in all respects, and the Bonds issued thereunder will constitute Bonds as defined in this Contract for all purposes.

ARTICLE III **Operating Requirements**

Section 3.01. **Water Sales.** District agrees to deliver potable water to Customer in accordance with the specifications and restrictions of this Article. District agrees to provide potable water to meet volume and demand requirements of Customer as provided herein.

Section 3.02. **Water Supply Limitations.** Delivery of potable water to meet the requirements of Customers, including Participating Customers, is subject to and limited by available System supply and System deliverability, as determined by the District. Such delivery shall not be unreasonably withheld. The District will use its best efforts to furnish and remain in position to furnish treated water sufficient for all reasonable treated water requirements of each Customer, but its obligation shall be limited to the amount of treated water available from the System; and provided that the maximum rate of delivery shall be consistent with the capacities and abilities of System facilities, and shall not exceed the amounts fixed on an equitable and uniform basis by the Board.

Section 3.03. **Quantity.** The District agrees to deliver treated water under this Contract to FWSD at its Point of Delivery as described in Section 3.13 hereof, and FWSD agrees to take at its Point of Delivery or to pay for certain minimum amounts of water to assure adequate funds to the District to fulfill its obligations under this Contract.

Section 3.04. **Minimum Amounts.** For the purpose of calculating the minimum amount of each Annual Requirement for which FWSD is unconditionally liable, without offset or counterclaim, FWSD, during each Annual Payment Period, shall be deemed to have taken and used the minimum Demand for System treated water (regardless of whether or not such amount is or was actually taken or used) specified for FWSD in Exhibit B to this Contract.

Section 3.05. **Demand.** For the initial Water Year, FWSD will be obligated to take or pay for the Demand specified in Exhibit B. After one year of operating experience, the District may adjust the Demand for any Water Year for Customer by mutual agreement; however, District in making such adjustment shall always assure that the sum of all Demands for all Customers will be adequate to support the costs and expenses of the District. The District and Customer hereby agree that it is the intention of all parties to adopt a procedure for determination of Demand on an annual basis that takes into account actual usage for the most recent five (5) Water Years and projected needs for the next Water Year. However, the parties agree to adhere to Minimum Demands specified in Exhibit B until the District has sufficient data to justify a transition to a Demand calculation based on actual and projected usage. It is the intention of the District to adopt the revised method of calculating Demand as soon as prudent to promote fairness and equity among all Customers and to avoid any Customer paying unnecessarily for water or Demand not needed in the near future.

Section 3.06. **Demand Meters.** A Demand meter (rate-of-flow controller) may be installed by District during initial construction as part of the cost of the Project. If not installed initially, Customer and District agree that after an initial five (5) year period, the District may require the installation of a rate-of-flow controller at the cost and expense of Customer to regulate and measure Demand.

Section 3.07. **Changes in Demand.** Customer shall give reasonable notice to District of anticipated changes in Demand requirements. Such notice shall be given at least six (6) months in advance if the requested change, when considered with other pending or contemporaneous requests, does not require construction of additional facilities. The Executive Director of the District may waive the six (6) month notice requirement for good cause shown. If construction of additional facilities is required, such advance notice as will be necessary to allow for financing, design and construction of the needed facilities shall be given by Customer.

Section 3.08. **Payment for Demand.** Initially, payment for Demand shall be based on the Minimum Demand specified in Exhibit B. If as described in Section 3.05 above, District makes the transition to billing based on actual or projected Demand, Customer agrees to pay the total annual Demand charge for any increase in the agreed upon maximum Demand during a Water Year; and for each Water Year to pay annual Demand charges based on (a) the current Water Year Demand, (b) the highest Demand established during the five (5) Water Years preceding or (c) the minimum Demand specified in this Contract, whichever is greater. Until modified by mutual agreement, Customer agrees to pay such Demand charge as may be required by this Contract or subsequent agreements, whether or not a Demand meter or rate-of-flow controller is installed or is used for billing purposes.

Section 3.09. **Other Water Supplies.** Unless otherwise mutually agreed in writing, Customer agrees to secure all of its water supply requirements from the District for the life of this Contract. The parties to this Contract desire to promote, achieve and maintain efficient System operation and to promote conservation of limited ground water resources. To that end, unless otherwise mutually agreed in writing, Customer agrees to not install wells to withdraw underground water resources for retail service within its boundaries. Any well to be used for irrigation of common areas, or to serve development amenities is exempt from this provision.

Section 3.10. **Resale.** Customer hereby agrees that it will not sell water purchased from District to any person or entity outside Customer's boundaries unless Customer has received prior written approval from the District. Approval to make retail sales to individual customers outside such boundaries may be granted by the Executive Director of the District. Approval to make wholesale sales for resale shall require the specific approval of the Board. In granting

such authorization, District may establish the terms and conditions of the conveyance of such water including, but not restricted to, the setting of monetary rates for sale of such water. "Convey" means sell, trade, donate, exchange, transfer title, or contract therefor. This provision applies to all water whether initially conveyed to Customer under this Contract, obtained from water wells or from other sources.

Section 3.11. Other Contracts. The parties hereto recognize and acknowledge that it is the policy and practice of the District that any other person that desires to receive service from the System shall contract directly with the District to become a Customer of the District. Any proposal to the contrary would be considered an exception to that policy. Accordingly, Customer may enter into subcontracts with a City, another utility or other entity to provide wholesale water service only if approved in writing in advance by the District. If approved, no such transaction shall relieve Customer of its obligations to the District under the terms of this Contract.

Section 3.12. Quality. The water to be delivered by the District and received by Customer shall be potable, treated water from the System. Customer has satisfied itself that such water will be suitable for its needs. The District is obligated to treat such water according to standards of all State and Federal agencies having jurisdiction over water quality. The District and Customer shall cooperate, each within its legal powers, in preventing, to the extent practicable, the pollution and contamination of the reservoirs and watersheds from which System water is obtained.

Section 3.13. Points of Delivery.

(a) District agrees to deliver water contracted for by FWSD at the Point of Delivery as delineated in Exhibit A attached hereto. The permanent delivery facilities delineated in Exhibit A hereof shall be constructed by District and included in the cost of the Project.

(b) Any additional Point of Delivery shall be subject to approval by District. Unless otherwise mutually agreed to, Customer shall be responsible for the design contracting, construction and financing of facilities and acquisition of any rights-of-way for additional or future Point of Delivery for water from the System. Plans shall be submitted to District for written approval and all designs, materials and specifications shall conform to District requirements. Customer agrees that District has the right to make periodic inspections during the construction phase of such future or additional delivery facilities. Final acceptance of completed delivery facilities is subject to the written approval of District. Customer agrees that after final inspection and acceptance of delivery facilities, Customer will convey title of those facilities and rights-of-way in conjunction therewith to District. Upon conveyance of title to delivery facilities by appropriate instrument(s), District shall be responsible for operation and maintenance thereof.

Section 3.14. Metering Equipment.

(a) The District will furnish, install, operate, and maintain at its expense the necessary equipment and devices of standard type required for measuring the quantity of treated water delivered under this Contract from the System to Customer through its Point of Delivery, except as otherwise provided in Section 3.13. Such meters and other equipment so installed shall remain the property of the District. The District shall inspect, calibrate, and adjust its meters at least annually as necessary to maintain accurate measurements of the quantity of treated water being delivered. Customer shall have access to the metering equipment at all reasonable times for inspection and examination, but the reading, calibration, and adjustment thereof shall be done only by employees or agents of the District. If requested, Customer may witness such

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reading, calibration and adjustment of meters. All readings of meters will be entered upon proper books of record maintained by the District. Customer may have access to said record books during normal business hours.

(b) Customer may request, in writing, that the District calibrate any meter or meters in the presence of the Customer. The District will make up to two (2) such calibrations in any fiscal year at no charge to Customer. All requested calibrations in excess of two (2) will be made at the expense of the requesting Customer, except when the accuracy of the meter is beyond the limits of commercial accuracy in which case the District shall bear such expense. If, for any reason, any meter is out of service or out of repair, or if, upon any test, the percentage of inaccuracy of any meter is found to be in excess of commercial accuracy [which unless otherwise agreed to shall be considered to be two (2%±) percent], registration thereof shall be corrected for a period of time extending back to the time when such inaccuracy began, if such time is ascertainable, and if not ascertainable, then for a period extending back one-half (½) of the time elapsed since the date of the last calibration, but in no event further back than a period of six (6) months.

(c) Customer may, at its option and its own expense, install and operate a meter (check meter) to check any meter installed by the District, but the measurement for the purpose of this Contract shall be solely by the District's meters, except as in this Section specifically provided to the contrary. All such check meters shall be of standard make, shall be installed in a location approved by the District, and shall be subject at all reasonable times to inspection and examination by any employee or agent of the District, but the reading, calibration, and adjustment thereof shall be made only by Customer, except during any period when a check meter may be used under specific written consent by the District for measuring the amount of treated water delivered from System, in which case the reading, calibration, and adjustment thereof shall be made by the District with like effect as if such check meter or meters had been furnished or installed by the District.

(d) If either party at any time observes a significant variation between the delivery meter or meters and the check meter or meters, if any such check meter or meters shall be installed, such party will promptly notify the other party, and the parties hereto shall then cooperate to procure an immediate calibration test and joint observation of any adjustment and the same meter or meters shall then be adjusted to accuracy. Each party shall give the other party forty-eight (48) hours' notice of the time of all tests of meters so that the other party may conveniently have a representative present.

(e) If for any reason any meters are out of repair so that the amount of water delivered cannot be ascertained or computed from the reading thereof, the water delivered through the period such meters are out of service or out of repair shall be estimated and agreed upon by the parties hereto upon the basis of the best data available. For such purpose, the best data available shall be deemed to be the registration of any check meter or meters if the same have been installed and are accurately registering. Otherwise, the amount of water delivered during such period may be estimated: (i) by correcting the error if the percentage of the error is ascertainable by calibration tests or mathematical calculation, or (ii) by estimating the quantity of delivery by deliveries during the preceding periods under similar conditions when the meter or meters were registering accurately.

Section 3.15. Unit of Measurement. The unit of measurement for treated water delivery from the System hereunder shall be 1,000 gallons, U.S. Standard Liquid Measure.

Section 3.16. Access.

(a) Customer agrees to provide ingress and egress for District employees and agents to all Customer premises inside its boundaries to install, operate, inspect, test, and maintain facilities owned or maintained by District within corporate or jurisdictional limits of Customer or to make such inspections or tests authorized by this Contract.

(b) District agrees to provide ingress and egress for Customer employees and agents to all premises under control of the District to install, operate, inspect, test, and maintain facilities, and read meters owned or maintained by Customer.

Section 3.17. Reporting Requirements. Approximately sixty (60) days after the end of each Annual Payment Period, Customer shall furnish in writing to the District the following information:

- (1) The number of active domestic water connections currently served;
- (2) The number of commercial and business water connections currently served;
- (3) The number of water connections currently served which purchase 1,000,000 gallons or more per year, with name and location of each;
- (4) The number of gallons of water pumped from sources other than the District during the most recent Annual Payment Period;
- (5) An estimate of the projected annual water requirements from the System by Customer for each of the next five (5) years;
- (6) An estimate of Demand for the next Water Year.

The purpose of this provision is to permit the District to accumulate statistical data which will enable it to plan for adequate service, and to facilitate plans for betterment and future facilities expansion.

Section 3.18. Customer Advisory Council.

(a) On an annual basis, the governing body of each Customer may appoint a member of its governing body or one of its employees as a member of the Customer Advisory Council for the Regional Treated Water System, which Council is hereby created and established. The Council shall elect a Chairman, a Vice-Chairman, and a Secretary. The Council may establish bylaws governing the election of officers, meeting dates and other matters pertinent to its function. The Council shall consult with and advise the District and the Board with regard to the following matters pertaining to the District:

- (i) The issuance of Bonds;
- (ii) The operation and maintenance of the District and the System;
- (iii) Contracts for services to Customers;
- (iv) The District's Annual Budget, prior to its submission to the Board;

(v) All other pertinent matters relating to operation of the District and the System;
and

(vi) Improvements and extensions of the System.

The Council shall have access to and may inspect at reasonable times all physical elements of the System and all records and accounts of the District pertaining to the System.

(b) The term of membership on the Council shall be at the pleasure of each governing body represented, respectively, and each member shall serve until replaced by such governing body. All expenses of the Council in discharging its duties under this Section shall be considered as an Operation and Maintenance Expense of the District.

Section 3.19. Water Conservation, Drought Contingency Plan.

(a) Customer agrees that water supplies or services may be limited or curtailed pursuant to Section 3.02. Also, Customer agrees to coordinate with the District the implementation of any action to limit or curtail water supplies to minimize adverse impact on System operation, and on adequacy of service, and to promote public understanding of the need for and terms of such limitation or curtailment.

(b) It is the policy of the District to prepare, adopt and maintain a regional water conservation plan which incorporates loss reduction measures and demand management practices which insure that the available supply of the System is used in an economically efficient and environmentally sensitive manner. Similarly, it is the policy of the District to prepare, adopt and maintain a drought and emergency contingency plan for water supply to Customers. Customer agrees to cooperate in the implementation of both plans and to adopt and enforce such or similar plans for use within its jurisdiction. Customer may be required by State or Federal agencies to implement a water conservation plan; also, the District reserves the right to require Customer to implement a water conservation plan. The Customer's water conservation plan is subject to approval by District.

(c) To the extent the District imposes restrictions of general applicability to Customers, including rules relating to the curtailment or rationing of water delivery and availability, District agrees to impose such restrictions equitably and in a non-discriminatory fashion. Such rationing shall, within the limits permitted by law, be done by the District on the basis of the relative actual total amount of water taken from the System by each Customer respectively during the most recent Water Year during which rationing among the Customers was not necessary.

Section 3.20. **Standards.** Except as otherwise provided in the Special Provisions, Exhibit C hereto, the following requirements shall apply. Customer agrees to protect its storage and distribution system from cross connections under the specifications required by health standards of the State of Texas. Customer agrees to provide air gaps for any ground storage and backflow preventers for any elevated storage, or other distribution facility, receiving water directly from the System. Customer agrees to provide internal storage sufficient to meet its emergency needs and to maintain a reasonable load factor for deliveries from the System.

ARTICLE IV
Fiscal Provisions

Section 4.01. **Annual Requirements.** Subject to the terms and provisions of this Contract, the District will provide and pay for the cost of the acquisition, construction and improvement of the Project and System facilities, by issuing its Bonds in amounts which will be sufficient to accomplish such purposes. It is acknowledged and agreed that payments to be made under this Contract and similar contracts with other Customers, Participating Members and Participating Utilities will be the primary source available to the District to provide the Annual Requirement. In compliance with the District's duty to fix, and from time to time to revise, the rates and charges for services of the System, the Annual Requirement may change from time to time. Each such Annual Requirement shall be allocated to Customer and among the Members and other Customers as hereinafter provided, and the Annual Requirement for each Annual Payment Period shall be provided for in each Annual Budget and shall at all times be not less than an amount sufficient to pay or provide for the payment of:

1. An "Operation and Maintenance Component" equal to the amount paid or payable for all Operation and Maintenance Expenses of the System; and

2. A "Capital Component" equal to:

(i) the principal of, redemption premium, if any, and interest on the Bonds, as such principal, redemption premium, if any, and interest become due, less interest to be paid out of Bond proceeds or from other sources if permitted by any Bond Resolution, and all amounts required to redeem any Bonds prior to maturity when and as provided in any Bond Resolution, plus the fees, expenses and charges of each paying agent/registrar for paying the principal of and interest on the Bonds, and for authenticating, registering and transferring Bonds on the registration books of the District maintained with the paying agent/registrar; and

(ii) the proportionate amount of any special, contingency or reserve funds required to be accumulated and maintained by the provisions of any Bond Resolution; and

(iii) an amount in addition thereto sufficient to restore any deficiency in any of such funds required to be accumulated and maintained by the provisions of any Bond Resolution; and

3. An "Operational and Maintenance Reserve" in an amount deemed appropriate and necessary by the Board for Operation and Maintenance Expenses of the System and for capital improvements. Any such reserve shall be used as a source of funds for Operation and Maintenance Expenses, for emergency expenses and as a fluctuating reserve for additions to, or shortfalls in, the annual revenues of the System. The normal level of such reserve shall be 25% of the on-going annual Operation and Maintenance Expenses; however, the Board may authorize the reserves to be maintained at a higher level, especially if needed for future capital improvements, to respond to new regulatory requirements, or to facilitate efficient operation and maintenance of the System.

4. Other "Special Reserves" as determined necessary by the Board for such purposes as "Rate Stabilization" or for "Capital Improvements."

Section 4.02. Annual Budget. Each annual budget for the System shall always provide for amounts sufficient to pay the Annual Requirement. The annual budget shall be prepared by the District based on estimates made by the District. On or before June 15 of each year, the District shall furnish to each Customer a preliminary estimate of the Annual Payment required from each Customer for the next following Annual Payment Period. Not less than forty days before the commencement of each Annual Payment Period, the District shall cause to be prepared as herein provided its preliminary budget for the System for the next ensuing Annual Payment Period. A copy of such preliminary budget shall be filed with each Customer for review before action by the Board. Customer may submit comments about the preliminary budget directly to the Board. The Board may adopt the preliminary budget or make such amendments thereto, as the Board may deem proper. The budget thus approved by the Board shall be the annual budget for the next ensuing Annual Payment Period. The annual budget may be amended by the District at any time to transfer funds from one account or fund to another account or fund so long as such transfer will not increase the total budget. The amount for any account or fund, or the amount for any purpose, in the Annual Budget may be increased through formal action by the Board even though such action might cause the total amount of the Annual Budget to be exceeded; provided that such action shall be taken only in the event of an emergency or special circumstances which shall be clearly stated in a resolution at the time such action is taken by the Board.

Section 4.03. Payments by Customer.

(a) For the treated water services to be provided to FWSD under this Contract, FWSD agrees to pay, at the time and in the manner hereinafter provided, its proportionate share (Annual Payment) of the Annual Requirement. FWSD shall pay the Annual Payment for each Annual Payment Period directly to the District, in monthly installments in accordance with the schedule of payments furnished by the District, as hereinafter provided. Current rates and charges for Fiscal Year 2000-2001 are set forth in Resolution 00-32 adopted by the Board on September 7, 2000, which rates and charges may be changed from time to time by the Board.

(b) FWSD shall pay its Annual Payment according to the minimum amounts respectively specified in Section 3.04 of this Contract and according to the actual volume of treated water taken. The District shall estimate a price per 1,000 gallons of Demand and volume for purposes of determining the monthly payment to be made by each Customer. Customer shall pay a Demand charge in approximately equal monthly installments based on the minimum quantity specified in Exhibit B or upon a different quantity subsequently established by the District in accordance with Section 3.05. Such Demand charge shall be sufficient to cover the fixed cost portion of the Annual Requirement. Customer shall pay a volume charge based on the actual volume of treated water delivered to Customer monthly. The volume charge shall be sufficient to cover the variable cost portion of the Annual Requirement and specifically the costs of raw water purchased and the variable costs associated with treating, pumping, transporting and delivering the water. The District reserves the right to combine the volume and Demand charge into a unified charge for the convenience of the District and its Customers, especially for short-term sales or for sale of small quantities.

Section 4.04. Fiscal Policy. It is hereby provided that in estimating costs for services, the District is specifically authorized, in its discretion, to include in such estimate of costs reasonable contributions to reserve funds and to assume that the Annual Payment Period may be a wet year. Such policy could cause revenues to be increased if the year is actually normal or dry instead of wet as assumed. This fiscal policy is expressly approved by the Customer and is deemed by the parties hereto to be beneficial in the fiscal management of the System, and will assure the timely availability of funds even under unexpected circumstances. Upon receipt

during any Annual Payment Period of an amount sufficient to meet the then current Annual Budget of the System for the remainder of the then current Annual Payment Period, the District shall deposit subsequent revenues received into appropriate reserve or contingency accounts. If there is a shortfall in revenues, the District may withdraw from the reserves, adjust the Annual Requirement, revise the payment schedule or do any combination thereof.

Section 4.05. **Minimum Payments.** It is agreed that if, during any Annual Payment Period, the estimated and/or actual metered volume of treated water provided by the System to FWSD is, for any reason whatsoever, less than any minimum amount prescribed by this Contract and the District, FWSD shall pay its Annual Payment according to such minimum amount. However, if FWSD's estimated and/or actual metered amount of water is equal to, or in excess of, such minimum amount, its Annual Payment shall be calculated on the basis of estimated and actual volumes and Demands.

Section 4.06. **Redetermination of Annual Requirements.** Notwithstanding the foregoing, the Annual Requirement, and Customer's share thereof (Annual Payment), may be redetermined at any time during any Annual Payment Period, to the extent deemed necessary or advisable by the District, if:

- (i) The District commences furnishing services of the System to an additional Customer;
- (ii) Unusual, extraordinary, or unexpected expenditures for Operation and Maintenance Expenses are required which are not provided for in the District's annual budget or reserves for the System;
- (iii) Operation and Maintenance Expenses of the System are substantially less than estimated;
- (iv) District issues Bonds which require an increase in the Capital Component of the Annual Payment; or
- (v) The District receives either significantly more or significantly less revenues than the amounts which are provided in the District's annual budget for the System.

If the Annual Requirement is so redetermined, Customer will be advised of the Adjusted Annual Payment.

Section 4.07. **System Revenues.** During each Annual Payment Period, all revenue derived from sales of System water shall be credited to and be used for paying part of the Annual Requirement in the manner determined by the District.

Section 4.08. **Prompt Payment/Disputed Bills.** Customer hereby agrees that it will make payments required by this Contract to the District within 20 days of the date a bill for service is rendered. If Customer, at any time, disputes the amount to be paid by it to the District, Customer shall nevertheless promptly make such payment or payments; but, if it is subsequently determined by agreement or court decision that such disputed payments should have been less, or more, the District shall promptly revise and reallocate the charges in such manner that Customer will recover its overpayment or the District will recover the amount due it. All amounts due and owing to the District by Customer, or due and owing to Customer by the

District, shall, if not paid when due, bear interest at the rate of ten (10%) percent per annum from the date when due until paid.

Section 4.09. **Delinquent Bills.** As provided in Section 5.11, Customer specifically agrees to make all payments required by this Contract without offset or counterclaim. Nevertheless, if any Customer in the System shall become delinquent in such payments, the District shall, to the extent permitted by law, discontinue the services of the System to any such Customer which remains delinquent in any payments due hereunder for a period of sixty (60) days, and is not obligated to resume such services while such Member or Customer is so delinquent. It is further provided and agreed that if Customer should remain delinquent in any payments due hereunder for a period of one hundred twenty (120) days, and if such delinquency continues during any period thereafter, Customer's minimum amount specified by Contract, shall be deemed to have been zero gallons during all periods of such delinquency, for the purpose of calculating and redetermining the percentage of each Annual Requirement to be paid by the non-delinquent Members and Customers; and, the District shall redetermine such percentage in such event on a basis so that the non-delinquent Members and Customers, collectively, shall be required to pay all of the Annual Requirement. The Board may authorize the use of available System reserves as a source of funds to help offset said delinquent payments. However, the District shall pursue all legal remedies against any such delinquent Member or Customer to enforce and protect the rights of the District, other Members and Customers, and the holders of the Bonds. The delinquent Member or Customer shall not be relieved of the liability to the District for the payment of all amounts which would have been due hereunder had no default occurred or the percentage had not been redetermined as provided in this Section. It is understood that the foregoing provisions are for the benefit of the holders of the Bonds so as to insure that all of the Annual Requirement will be paid by the non-delinquent Members and Customers during each Annual Payment Period regardless of the delinquency of a particular Member or Customer. If any amount due and owing the District by Customer is placed with an attorney for collection, Customer shall pay to the District all attorneys fees, in addition to all other payments provided for herein, including interest.

Section 4.10. **Updated Schedule of Payment.** If, during any Annual Payment Period, Customer's Annual Payment is redetermined as provided or required in the foregoing Sections, the District will promptly furnish Customer with an updated schedule of monthly payments reflecting such redetermination.

Section 4.11. **Service Areas.** For purposes of determining the Annual Requirement and for delivery of services, the District shall maintain separate cost centers for each service area, including specifically the North Service Area and the South Service Area. Provided, however, that the District may combine the cost of two (2) or more such service areas if, in the Board's judgment, such action would result in more equitable distribution of costs of the System or in the rendition of service to Customers.

ARTICLE V **Miscellaneous Provisions and Special Conditions**

Section 5.01. **Operation and Maintenance of System.** The District will continuously operate and maintain the System in an efficient manner and in accordance with good business and engineering practices, and at reasonable cost and expense. The District recognizes its right and duty to operate the various facilities of the System in the most prudent and economical manner for the benefit of all Customers.

Section 5.02. **Project Schedule.** It is the intent of the parties that the Project will be placed in operation as soon as practicable, and the District agrees to proceed diligently with the design and construction of the Project, subject to the terms and conditions in this Contract. In connection therewith, Customer agrees to promptly provide any funds to District required by the provisions of Exhibit C hereto.

Section 5.03. **Permits, Financing and Applicable Laws.** It is understood that any obligations on the part of the District to acquire, construct, and complete the Project and other System facilities and to provide treated water from the Project and other System facilities to the Customer shall be: (i) conditioned upon the District's ability to obtain all necessary permits, material, labor, and equipment; (ii) conditioned upon the ability of the District to finance the cost of the Project and other System facilities through the actual sale of District Bonds; and (iii) subject to all present and future valid laws, orders, rules, and regulations of the United States of America, the State of Texas, and any regulatory body having jurisdiction.

Section 5.04. **Title to Water; Indemnification.** Title to all water supplied to Customer shall be in the District up to each Point of Delivery, at which point title shall pass to the receiving Customer, except that the District reserves the right of re-use of wastewater treated effluent, to the extent authorized by State of Texas. The District and FWSD agree to save and hold each other harmless, to the extent authorized by law, from all claims, demands, and causes of action which may be asserted by anyone on account of the transportation and delivery of said water while title remains in such party. Both FWSD and District agree to be responsible for their own respective negligent acts.

Section 5.05. **Payments From Ad Valorem Taxes and Revenues.** As provided in Exhibit C hereto, Customer agrees to levy taxes, and the District shall have the right to demand payment by Customer of any obligations assumed by it or imposed on it under and by virtue of this Contract from funds raised or to be raised by taxes. Customer may make payments from its water and wastewater (sewer) system revenues, or from any other lawful source, including impact fees and ad valorem taxes.

Section 5.06. **Operating Expenses.** Customer represents and covenants that all payments to be made by it under this Contract shall constitute reasonable and necessary "operating expenses" of its combined waterworks and sewer system, and that all such payments will be made from the revenues of its combined waterworks and sewer system or any other lawful source. Customer represents and has determined that the treated water supply to be obtained from the System, including the Project and other System facilities, is absolutely necessary and essential to the present and future operation of its water system and that the System is the best long-term source of supply of treated water therefor, and accordingly, all payments required by this Contract to be made by Customer shall constitute reasonable and necessary operating expenses of its respective system as described above, with the effect that the obligation to make such payments from revenues of such system(s) shall have priority over any obligation to make any payments from such revenues (whether of principal, interest, or otherwise) with respect to all bonds or other obligations heretofore or hereafter issued by Customer.

Section 5.07. **Rates for Water and Wastewater Services.** Customer agrees throughout the term of this Contract to continuously operate and maintain its waterworks system and its wastewater (sewer) system, and to fix and collect such rates and charges for water and wastewater (sewer) services to be supplied by its systems as will produce revenues in an amount equal to at least: (i) all of the expenses of operation and maintenance of such system or systems, including specifically, its payments under this Contract, and (ii) all other amounts as

required by law and the provisions of the ordinance or resolutions authorizing its revenue bonds or other obligations now or hereafter outstanding, including the amounts required to pay all principal of and interest on such bonds and other obligations. Notwithstanding the foregoing, in fixing and collecting such rates and charges, Customer may take into consideration the amount of any ad valorem taxes levied, assessed and collected in accordance with Section 5.05.

Section 5.08. Use of Funds and System. The District covenants and agrees that neither the proceeds from the sale of the Bonds, nor the monies paid it pursuant to this Contract, nor any earnings from the investment of any of the foregoing, will be used for any purposes, except those directly relating to the System, and the Bonds as provided in this Contract; provided that the District may rebate any excess arbitrage earnings from such investment earnings to the United States of America in order to prevent any Bonds from becoming "arbitrage bonds" within the meaning of the Internal Revenue Code of 1986 (the "Code") or any amendments thereto in effect on the date of issue of such Bonds. FWSD covenants and agrees that it will not use, or permit the use of, the System in any manner that would cause the interest on any of the Bonds to be or become subject to federal income taxation under the Code or any amendments thereto in effect on the date of issue of such Bonds.

Section 5.09. Rights-of-Way.

(a) FWSD hereby grants to the District without additional cost to the District, the perpetual use of the streets, easements, and rights-of-way under its control for the construction, operation, and maintenance of the System and the Project.

(b) FWSD agrees that with prior written approval, District may use streets, alleys and public rights-of-way within Customer's boundaries for pipeline purposes to provide water to Customer or to other Customers without charges or tolls, provided that District makes the necessary repairs to restore to their original condition, the streets, alleys or public rights-of-way so used.

(c) FWSD hereby consents to the District exercising its power of eminent domain, if necessary, to obtain property or rights-of-way within the boundaries of FWSD for the Project and the System.

Section 5.10. Use of Customer Facilities. The parties to this Contract, including specifically the District, desire to develop and operate the System in an efficient manner. To that end, the policy of the District is to encourage joint-use of facilities, including existing and future, pipelines, storage tanks and pump stations owned by and under the control of Customers wherever feasible and advantageous to the delivery of water from the System. The District agrees that if it proposes the joint use of such facilities, and if a Customer agrees, that the Customer whose facilities will be used is entitled to fair and reasonable compensation for the use of facilities and for the service provided by the Customer to District. Further, it is agreed by all parties to this Contract that such compensation will be considered to be an Operation and Maintenance Expense of the System.

Section 5.11. Unconditional Obligation to Make Payments. Recognizing the fact that FWSD urgently requires the facilities and services of the Project and the System, and that such facilities and services are essential and necessary for actual use and for standby purposes, and recognizing the fact that the District will use payments received from FWSD and other Customers to pay and secure its Bonds, it is hereby agreed that FWSD shall be unconditionally obligated to pay, without offset or counterclaim, its proportionate share of the Annual

Requirement, as provided and determined in this Contract (including the obligation to pay for certain "minimums" as described in Section 3.04 hereof), regardless of whether or not the District actually acquires, constructs or completes the Project or the System or is actually delivering water from the System to FWSD, or whether or not FWSD actually receives or uses water from the System whether due to Force Majeure or any other reason whatsoever, regardless of any other provisions of this or any other contract or agreement between any of the parties hereto. This covenant by FWSD shall be for the benefit of and enforceable by the holders of the Bonds as well as the District.

Section 5.12. **Insurance.** The District agrees to carry and arrange for fire, casualty, public liability, and/or other insurance, including self insurance, on the System for purposes and in amounts which, as determined by the District, ordinarily would be carried by a privately owned utility company owning and operating such facilities, except that the District shall not be required to provide liability insurance except to insure itself against risk of loss due to claims for which it can, in the opinion of the District's legal counsel, be liable under the Texas Tort Claims Act or any similar law or judicial decision. Such insurance will provide, to the extent feasible and practicable, for the restoration of damaged or destroyed properties and equipment, to minimize the interruption of the services of such facilities. All premiums for such insurance shall constitute an Operation and Maintenance Expense of the System.

Section 5.13. **Future Capacity.** The Project and the System will include capacity in pipelines and certain other facilities for future needs of Participating Customers, Participating Members, Participating Utilities and other Customers. Customer agrees that it is in the best interest of both the District and Customer to plan, acquire and construct the Project and System with excess capacity in anticipation of future increases in Customer's requirements and in anticipation of future new Customers. Further, FWSD agrees that if the District executes a financial plan for the Project or System that includes participation by the State in future capacity costs and includes deferral of a portion of the capital costs to a future date, that FWSD will assume its respective share when due of such system costs, if any, so deferred as if Bonds had been issued during the initial construction of the Project. Subject to the terms of this Contract, District reserves the right to contract with additional Customers for equitable participation in such future capacity.

Section 5.14. **Special Provisions.** The parties hereto acknowledge and agree to the Special Provisions which are set forth in Exhibit C hereto which Exhibit is incorporated herein for all purposes. The Special Provisions in Exhibit C of this Contract reflect circumstances or issues for FWSD which may be different from those of other Customers and therefore constitute a modification of, or a requirement in addition to, the standard provisions otherwise contained in this Contract. If any provision of Exhibit C is different from or conflicts with the general provisions set forth in the main body of this Contract, the provisions of Exhibit C shall prevail.

ARTICLE VI Standard Provisions

Section 6.01. **Force Majeure.** If by reason of force majeure any party hereto shall be rendered unable wholly or in part to carry out its obligations under this Contract, other than the obligation of Customer to make the payments required under this Contract, then if such party shall give notice and full particulars of such force majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied on, the obligation of the party giving such notice, so far as it is affected by such force majeure, shall be suspended during the continuance of the inability then claimed, but for no longer period, and any such party shall

endeavor to remove or overcome such inability with all reasonable dispatch. The term "Force Majeure" as employed herein shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of public enemy, orders of any kind of the Government of the United States or the State of Texas, or any civil or military authority, insurrection, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, partial or entire failure of water supply, or on account of any other causes not reasonably within the control of the party claiming such inability.

Section 6.02. Limitations and Conditions/Other Systems. If the District determines that it will be necessary to participate with other parties in the construction of facilities in order to fulfill its obligations under this Contract, Customer agrees that such participation is as much a part of the Project and System as if separate facilities were constructed by the District. Furthermore, any cost, rates, fees or charges applicable to pumping, transportation or treatment of water by others, and charges for other services rendered by other parties at the request of the District for the benefit of the Project and System shall constitute Operation and Maintenance Expense of the System as defined herein.

Section 6.03. Term of Contract. This Contract shall be effective on and from the Contract Date, and shall continue in force and effect for twenty five (25) years or for such period of time that Bonds issued by the District for the Project or System remain outstanding, whichever period is greater; provided, however, the term of the Contract and the expiration date may be extended for a period of time not to exceed twenty (20) years by mutual agreement of Customer and the District as to the terms and conditions. The District's obligation to provide the contracted for services shall commence from the date that the District gives written notice that the Project is operational and functional to treat and deliver treated water to Customer. This Contract and its attachments constitute the sole agreement between the parties hereto with respect to the Project and System.

Section 6.04. Contracting Parties. This Contract shall be effective as to FWSD whether or not all parties who have previously executed contracts of a similar nature remain participants in the System. The "minimums" listed in Exhibit B shall remain the same as listed for FWSD, whether or not the District may agree to changes in minimums with other parties who are participants in the System.

Section 6.05. Modification. No change, amendment or modification of this Contract shall be made or be effective which will affect adversely the prompt payment when due of all monies required to be paid by Customer under this Contract or any similar contract and no such change, amendment or modification shall be made or be effective which would cause a violation of any provisions of any Bond Resolution.

Section 6.06. Addresses and Notice. Unless otherwise provided herein, any notice, communication, request, reply or advice (herein severally and collectively, for convenience, called "Notice") herein provided or permitted to be given, made or accepted by any party to any other party must be in writing and may be given or be served by depositing the same in the United States mail postpaid and registered or certified and addressed to the party to be notified, with return receipt requested, or by delivering the same to an officer of such party, or by prepaid telegram when appropriate, addressed to the party to be notified. Notice deposited in the mail in the manner described above shall be conclusively deemed to be effective, unless otherwise stated herein, from and after the expiration of three days after it is so deposited. Notice given in any other manner shall be effective only if and when received by the party to be notified. For the

**UPPER TRINITY REGIONAL WATER DISTRICT
Regional Treated Water Supply Service Contract
Denton County Fresh Water Supply District No. 9**

purposes of notice, the addresses of the parties shall, until changed as hereinafter provided, be as follows:

If to the District, to:

Executive Director
Upper Trinity Regional Water District
396 W. Main Street
P. O. Drawer 305
Lewisville, Texas 75067

If to FWSD No. 9, to:

Denton County Fresh Water Supply District No. 9
c/o Law Offices of Clay E. Crawford, P.C.
4265 San Felipe, Suite 1100
Houston, Texas 77027

The parties hereto shall have the right from time to time and at any time to change their respective addresses and each shall have the right to specify as its address any other address by at least fifteen (15) days written notice to the other parties hereto.

Section 6.07. **State or Federal Laws, Rules, Orders or Regulations.** This Contract is subject to all applicable Federal and State laws and any applicable permits, ordinances, rules, orders and regulations of any local, state or federal governmental authority having or asserting jurisdiction; but, nothing contained herein shall be construed as a waiver of any right to question or contest any such law, ordinance, order, rule or regulation in any forum having jurisdiction.

Section 6.08. **Remedies Upon Default.** It is not intended hereby to specify (and this Contract shall not be considered as specifying) an exclusive remedy for any default, but all such other remedies (other than termination) existing at law or in equity may be availed of by any party hereto and shall be cumulative. However, recognizing that the District's undertaking to provide and maintain the services of the System is an obligation, failure in the performance of which cannot be adequately compensated in money damages alone, the District agrees, in the event of any default on its part, that Customer shall have available to it the equitable remedy of mandamus and specific performance in addition to any other legal or equitable remedies (other than termination) which may also be available. Recognizing that failure in the performance of Customer's obligations hereunder could not be adequately compensated in money damages alone, Customer agrees in the event of any default on its part that the District shall have available to it the equitable remedy of mandamus and specific performance in addition to any other legal or equitable remedies (other than termination) which may also be available to the District. Notwithstanding anything to the contrary contained in this Contract, any right or remedy or any default hereunder, except the right of the District to receive the Annual Payment which shall never be determined to be waived, shall be deemed to be conclusively waived unless asserted by a proper proceeding at law or in equity within two (2) years plus on (1) day after the occurrence of such default. No waiver or waivers of any breach or default (or any breaches or defaults) by any party hereto or of performance by any other party of any duty or obligation hereunder shall be deemed a waiver thereof in the future, nor shall any such waiver or waivers be deemed or construed to be a waiver of subsequent breaches or defaults of any kind, character or description, under any circumstance.

Section 6.09. **Severability.** The parties hereto specifically agree that in case any one or more of the sections, subsections, provisions, clauses or words of this Contract or the application of such sections, subsections, provisions, clauses or words to any situation or

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circumstance should be, or should be held to be, for any reason, invalid or unconstitutional, under the laws or constitutions of the State or the United States of America, or in contravention of any such laws or constitutions, such invalidity, unconstitutionality or contravention shall not affect any other sections, subsections, provisions, clauses or words of this Contract or the application of such sections, subsections, provisions, clauses or words to any other situation or circumstance, and it is intended that this Contract shall be severable and shall be construed and applied as if any such invalid or unconstitutional section, subsection, provision, clause or word had not been included herein, and the rights and obligations of the parties hereto shall be construed and remain in force accordingly.

Section 6.10. Venue. All amounts due under this Contract, including, but not limited to, payments due under this Contract or damages for the breach of this Contract, shall be paid and be due in Denton County, Texas, which is the County in which the principal administrative offices of the District are located. It is specifically agreed among the parties to this Contract that Denton County, Texas, is the place of performance of this Contract; and in the event that any legal proceeding is brought to enforce this Contract or any provision hereof, the same shall be brought in Denton County, Texas.

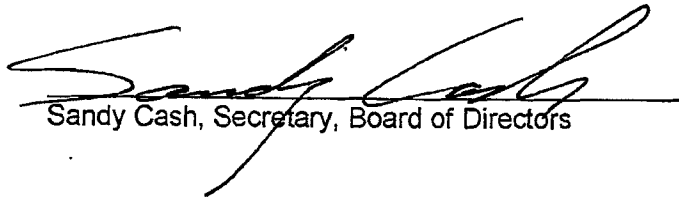
UPPER TRINITY REGIONAL WATER DISTRICT
Regional Treated Water Supply Service Contract
Denton County Fresh Water Supply District No. 9

IN WITNESS WHEREOF, the parties hereto acting under authority of their respective governing bodies have caused this Contract to be duly executed in several counterparts, each of which shall constitute an original, all as of the day and year first above written, which is the Contract Date.

UPPER TRINITY REGIONAL WATER DISTRICT

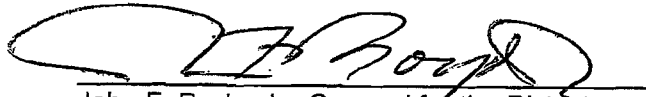
By: 
Richard Lubke, President, Board of Directors

ATTEST:

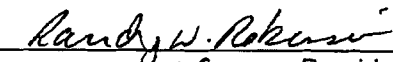

Sandy Cash, Secretary, Board of Directors

(DISTRICT SEAL)

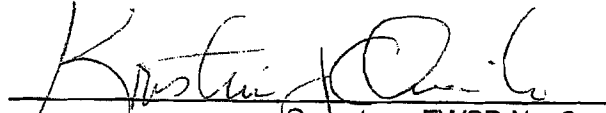
APPROVED AS TO FORM AND LEGALITY:


John F. Boyle, Jr., Counsel for the District

DENTON COUNTY FRESH WATER SUPPLY DISTRICT NO. 9

By: 
Randy W. Roberson, President, FWSD No. 9

ATTEST:


Kristin J. Chiocci, Secretary, FWSD No. 9

APPROVED AS TO FORM AND LEGALITY:

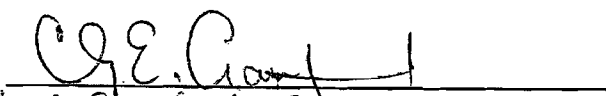

Clay E. Crawford, Counsel for FWSD No. 9

EXHIBIT A

DENTON COUNTY FRESH WATER SUPPLY DISTRICT NO. 9

POINT OF DELIVERY

The provisions of this Exhibit A form a part of the Contract and are applicable to the District and to Denton County Fresh Water Supply District No. 9 (FWSD) as if set forth in its entirety in the body of the Contract.

Point of Delivery:

The approximate Point of Delivery shall be at a mutually agreed location on the north side of U.S. 380 and east of F.M. 2931, generally as outlined on the attached sketch.

Note

Upon mutual agreement of the District and FWSD, an updated Exhibit A may be substituted for this Exhibit A.



2931

FISHTRAP ROAD

DCFWSD #9

PROP. WATER
DISTRIBUTION MAIN

POINT OF DELIVERY

U.S. HWY 380

UPPER TRINITY REGIONAL WATER DISTRICT
Regional Treated Water Supply Service Contract
Denton County Fresh Water Supply District No. 9

EXHIBIT—A Page 2 of 2
DCFWSD NO. 9
BOUNDARY AND
POINT OF DELIVERY
(WATER)



Petitt and
Associates, Inc.
ENGINEERING & SURVEYING

10720 MILLER ROAD, SUITE 218
Dallas, Texas 75236

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EXHIBIT B

MINIMUM AMOUNT OF SYSTEM CAPACITY (DEMAND) BEING COMMITTED FOR DENTON COUNTY FRESH WATER SUPPLY DISTRICT NO. 9 IN ACCORDANCE WITH SECTION 3.04 OF CONTRACT

The provisions of this Exhibit B form a part of the Contract and are applicable to the District and to Denton County Fresh Water Supply District No. 9 (FWSD) as if set forth in its entirety in the body of the Contract.

Participating Customer
Denton County Fresh Water Supply District No. 9

Minimum Demand
1.80 MGD

System Limitations: Capacity in the System is constrained by limited pipeline capacity to deliver water to FWSD in northeast Denton County. District is proceeding expeditiously with plans to construct a new water treatment plant on Fishtrap Road east of F.M. 2931. The Minimum Demand provided for in this Exhibit A represents specific capacity in the System, an amount that is expected to be adequate for a five-year period. Depending on FWSD's pace of growth, District may or may not be able to meet the full amount of Demand required by FWSD until the proposed new water treatment plant is completed. In entering into this Contract, FWSD expressly agrees to coordinate development within FWSD boundaries according to available water supply (System capacity) from year to year. While District will endeavor to meet the full amount of FWSD's requirements, District has the obligation to curtail delivery of water to FWSD if necessary to maintain System integrity. If District determines it necessary to curtail delivery of water, it will do so on a pro rata basis among all Participating Customers in northeast Denton County who enter into contracts similar to this Contract after February 20, 2001. For such time that delivery of water is so curtailed by District, the charges for Demand shall be pro rated accordingly.

EXHIBIT C

SPECIAL PROVISIONS FOR DENTON COUNTY FRESH WATER SUPPLY DISTRICT NO. 9

The provisions of this Exhibit C form a part of the Contract and are applicable to the Upper Trinity Regional Water District (the "District") and to Denton County Fresh Water Supply District No. 9 ("FWSD") as if set forth in their entirety in the body of the Contract. If any provision of this Exhibit C conflicts with general provisions in the main body of the Contract, the provisions of this Exhibit C shall prevail.

1. **Creation of FWSD.** Elections held on November 7, 2000 ordered by the temporary directors of FWSD pursuant to Chapters 49, 51 and 53 of the Texas Water Code, confirmed the creation of the FWSD, pursuant to Article XVI (Section 59), Article III (Section 52) and Article III (Section 52a) of the Constitution of the State of Texas and authorized the exercise of sanitary sewer powers on November 7, 2000. FWSD is authorized to conserve, transport and distribute fresh water from any source for domestic and commercial purposes. Also, FWSD is authorized to purchase, construct, own and operate a sanitary sewer system.

2. **Payments From Ad Valorem Taxes and Revenues.** Pursuant to the FWSD Election held on the 20th day of January 2001 and the subsequent Canvassing Order of its Board of Directors dated January 25, 2001 the FWSD has the authority to levy, and does hereby covenant to establish, an ad valorem tax ("Contract Tax"). Said Contract Tax shall be levied, subject to compliance with Section 49.108, Texas Water Code as amended, to the extent applicable, and pursuant to this Paragraph on all taxable property within its boundaries, unlimited as to rate and amount, sufficient to accomplish the payment of FWSD's obligations approved by it and imposed on it by virtue of this Contract. Further, Section 53.029, Texas Water Code, as amended, authorizes the FWSD to divide into two new districts if it has no outstanding bonded debt and has not levied ad valorem taxes. District recognizes that FWSD may annex additional land into its boundaries pursuant to this Exhibit C, and may divide into new districts. Therefore, in order to preserve the ability of the FWSD to divide into new districts and to provide assurance acceptable to the District regarding the collection of all payment obligations of FWSD hereunder, the District and FWSD agree that FWSD may delay the levy of its Contract Tax for up to twelve (12) months or until FWSD has completed its division process, whichever occurs first, subject to the following terms:

(a) First, within thirty (30) days of the Contract Date, the FWSD shall pay or cause to be paid to the District the amount of \$105,000.00 per MGD of Minimum Demand specified in Exhibit B ("Initial Project Payment"). Said payment relates to oversize cost in the pumping facilities and planned extension of a major treated water transmission line generally along U. S. 380 to serve FWSD and others. Said payment shall reserve certain rights of FWSD to receive future service from said pipeline under this Contract.

(b) Second, within sixty (60) days of Contract Date, FWSD shall pay the Equity Fee required by this Contract for the Minimum Demand specified in Exhibit B hereof for FWSD.

(c) Third, in the event that prior to the date that FWSD actually levies the required Contract Tax as set forth in subparagraph (g) below, another party expresses a desire to contract for a portion or all of the Minimum Demand specified in Exhibit B hereof for FWSD; and, such other party submits a written request to District requesting such capacity in the System, the District shall promptly provide written notice of such request to FWSD. Such notice shall include a statement confirming that District has no other System capacity available to satisfy the request, and identifying the entity requesting said capacity and the

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amount of capacity so requested. Within 100 days from the date of receipt of such notice from the District, FWSD shall either levy the required Contract Tax and provide satisfactory written evidence thereof to District; or, pay or cause to be paid, to District \$900,000.00 per MGD of Minimum Demand specified in Exhibit B hereof for FWSD (the "Subsequent Project Payment"). Said payment shall serve as a deposit for Minimum Demand (System capacity) and the security for payment of costs thereof, pending the levy of the Contract Tax by FWSD pursuant to subparagraph (g) below. The Initial Project Payment and Subsequent Project Payment are hereinafter collectively referred to as the "FWSD Project Payments."

(d) Fourth, FWSD shall timely pay all other fees and charges required by this Contract, whether for Demand, Volume, Facility Charges, etc., from Contract Date, and may make full use of System capacity up to the Minimum Demand.

(e) Upon the levy of the Contract Tax or payment of the Subsequent Project Payment, the Minimum Demand (System capacity) set forth in Exhibit B hereto shall be vested in FWSD, subject to FWSD's compliance with the other obligations of this Contract.

(f) In the event that FWSD does not levy the Contract Tax, or pay or cause to be paid the Subsequent Project Payment, the FWSD Minimum Demand specified in Exhibit B hereof shall be reduced to the extent that capacity so requested by another party pursuant to subparagraph (c) above is actually contracted to others. The Minimum Demand for FWSD shall be reduced on a pro rata basis along with the Minimum Demand of any other Participating Customer that is a party to a contract similar to this Contract that likewise elects not to levy the Contract Tax, or pay or cause to be paid the Subsequent Project Payment. If by such pro rata reduction, said Minimum Demand would be reduced to 0.1 MGD or less, this Contract will be subject to unilateral cancellation by District without recourse by FWSD.

(g) At such time as FWSD has completed its division process, or no later than twelve (12) months from Contract Date, whichever occurs first, FWSD will levy, and does covenant to establish, an ad valorem tax ("Contract Tax") on all taxable property within its boundaries, unlimited as to rate and amount, sufficient to accomplish the payment of FWSD's obligations approved by it and imposed on it by virtue of this Contract. FWSD shall assess and collect such Contract Tax each year in an amount fully sufficient to accomplish the payment of its obligations under this Contract. FWSD covenants to achieve through a Joint Utility Contract the levy of like taxes on any subdivided district. FWSD further pledges any taxes or revenues (herein "Joint Utility Contract Revenues") to be received from any district created by future division of FWSD into two or more districts, to the payments of such obligations, and hereby covenants to collect such Joint Utility Contract Revenues in an amount sufficient to satisfy said subdivided district's obligations under an appropriate Joint Utility Contract. Notwithstanding the foregoing, if in advance of the time when ad valorem taxes are scheduled to be assessed and collected for any year, revenues, including revenues from any Joint Utility Contract or other legally available funds are budgeted and appropriated for the payment of FWSD's obligations under this Contract, the amount of ad valorem taxes required to be assessed and collected pursuant to this Paragraph may be reduced to the extent and by the amount of such revenues or other funds budgeted and appropriated for payment of such obligations.

The District and FWSD agree that any FWSD Project Payments made pursuant to the proceeding paragraphs shall constitute a refundable interest bearing deposit to secure the timely satisfaction of FWSD's payment obligations under this Contract. Further, it is the mutual intent of District and FWSD to provide for the future refund of all FWSD Projects Payments as provided herein. Accordingly, within thirty (30) days from District's receipt of satisfactory evidence that FWSD has levied the Contract Tax, or within thirty (30) days from Date that this Contract is cancelled by action of the Board pursuant to subparagraph (f) above, District shall refund to FWSD all FWSD Project

Payments made, including accrued interest, less any amounts then due and owing to District by FWSD under this Contract.

3. **Wastewater Control.** The District and FWSD agree that the public health and safety require that plans for control of wastewater be prepared and implemented by FWSD in conjunction with extension of the treated surface water supply system being developed by the District. Accordingly, FWSD agrees to install a wastewater collection system for customers receiving retail treated water service pursuant to this Contract.
4. **Required to Connect.** FWSD will require retail customers within its boundaries to connect to the future wastewater collection system under reasonable rules as the collection system is installed and extended.
5. **Joint Facilities.** In conjunction with the treated water service to be provided by the District to FWSD, there may be an opportunity to construct storage tanks or other facilities jointly with the District or others. If the District and FWSD agree that such joint facilities are mutually beneficial, a separate agreement will be executed concerning such joint facilities.
6. **State Participation Program/Equity Fee.** FWSD acknowledges that a portion of the System is funded through the State Participation Program, resulting in the State having an equity ownership interest in the System. The District's policy is to purchase (buy-back) the State's interest over a reasonable period of time; and, to that end, District requires that any entity contracting for new or additional capacity in the System to pay an "Equity Fee" established by District for each Fiscal Year. For the Fiscal Year ending September 30, 2001, the "Equity Fee" is equal to \$139,171 per mgd of Demand subscribed herein and contracted to FWSD. Accordingly, FWSD agrees to pay, the "Equity Fee" for System capacity requested by FWSD pursuant to this Contract. Such Equity Fee may be paid in a lump sum or in sixty (60) equal monthly installments, with payment commencing within 60 days of Contract Date. The effective rate of interest to be paid by FWSD over such 60-month period shall be established by the District based on interest rates typically received by District on its investments.
7. **Installation of Facilities.** To enable the most effective and safe delivery of wholesale water service to Customers, it is normally necessary or advisable for the receiving Customer to install certain facilities: (1) a storage tank to receive the water through an air gap, (2) a pump station to allow the Customer to deliver the water into its distribution system and (3) facilities to add disinfectant to the water to maintain disinfectant levels required by regulatory agencies. Design, construction and operation of such facilities are the responsibility of each respective Customer. However for service to FWSD, it may be possible to design the facilities of the Project to provide treated water at normal distribution pressure from the District's System directly into FWSD's retail distribution system, depending on final Project design. As of Contract Date, District, FWSD and Mustang Water Supply Corporation (MWSC) are in mutual agreement that the preferred strategy is to so provide water under this Contract directly into the distribution system of FWSD, subject to confirmation during final design of the Project. FWSD agrees that District may incorporate a backflow prevention device at the Point of Delivery; and if so, FWSD agrees to pay the capital cost thereof and to pay any periodic cost to inspect, certify and maintain the backflow prevention device. Compliance with applicable requirements of Texas Natural Resource Conservation Commission concerning pressure and storage shall remain with FWSD.
8. **Standards/Specifications.** As a condition of receiving water under this Contract, FWSD agrees to design, construct, operate and maintain its water distribution system to generally accepted municipal standards and applicable specifications published by North Central Texas Council of Governments. All pipelines shall be minimum six (6) inch diameter with sufficient capacity for normal fire flow conditions of a city. Further, pipes, valves and fittings shall conform to applicable specifications of American Water Works Association. Storage shall be provided as necessary to

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comply with State of Texas guidelines and with the operational standards of Mustang Water Supply Corporation. Specifically, it may be necessary to install an elevated storage tank during the course of development within the boundaries of FWSD.

9. **Minimum Usage.** To help enable efficient operation and use of the System, FWSD hereby agrees to use water at a minimum amount each year as herein specified. For each Water Year during the life of this Contract, FWSD agrees to use a minimum daily volume of water from the System equal to twenty percent (20%) of the highest peak demand actually taken from the System in the immediately preceding five (5) Water Years, or the actual volume needed to meet total requirements of FWSD's retail water system, whichever amount is least.

10. **Convey Easements.** FWSD agrees to convey without cost to District any easements necessary for District to construct and operate the water pipeline and other delivery facilities within FWSD boundaries to the Point of Delivery provided for in Exhibit A. Said easement(s) shall be for the exclusive use of District and shall be conveyed using the District's standard easement documents. Further, FWSD agrees to dedicate to District on District's standard form a restricted water utility easement, thirty (30) feet wide along and adjacent to the north side of U.S. 380 for the entire frontage of FWSD along U.S. 380, solely for the joint use of District and MWSC for water and wastewater pipelines. Said restricted easement shall not be fenced. If FWSD annexes any other property into FWSD that fronts along the north side of U.S. 380 west of FM 1385 or along west side of F.M. 1385 north of U.S. 380, FWSD agrees to dedicate a thirty (30) feet wide water utility easement along F.M. 1385 solely for the joint use of District and MWSC for water and wastewater pipeline. Similarly, if FWSD annexes other property into FWSD that fronts on the south or north side of Fishtrap Road west of F.M. 1395, FWSD agrees to dedicate a thirty (30) feet wide water utility easement for the sole use of District along Fishtrap Road. To enable FWSD to plan for and to install public improvements within its boundaries, District will not unreasonably deny FWSD the right to cross easements of the District with roads, pipelines and utility easements in accordance with standards of the District. Further, any easements to be granted by FWSD to District under this Paragraph shall be subject to rights of existing easements granted prior to January 1, 2001.

11. **Mustang CCN.** FWSD agrees and acknowledges that MWSC is the holder of a Certificate of Convenience and Necessity (CCN) for water service within the boundaries of FWSD. Accordingly, FWSD agrees to contract with MWSC for operation of FWSD's retail water distribution system or for such other services mutually agreed by FWSD and MWSC.

12. **Contract for Operations.** The District recognizes that FWSD and MWSC have entered into, or will enter into, one or more agreements concerning coordination and operation of the water distribution system to be constructed to provide retail water service within the boundaries of FWSD. In regard to such agreement(s), FWSD hereby covenants and agrees that it will not use or operate said retail distribution system, or permit the use or operation of said system or of the District's System in any manner that could cause the interest on any of the District's Bonds to be or to become subject to federal income taxation under the Internal Revenue Code of 1986 or any amendments thereto in effect on the date of issue of such Bonds.

13. **Approval of Operating Contracts.** FWSD agrees that in regard to an agreement with MWSC or any private party to operate or maintain its water distribution system, it will award such operating agreement(s) pursuant to Qualified Management Contracts, in compliance with the Internal Revenue Code. Further it will award such agreement(s) only after written approval by the District and its Bond Counsel concluding that the proposed operating agreement will not adversely affect the tax exempt status of the District's Bonds, notes, and other obligations. FWSD agrees to provide to District for its review and approval any new or amended agreement or contract to operate the water system. Each new or amended contract shall include provisions that such private operator takes the contract subject in all respects to this Contract. The District's review and approval of any new or amended agreements or contracts with a private operator to operate FWSD's water system

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shall not be unreasonably withheld and shall only be withheld if such agreements or contract could adversely affect the tax exempt status of the District's Bonds, notes, and other obligations, in the opinion of the District's Bond Counsel. FWSD agrees to include the necessary provisions in its operating agreement to satisfy the Internal Revenue Code requirements. If FWSD contracts with MWSC after MWSC converts to a public entity that is qualified to issue tax exempt municipal bonds, any such operating contract or agreement will not require prior approval by District; however, FWSD shall provide notice to District with a copy of such contract.

14. **Distribution System.** FWSD hereby agrees that it will not assign, sell, or convey its retail water distribution system to any party, including MWSC, without the prior written approval of District, which approval will not be unreasonably denied. Furthermore, any such approval relating to MWSC will be denied only if any requested sale, assignment or conveyance would cause the interest on any of the Bonds to be or become subject to federal income taxation under the Internal Revenue Code of 1986, as amended. Further, any such assignment, sale or conveyance if approved would require the benefiting party to assume all obligations of this Contract.

15. **Non-member Customer Rates.** FWSD agrees and understands that this Contract provides for FWSD to be a Customer of the District's Regional Treated Water System as herein defined; and further, that FWSD is not entitled to be a Participating Member or Participating Utility of said System. The special privileges enjoyed by Participating Members and Participating Utilities are derived from their having carried the risks and costs of developing and organizing the District and System after the District was created by the State Legislature in 1989. Nevertheless, it is hereby acknowledged that this Contract, as compared to similar contracts with Participating Members and Participating Utilities, provides for FWSD to receive water service under reasonably comparable terms, except that FWSD shall not be entitled to a direct representative on the Board, but will be represented by an at-large representative. Further, FWSD agrees that it is reasonable and necessary for the District to charge FWSD a higher "Customer" rate for water service than the "Member" rate otherwise charged by District to Participating Members and Participating Utilities, which higher rates are agreed to be fully justified as a matter of equity and law. It is mutually agreed that the Customer rates and charges for services hereunder shall never be more than seven percent (7%) above like rates charged by District to Participating Members and Participating Utilities of District. Further, it is mutually agreed that FWSD shall be exempt from the Administrative Payment defined in Section 1.02 of this Contract.

16. **Provision to Subdivide.** Section 53.029, Texas Water Code, authorizes a fresh water supply district under certain circumstances to subdivide into two or more new districts. Nothing contained in this Contract shall limit the authority of FWSD to so subdivide, provided the District is notified in writing at least sixty (60) days in advance of such proposed subdivision; and, provided that the appropriate share of the obligations under this Contract are being assumed by the new subdivided district in a manner that is approved in writing by the District. FWSD further pledges any taxes or revenues (herein "Joint Utility Contract Revenues") to be received from any district created by future division of FWSD into two or more districts, to the payments of such obligations, and hereby covenants to collect such Joint Utility Contract Revenues in an amount sufficient to satisfy said subdivided district's obligations under an appropriate Joint Utility Contract. Instruments and contracts related to such proposal to divide shall be submitted to District for its review and approval. Review and approval by the District shall be limited to fiscal responsibility and operational compatibility. The foregoing provisions of this paragraph notwithstanding, FWSD covenants that it will be entirely responsible for providing adequate funds to District to fulfill the obligations of this Contract, that it will enter into a Joint Utility Contract with any subdivided district, the terms of which shall require prior approval by District; and, that District will not be required to look to any subdivided district of FWSD to meet the obligations and requirements of this Contract. The District agrees to approve or disapprove such proposal by FWSD to subdivide within forty-five (45) days of receipt of written notice, and such approval shall not be unreasonably withheld.

17. **Transfer to a Municipality.** FWSD or any district created therefrom pursuant to Section 53.029 of the Texas Water Code, retains the right to transfer, assign and convey its rights, titles, interests and responsibilities under this Contract to any city, town or village that annexes said district in its entirety and assumes the responsibilities of this Contract as a matter of law or agrees to assume said rights, titles, interests and responsibilities in their entirety. Any other transfer, assignment and conveyance must be submitted to the District in writing for its approval. The District shall approve or disapprove said request within 120 days of receipt of written request and such approval shall not be unreasonably withheld.

18. **FWSD may Obtain Easements.** If requested by FWSD, District will authorize FWSD to use its own personnel and resources, without reimbursement, to negotiate for and obtain any property, easements and permits for the Project. Said property, easements and permits shall be obtained in the name of the District. District shall use its funds to pay the actual cost of said property and easements, either on a contemporaneous basis or reimbursement basis, at the option of the District. In obtaining such property and easements, FWSD agrees to follow the rules, guidelines and procedures of the District.

19. **Eminent Domain.** In obtaining easements and property for the Project, District and FWSD acknowledge that the use of the power of eminent domain may be required if and when negotiations are not successful in obtaining the required easement parcels for the Project. FWSD hereby confirms and agrees that it has the power of eminent domain that may be exercised within and without its boundaries for the principal governmental purposes required under this Contract, and that FWSD is agreeable to use its power of eminent domain in conjunction with the District upon receipt of a written request from District requesting the acquisition of a specific parcel of property or an easement required for the Project. For the convenience of both parties and for the benefit of the System, District and FWSD mutually agree that FWSD is hereby authorized to use its powers of eminent domain to obtain any specific parcel of property or easement required for the Project, after consultation with the Board and after written authorization by the Executive Director for the District.

20. **Contract for Wastewater Treatment Service.** As part of the consideration for obtaining wholesale treated water service from the District pursuant to this contract, FWSD agrees that it will, contemporaneously with this Contract, enter into a contract with District for wastewater treatment service on a basis that is consistent with recent studies conducted by Alan Plummer Associates, Inc. for District, in which studies, FWSD (or its agent) was an active participant.

21. **Combined Volume Rate.** In recognition of the start-up nature of FWSD and the expected low volume usage for the first few years, FWSD and District agree that for a limited period of time, a flat rate charge shall apply in lieu of the regular Demand and Volume charges. The Board shall have the right to establish said flat rates from time to time according to rates charged to other Customers of the District. Notwithstanding other provisions of this Contract, the initial rate for water service hereunder shall be equal to \$2.50 / 1000 gallons of metered or estimated Volume. The flat rate shall apply until the actual peak demand experienced by Customer reaches 0.5 MGD, or until three (3) years from Contract Date, whichever occurs first. From the date that District provides notice to FWSD that Project is operational and ready to deliver water to the Point of Delivery, FWSD shall be obligated to take or pay for sufficient Volume of water (herein "Minimum Payment") to generate monthly revenue (payment by FWSD) to District equal at least to fifty percent (50%) of what otherwise would be owing for Minimum Demand specified in Exhibit B. On a monthly basis, FWSD shall be billed for the Minimum Payment or for actual usage, whichever billing amount would be greater. This obligation for Minimum Payment shall continue until the above referenced threshold of 0.5 MGD or 3 years occurs. Thereafter, the regular Demand and Volume charges shall apply to the Minimum Demand contracted herein and the actual Volume used by Customer. The obligation of Customer to pay the specified Equity Fee and the Facilities Charge shall not be affected by the provisions of this paragraph.

22. **Expansion of Service Area.** Under this Contract, FWSD has the right to receive wholesale water service directly from the District for an agreed service area within its initial boundaries, plus certain additional area, if FWSD chooses to expand its boundaries or service area. The initially agreed area within its boundaries for this limited purpose is 330 acres. Any additional eligible area will be determined according to FWSD's percentage of capital cost participation in the Northeast Regional Water Reclamation System pursuant to a separate contract between FWSD and District for Wastewater service. For each one percentage point (1.0%) of capital cost participation for FWSD's pro rata share in said System, the additional area authorized to receive service under this Contract shall increase one percentage point (1.0%), up to a maximum of one hundred percent (100%) increase in acreage being served; that is, a maximum of 330 additional acres - - plus an additional 117 acres, to account for the plant site purchased by District out of FWSD's original boundaries. Any such additional area to be served by the System is subject to approval by District, including a determination by the District that such additional service is feasible and that adequate capacity in the System is available to provide the service. If FWSD so requests the District to provide such additional service from the System, up to the maximum amount provided for in this Paragraph, District will not unreasonably withhold approval. In administering the provisions of this Paragraph, FWSD and District agree that, with approval of District, FWSD may coordinate with other Initial Participating Customers in the System to allow either or both Customers to fully utilize the options for expanded acreage to be served by the System as described above.

23. **Approval for Expansion Areas.** Pursuant to this Contract, District agrees to deliver treated water to FWSD for use within the boundaries of FWSD as shown in Exhibit A. If in the future FWSD desires to expand or modify the area to be served under this Contract, or to serve additional area pursuant to Paragraph 22 of this Exhibit C; and, if it desires for District to deliver treated water for use within said expanded or modified service area, it must first obtain written approval from the District which approval shall be determined according to availability of water, project feasibility and consistency with the Mustang WSC water distribution system and CCN.

24. **Service Area Boundary Revisions.** If FWSD desires to adjust the boundaries of the area to be served under this Contract as illustrated in Exhibit A hereof, it may do so, subject to the following provisions.

- (a) Any expansion of the service area must comply with the limitations of Paragraph 22 of this Exhibit C.
- (b) The Minimum Demand specified in Exhibit B shall continue to apply, and the minimum monthly revenues and payment specified in Paragraph 21 of this Exhibit C shall continue to apply.
- (c) The Point of Delivery specified in Exhibit A shall continue to apply for all deliveries of water to FWSD.
- (d) Any proposed modification to add non-contiguous area to, or to delete area shall require prior written approval by the District's Executive Director. Such approval will not be unreasonably withheld.
- (e) Any proposed modification that is expected to require an additional Point of Delivery will require an amendment to this Contract and shall require prior approval by the Board of Directors.
- (f) Upon any significant modification to the approved area to be served by FWSD under this Contract, FWSD shall promptly provide an updated map of the revised service area to supplement or amend Exhibit A hereto.

25. **Alternative Metering Provision.** Subject to prior written approval by the District's Executive Director, FWSD may propose that the amount of water delivered by District to FWSD be determined by summation of meter readings for all retail and other usage within FWSD's distribution system. Such approval by the Executive Director will be given only if such change is in the best interest of the District, will enable interconnection of local distribution systems, and will promote increased reliability. Further, such approval shall be granted only if an acceptable and reliable method is developed and approved for determination of both applicable Volume and Demand within FWSD's system.

26. **Construction of District Facilities.** In conjunction with development of infrastructure within FWSD's boundaries, it may be mutually convenient for FWSD to construct certain facilities for District. If so mutually agreed, District and FWSD may proceed with joint plans for design and construction on a cost reimbursement basis according to the following procedures.

(a) design shall be in accordance with District standards and generally accepted engineering practice. Unless the plans and specifications are prepared by District, all plans, specifications and contract documents relating to District facilities shall be submitted to District for review and approval by staff prior to FWSD advertising for construction bids. Such plans, specifications and contract documents shall clearly identify and itemize all District facilities to be constructed to allow the associated cost to be determined.

(b) FWSD shall serve as project manager for both parties and shall advertise, award and contract for construction of District facilities contemplated herein in full compliance with Sections 49.271 - 49.273 and 49.275 of the Water Code. Prior to award of contract for construction of District facilities, FWSD shall provide District with full and complete bid packet, including bid tabulation and recommendation of award by FWSD's engineer. After consideration by its Board of Directors, District shall promptly notify FWSD of its action. If District concurs, FWSD shall proceed to award and execute the contract according to the terms and conditions contained herein. FWSD shall be responsible for field engineering and other activities to assure the facility is constructed according to plans and specifications. District shall have the right to inspect construction of District facilities as the work progresses and the right of final acceptance or rejection of completed work. Upon completion of construction and final acceptance by District, full fee simple ownership of the facility and its appurtenances shall be vested in District without further action by the parties.

(c) FWSD shall submit the contractor's request for monthly progress payment with its recommendation to District for review and concurrence. Within ten (10) days after such concurrence, District shall reimburse FWSD its share of such payment due the contractor. Construction Change Orders, if any, which do not exceed three percent (3.0%) of the original contract amount for construction of District facilities in the aggregate, or fifteen thousand dollars (\$15,000) individually, may be approved on behalf of District by its Executive Director. Change Orders which exceed the three percent (3.0%), or the fifteen thousand dollars guideline shall require approval in advance by District's Board of Directors. Any Change Order relating to construction of District facilities must be approved by District prior to execution.

**UPPER TRINITY REGIONAL WATER DISTRICT
DENTON COUNTY FRESH WATER SUPPLY DISTRICT NO. 9**

**FIRST AMENDMENT TO
PARTICIPATING CUSTOMER CONTRACT**

THE STATE OF TEXAS §
 §
COUNTY OF DENTON §

As of September 6, 2001, this FIRST AMENDMENT ("AMENDMENT") is made TO THE REGIONAL TREATED WATER SUPPLY CONTRACT (the "Contract") dated the 29th day of August, 2001, between UPPER TRINITY REGIONAL WATER DISTRICT, (the "District"), a conservation and reclamation District created pursuant to Article XVI, Section 59 of the Constitution of the State of Texas and DENTON COUNTY FRESH WATER SUPPLY DISTRICT NO. 9 ("FWSD") which may be referred to herein as ("Participating Customer" or "Customer").

WITNESSETH

WHEREAS, FWSD is a special district and political subdivision of the State of Texas created and organized pursuant to the Texas Constitution and the Texas Water Code; and

WHEREAS, FWSD entered into a Participating Customer Contract with District, for participation in the District's Regional Treated Water System; and

WHEREAS, the District and FWSD desire to amend Exhibit C of the Contract to enable expedited construction of the Project and provide optional and additional security to District regarding the collection of all payment obligations of FWSD under the Contract.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and agreements contained in the Contract, the District and FWSD agree as hereinafter set forth, to-wit:

Section 1. Adoption of Preamble. The matters stated in the preamble are found to be true and correct and are incorporated into the body of this Amendment as if copied in their entirety.

Section 2. Alternative Project Payment. The following paragraph(s) is hereby added to Exhibit C in all respects.

26. Alternate Project Payment. The District and FWSD agree that it is mutually beneficial to implement the Project in an expeditious

manner and to proceed with construction of said Project. In recognition of the District's agreement that the levy of the Contract Tax may occur at any time as may be determined by FWSD, notwithstanding the time limits established in Section 2 of this Exhibit C, it is agreed that alternative security may be provided to the District. Accordingly, this section establishes an alternative security procedure to that set forth in Section 2 of this Exhibit C. Within thirty (30) days of the Contract Date, FWSD must give notice to District if it elects to accept said alternative security procedure. If FWSD makes such election, within forty-five (45) days of District's notice of intent to award the first construction contract for the Project, FWSD shall deposit, pay or cause to be paid to the District an amount equal to \$666,667 per MGD of Minimum Demand subscribed to as specified in Exhibit B (herein referred to as "Alternative Project Payment(s)"). Said payment shall release FWSD from the obligations set forth in Section 2(a) relating to initial project payments for oversizing cost and Section 2(c) relating to subsequent project payments for system cost all as provided in this Exhibit C.

Said payment shall reserve certain rights of FWSD to receive future service from said pipeline and the system under this Contract, and vest the Minimum Demand set forth in Exhibit B hereto in FWSD, subject to FWSD's compliance with its other obligations under this Contract.

In the event FWSD elects to proceed with the payment of the Alternative Project Payments under this Section 26, FWSD will remain obligated to comply with Section 2(b) and (d) of this Exhibit C.

The District and FWSD agree that any Alternative Project Payments made pursuant to the preceding paragraphs shall constitute a refundable interest bearing deposit to secure the timely satisfaction of FWSD's payment obligations under this Contract. Further, it is the mutual intent of District and FWSD to provide for the future refund of FWSD's Alternative Project Payments, as provided herein. Provided further, however, in the event FWSD fails to make a timely payment under the Contract, District may use the deposit to make said timely payment with the amount of the payment not subject to refund to FWSD. Accordingly, within forty-five (45) days from the District's receipt of satisfactory evidence that FWSD has levied the Contract Tax, in a manner satisfactory to District, District shall refund to FWSD the remaining balance of Alternative Project Payments made, including accrued interest, less any amounts then due and owing to District by FWSD under this Contract and less any amounts previously used to make a payment under the Contract.

At such time as FWSD elects to proceed with the levy of the Contract Tax, it will follow the procedures set forth in the Contract, including introductory paragraph and subparagraph (g) of Section 2 of Exhibit C, and including compliance with Section 49.108, Texas Water Code, as amended, to the extent applicable.

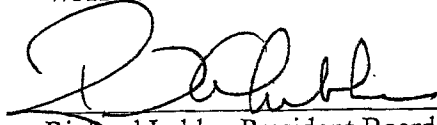
Section 3. Contract Provisions. All other provisions of said Contract shall continue in full force and effect.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

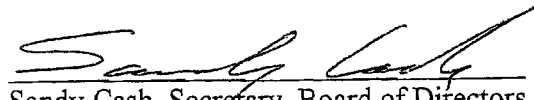
Upper Trinity Regional Water District
Amendment To Participating Customer Contract
Denton County Fresh Water Supply District No. 9

IN WITNESS WHEREOF, the parties hereto acting under the authority of their respective governing bodies have caused this Amendment to be fully executed in several counterparts, each of which shall constitute an original, all as of the day and year first above written, which is the effective date of this Amendment.

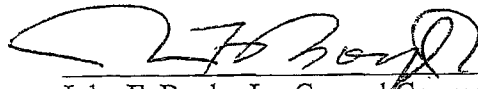
UPPER TRINITY REGIONAL
WATER DISTRICT


Richard Lubke, President Board of Directors

ATTEST:


Sandy Cash, Secretary, Board of Directors

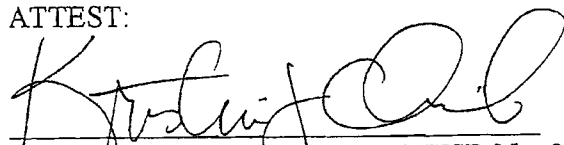
APPROVED AS TO FORM AND LEGALITY:


John F. Boyle, Jr., General Counsel for the District

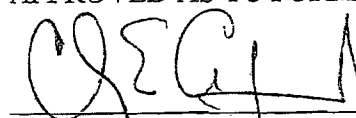
DENTON COUNTY FRESH WATER
SUPPLY DISTRICT No. 9


Debbie Reuther, President, FWSD No. 9

ATTEST:


Kristine Carl, Secretary, FWSD No. 9

APPROVED AS TO FORM AND LEGALITY:


Clay Crawford, Counsel for FWSD No. 9

520135.2

Schedule of rates to be charged by
Mustang SUD after the transfer

	Mustang SUD
Base Rate:	25.00
Gallonge Water Charge:	
1 to 1,000	2.43
1,001 to 3,000	2.66
3,001 to 6,000	3.30
6,001 to 9,000	3.64
9,001 to 10,000	3.99
10,001 to 12,000	3.99
12,001 to 15,000	4.34
15,001 to 20,000	4.91
20,001 to 25,000	5.49
> 25,000	9.41
Gallonge Wastewater Charge:	
1 to 8,000	35.50
8,001 to 10,000	39.50
> 10,000 gal.	39.50

Kathleen Hartnett White, *Chairman*
R. B. "Ralph" Marquez, *Commissioner*
Larry R. Soward, *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Protecting Texas by Reducing and Preventing Pollution

March 28, 2006

Ms. Angela Stepherson, P.C.
District Attorney
Denton County FWSD #9
3100 McKinnon St. Ste. 950
Dallas, TX 75201

Re: Comprehensive Compliance Investigation at:
Denton County FWSD #9, 809 Oakcrest Dr., Denton County, Texas
PWS ID No.: 0610244

COPY

Dear Ms. Stepherson:

On February 21, 2006, Mr. Brandon Cooper of the Texas Commission on Environmental Quality (TCEQ), D/FW Region Office conducted an investigation of the above-referenced facility to evaluate compliance with applicable requirements for public water supply systems. No violations were documented during the investigation.

The TCEQ appreciates your assistance in this matter and your compliance efforts to ensure protection of the State's environment. If you or members of your staff have any questions regarding these matters, please feel free to contact Mr. Brandon Cooper in the D/FW Region Office at 817-588-5830.

Sincerely,

Charles Marshall
PWS Work Leader
D/FW Region Office

CM/bac

PWS-06100244-CO

Texas Commission on Environmental Quality
Investigation Report
DENTON COUNTY FWSD 9
CN600739387

DENTON COUNTY FWSD 9
RN101178986

Investigation # 456367

Incident #

Investigator: BRANDON COOPER

Site Classification

GW >1K-10K CONNECTION

Conducted: 02/21/2006 -- 03/13/2006

No Industry Code Assigned

Program(s): PUBLIC WATER SYSTEM/SUPPLY

Investigation Type : Compliance Investigation

Location : 10 MI E of I35 on SH 380 at Providence Blvd .

Additional ID(s) : 0610244

Address: ; ,

Activity Type: REGION 04 - DFW METROPLEX
 PWSCCIDS - PWS CCI- Comprehensive compliance investigation of Discretionary Groundwater, Purchase

Principal(s) :

Role	Name
RESPONDENT	DENTON COUNTY FWSD 9

Contact(s) :

Role	Title	Name	Phone
Regulated Entity Mail Contact	DISTRICT ATTORNEY	MS ANGELA STEPHERSON	Fax (214) 981-9071 Work (214) 981-9090
Participated in Investigation	DIRECTOR OF OPERATIONS	MR MIKE SLOGGETT	Work (940) 440-9561
Participated in Investigation	PROPERTY MANAGER	MR BARRY JAMESON	Fax (940) 440-0230 Work (940) 440-9042
Participated in Investigation	OPERATOR	MR ALDO ZAMORA	Work (940) 440-9561 Fax (940) 440-3313
Regulated Entity Contact	PROPERTY MANAGER	MR BARRY JAMESON	Fax (940) 440-0230 Work (940) 440-9042

Other Staff Member(s) :

Role	Name
QA Reviewer	CHARLES MARSHALL

Associated Check List

<u>Checklist Name</u>	<u>Unit Name</u>
2005 PWS A STANDARD GROUND I	Denton County FWSD 9
2005 PWS A STANDARD GROUND II	Denton County FWSD 9
2005 PWS CAPACITIES - GROUNDWATER	Denton County FWSD 9
2005 PWS CAPACITIES - WHOLESALERS/PURCHAS	Denton County FWSD 9
2005 PWS DISTRIBUTION	Denton County FWSD 9
2005 PWS OP PRACTICES - GROUNDWATER	Denton County FWSD 9
2005 PWS OP PRACTICES - OPERATORS	Denton County FWSD 9

Investigation Comments :

INTRODUCTION

Summary of Investigation Findings

DENTON COUNTY FWSD 9

Investigation # 456367

, DENTON COUNTY,

Investigation Date: 02/21/2006

Additional ID(s): 0610244

No Violations Associated to this Investigation

ADDITIONAL ISSUES

Description

85% CAPACITY REQUIREMENT
ACR request includes an established equivalency ratio and meets 85% rule requirements in accordance with Chapter 291.93(3) relating to Adequacy of Water Utility Service for systems that are retail public utilities?

Additional Comments

The Denton County FWSD #9 has exceeded 85% of its maximum purchase/production capacity. A retail public utility that possesses a certificate of public convenience and necessity that has reached 85% of its capacity as compared to the most restrictive criteria of the commission's minimum capacity requirements in Chapter 290 TAC, must submit to the executive director a planning report that clearly explains how the retail public utility will provide the expected service demands to the remaining areas within the boundaries of its certificated area. A report is not required if the source of supply available to the utility service provider is reduced to below the 85% level due to a court or agency conservation order unless that order is expected to extend for more than 18 months from the date it is entered in which case a report shall be required. On the day of the investigation, a maximum daily demand of 1,700,000 gallons was noted on to have occurred on 07/01/2005. This amount factors to a peak hourly demand of 70,833 gallons per hour (gph). According to 30 TAC §290.45(f)(5), For systems which purchase water under direct pressure, the maximum hourly purchase authorized by the contract plus the actual service pump of the system must be at least 2.0 gallons per minute (gpm) per connection or provide at least 1,000 gpm and be able to meet peak hourly demands, whichever is less. Based on the current contracted purchase amount of 1.8 MGD or 75,000 gph the system has reached 94% of its maximum purchase/production capacity.

DENTON COUNTY FWSD 9 -

February 21 06 to March 13 06 Inv. # - 456367

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The Denton County FWSD #9 water system is located 10 miles east of I35 on SH 380 at Providence Blvd.

Ms. Tina Kelly, Property Manager for Huffines Communities, Inc. received prior notification for the routine compliance investigation on January 30, 2006. A list of required information for the compliance investigation was faxed to Ms. Tina Kelly, Property Manager for Huffines Communities, Inc. The investigation was conducted on February 21, 2006, at approximately 10:00 am with Mr. Barry Jameson, Property Manager-Huffines Communities, Mr. Aldo Zamora, Operator-Mustang SUD, and Mr. Mike Sloggett, Director of Operations-Mustang SUD. The exit interview was conducted with Mr. Zamora on February 21, 2006.

GENERAL FACILITY AND PROCESS INFORMATION

The Denton County FWSD #9 water system is a community water system owned by Huffines Communities, Inc. The system is contractually operated by Mustang SUD. On the day of the investigation, the Denton County FWSD #9 water system consisted of 1,370 connections, serving a population of approximately 4,110 (based on 3 x connections). Denton County FWSD #9 purchases pre-treated surface water under direct pressure from the Upper Trinity Regional Water District (PWS ID 0610213) at a contracted rate of 1,041 gpm (1.5 MGD). The system is contractually operated by Mustang SUD (PWS ID 0610036). According to the service contract, Denton County FWSD #9 shares a dual CCN with Mustang SUD. The water purchased by Denton County FWSD #9 is transported without charge by Mustang SUD through transmission lines, ground storage tanks, pump station, disinfectant equipment and other associated facilities that have been built by the UTRWD. The pump station used for the transfer of water is the Temple Dane Pump Station located on north bound FM 720. The pump station was built by UTRWD and is serviced by Mustang SUD. From the Temple Dane ground storage tank, water is pumped to the Denton County FWSD #9 distribution via five Variable Frequency Drive (VFD) high service pumps at 8,000 gpm total. The Temple Dane Pump Station is operated on a SCADA system and each VFD pump is set to run in a series. The pumps are controlled by changes in distribution pressure, if pressure decreases, a second pump will start. This process will continue until the pressure drops below 45 psi., at this point an alarm is triggered to operating personnel. According to Mustang SUD officials, Mr. Aldo Zamora and Mr. Mike Sloggett, the 6,000 gallon hydro-pneumatic tank at the Temple Dane pump station is not currently in use. The water main in which the Denton County FWSD #9 ties into is owned by the UTRWD and is the supply source to other public water supplies in north east Denton County.

BACKGROUND

The Denton County FWSD #9 is a housing development owned by Huffines Communities, Inc. and is located 10 miles east of I35 on SH 380 at Providence Blvd. Designated "Providence" by Huffines Communities, the Denton County FWSD #9 is a 7 phase housing development project. On the day of the investigation, the development was in the process of filling homes in phase 6 and was concurrently beginning construction on phase 7. According to Mr. Jameson, the Denton County FWSD #9 will become part of the Mustang SUD at some point after construction completion. Mr. Jameson also stated that a 1.0 MG elevated storage tank for the development was scheduled to be constructed in Fall 2006.

2. SYSTEM FACILITIES

Total Purchase (1,250 GPM)
Total = 1.80 MGD

Wells/Groundwater Sources:

E P	Source Code	Owners Desig.	Status	Depth	Pump Type	GPM	Location
N/A							

Ground Storage (0.0 MG)

Volume (Gal)	Material	Location
N/A		

TON COUNTY FWSD 9 -

February 21 06 to March 13 06 Inv. # - 4 .67

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Elevated / Pressure Storage (0.0 MG)			
Volume (Gal)	Material	Type	Location
N/A			

Service Pumps (0.0 GPM or 0.0 MGD)			
Number	Horse Power	GPM	Location
N/A			

3. SYSTEM CAPACITIES

Direct Purchase Capacities
 Required: (2.0 GPM X 1,370 Connections) = 2,740 GPM
 Required Peak Hourly Demand: 70,833 GPH
 Provided: 1,250 GPM = 75,000 GPH
 94% Capacity

Ground / Total Storage Capacity
 N/A

Elevated / Pressure Total Storage Capacity
 N/A

Service Pumping Capacity
 N/A

Service Pump Peaking Factor
 N/A

ADDITIONAL ISSUES

The Denton County FWSD #9 has exceeded 85% of its maximum purchase/production capacity. A retail public utility that possesses a certificate of public convenience and necessity that has reached 85% of its capacity as compared to the most restrictive criteria of the commission's minimum capacity requirements in Chapter 290 TAC, must submit to the executive director a planning report that clearly explains how the retail public utility will provide the expected service demands to the remaining areas within the boundaries of its certificated area. A report is not required if the source of supply available to the utility service provider is reduced to below the 85% level due to a court or agency conservation order unless that order is expected to extend for more than 18 months from the date it is entered in which case a report shall be required. On the day of the investigation, a maximum daily demand of 1,700,000 gallons was noted on to have occurred on 07/01/2005. This amount factors to a peak hourly demand of 70,833 gallons per hour (gph). According to 30 TAC §290.45(f)(5), For systems which purchase water under direct pressure, the maximum hourly purchase authorized by the contract plus the actual service pump of the system must be at least 2.0 gallons per minute (gpm) per connection or provide at least 1,000 gpm and be able to meet peak hourly demands, whichever is less. Based on the current contracted purchase amount of 1.8 MGD or 75,000 gph the system has reached 94% of its maximum purchase/production capacity.

No Violations Associated to this Investigation

Additional Issues

Description

Additional Comments

85% CAPACITY REQUIREMENT
 ACR request includes an established equivalency ratio and meets 85% rule requirements in accordance with Chapter 291.93(3) relating to Adequacy of Water

The Denton County FWSD #9 has exceeded 85% of its maximum purchase/production capacity. A retail public utility that possesses a certificate of public convenience and necessity that has reached 85% of its capacity as compared to the most

DENTON COUNTY FWSD 9 -

February 21 06 to March 13 06 In. # - 456367

Page 4 of 4

Utility Service for systems that are retail public utilities?

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Signed [Signature]
Environmental Investigator

Date 3-23-06

Signed [Signature]
Supervisor

Date 3/29/06

Attachments: (in order of final report submittal)

- Enforcement Action Request (EAR)
- Letter to Facility (specify type): Complaint
- Investigation Report
- Sample Analysis Results
- Manifests
- NOR

- Maps, Plans, Sketches
- Photographs
- Correspondence from the facility
- Other (specify): water contracts (2)