

Control Number: 43781



Item Number: 231

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

SOAH DOCKET No. 582-03-1994
TCEQ DOCKET NO. 2002-1350-UCR

43781
RECEIVED

APPLICATION OF THE TOWN OF §
PROSPER TO AMEND SEWER §
CERTIFICATE OF CONVENIENCE §
AND NECESSITY NO. 20888 IN §
DENTON COUNTY, APPLICATION §
NO. 34004-C §

BEFORE THE STATE OFFICE

2014 DEC 16 PM 3:42
PUBLIC UTILITY COMMISSION
FILING CLERK

ADMINISTRATIVE HEARINGS

LIST OF EXHIBIT ATTACHMENTS TO
JASON PIERCE TESTIMONY

- JP-1 Jason Pierce Resumé
- JP-2 Fishtrap Ltd. Request for Service
- JP-3 Mustang Annexation Order
- JP-4 Non-standard Service Agreements Phase I
- JP-5 Non-standard Service Agreements Phase II
- JP-6 Affidavit of Chris Boyd
- JP-7 Mustang SUD Financial Statement for year ending September 30, 2003
- JP-8 UTRWD Regional Wastewater System Study, April 2000
- JP-9 UTRWD East Side Doe Branch Water Reclamation Plant Site Study, July 2002
- JP-10 Preliminary Design Memorandum, October 14, 2002
- JP-11 UTRWD Doe Branch Interceptor Route Selection Study, March 19, 2003
- JP-12 Northeast Regional Water Reclamation System Contract
with Denton County FWSD No. 10.
- JP-13 Interceptor Schematic -- Regional Sanitary Sewer Plan, Pettit & Associates
- JP-14 City of Celina correspondence and Resolution No. 02-62
- JP-15 Craig Curry Deposition, April 12, 2004
- JP-16 Correspondence from Town of Prosper to UTRWD
- JP-17 Town of Prosper Rate Ordinance No. 03-48
- JP-18 Table of Wastewater Hauling from
Travis Roberts Deposition, Exhibit 1, April 15, 2004
- JP-19 Town of Prosper Impact Fee Ordinance No. 02-57
- JP-20 TCEQ Operator Certification

931

Jason L. Pierce

■ 519 Amy Jo Circle ■ Aubrey, Texas 76227 ■
Home: 940-365-3537 ■ Cell: 940-391-3786 ■ E-Mail: JPierce@classicnet.net

PROFESSIONAL EXPERIENCE

MUSTANG SPECIAL UTILITY DISTRICT ■ Aubrey, Texas *General Manager (2004 to Present)*

Chief Executive Officer of a retail water and wastewater utility in northeast Denton County, Texas providing quality service to approximately 3,400 connections in approximately 100 square miles. Key responsibilities include:

- Long-range master planning for water and wastewater services; including new construction to service new development as well as repair and replacement of existing infrastructure.
- Oversee the general operation of both the water and wastewater systems; including general oversight of monthly reporting to the Texas Commission on Environmental Quality.
- General oversight of the accounting / financial functions of the District; including accounts payable, accounts receivable, payroll, and the preparation of the monthly financial statements.
- Negotiate, prepare and administer any and all development agreements for water and wastewater service.
- Coordinate with the chief executive officers of the three municipal entities served by the District to plan and prepare for each respective water and wastewater needs.

UPPER TRINITY REGIONAL WATER DISTRICT ■ Lewisville, Texas *Manager of Contract Services (2001 to 2004)*

Senior level executive with a regional treated water, wastewater and solid waste utility providing managerial and technical contributions to the overall operation of this special district created by the Texas Legislature in 1989, whose Members and Customers include municipalities and other special districts in Denton County and as well as parts of Collin and Dallas Counties. Key responsibilities included:

- Negotiate, write and manage various contracts with over 30 municipalities and special districts for participation in various regional treated water, wastewater and other programs of the District.
- Coordinate and assist in the development of water and wastewater projects for service to District Members and Customers.
- Assist in planning future expansion of water and wastewater facilities to assist Members and Customers in meeting growth demands.
- Liaison between Members and Customers and the District.
- Communicate and interact with the District's Board of Directors.

Achievements include:

- Organized over 250 contracts into user-friendly reference system enabling optimum utilization of the documents.
- Assisted in the development of the Northeast Regional Water Reclamation to provide quality wastewater service in the northeastern portion of Denton and a part of Collin County; including contract negotiation, planning and construction of the Riverbend and Peninsula Water Reclamation Plants.
- Coordinated the expansion of the Regional Treated Water System to provide service to the Cities of Justin and Celina - - extending the system by over 40 miles.
- Worked with local developers and municipalities to find win-win situations in meeting the growing demands for water and wastewater service in northeast Denton County.

EXHIBIT

JP-1

CITY OF AUBREY ■ Aubrey, Texas
Mayor - - Elected (1999 to 2003)

Chief Executive Officer for a growing bedroom community with a population of 1,650 people located in northeast Denton County. Key responsibilities included:

- Long-term master planning; including transportation, parks, water and wastewater.
- Preparation and implementation of annual budget, including capital improvement projects (*Fiscal year budgets over \$2 million dollars*).
- Oversaw the operation of water and wastewater departments; ensuring compliance with all state regulations and reporting requirements.
- Responsible for the daily operations of the police and fire departments, as well as the public library.
- Developed, wrote and enforced local ordinances for the public's health, safety and welfare.

Achievements included:

- Successfully planned, designed and financed an approximately 5 linear mile street improvement project.
- Maintained costs within budget for all departments for all four years, while at the same time increasing the water / wastewater reserve fund.
- Coordinated local development with improvements to the water and wastewater system, thus lowering out-of-pocket capital expenses for the City.
- Began planning and obtained funding for a wastewater treatment plant expansion project to enable future growth to occur.
- Instituted a Code Enforcement Officer with an overall effect of removing approximately seven junked vehicles and improving the beautification of the City.

GUARDIAN HEALTH SYSTEMS ■ Dallas, Texas
Program Director (1999 to 2001)

Provided home infusion support to network retail pharmacies in Texas and Oklahoma. Responsible for the coordination, education and operation of network pharmacies in preparing, dispensing and supplying home infusion medication and equipment. In addition, provided support to the companies national mail order pharmacy.

Achievements included:

- Developed a hands-on training course for network pharmacy technicians, including ad-mixing, supply recognition, and program marketing / development.
- Coordinated semi-annual network meetings with pharmacists, including the preparation of the program topics, course materials / supplies, and assisted in giving presentations.
- Initiated a diabetes education and screening program whereby network pharmacies would host "Diabetic Days"; included coordination with diabetes monitor manufacturer, development of program guidelines and materials, marketing and screening follow-up.
- Continued the development of a national mail-order pharmacy with local suppliers and coordinated customer participation with insurance companies.

AXTELL PHARMACY, INC. ■ Pilot Point, Texas
Pharmacy Technician (1990 to 1999)

Assisted the pharmacist in the dispensing of prescription medication to retail customers, nursing homes and hospice patients. Duties also included the supervision of other technicians, medication supply ordering, preparation of compound and home infusion medications, marketing and home deliveries.

Achievements included:

- Implementation of compound medication laboratory and clean-room.

- Opened a closed-door pharmacy providing medications to nursing homes, drug rehabilitation facilities and hospice patients.
- Assisted in the expansion of pharmacy services to include durable medical equipment and Medicare approved inhalation drug therapies.

EDUCATION & PROFESSIONAL LICENSES

Bachelor of Business Administration (Corporate Finance), University of North Texas, Denton, TX (1995)
Licensed Paramedic, State of Texas (1997)
Hazardous Materials Technician, State of Texas (2002)

PROFESSIONAL PROFILE

Upper Trinity Regional Water District ▪ Board Member ▪ 2004 to Present

Denton County Transportation Authority ▪ Secretary, Board of Director ▪ 2001 to Present

Aubrey Economic Development Corporation ▪ Board Member ▪ 2002 to Present

Denton County Water Council ▪ Member ▪ 2002 to Present

Aubrey Area Ambulance Service ▪ Volunteer Licensed Paramedic ▪ 1994 to Present

Denton County Juvenile Diversionary Services ▪ Visiting Teen Court Judge ▪ 2002 to Present

North Central Texas Council of Governments, Regional Transit Initiative Committee ▪ Member ▪ 2004

Aubrey City Council ▪ Councilmember ▪ 1997 to 1999

Aubrey Planning and Zoning ▪ Member ▪ 1996 to 2000

PROFESSIONAL ASSOCIATIONS

- American Water Works Association
- Texas Section of American Water Works Association
- Texas Municipal Utility Association
- American Public Works Association
- Texas Rural Water Association

MUSTANG SPECIAL UTILITY DISTRICT

5315 Highway 377 S.

Aubrey, Texas 76227

Tel: 940-440-9561 | Fax: 940-440-3313

NON-STANDARD SERVICE APPLICATION

Date: October 24, 2003 Service Requested: ☒ Water ☒ Sewer

NAME OF PROPOSED DEVELOPMENT: Glenbrook Estates

Maximum Number of Lots: 442 Standard Lot Size: 50 X

NAME OF APPLICANT/DEVELOPER: Fishtrap Properties LTD

Name & Title of Person Completing Application: John Dowdall, Managing Partner

Mailing Address: 5305 Village Creek Plano, TX 75093

Telephone: 972-4470 650 Fax: _____

NAME OF PROPERTY OWNER: Fishtrap Properties LTD

Mailing Address: 5305 Village Creek Plano, TX 75093

Telephone: 972-447 0650 Fax: 972-732-6644

NAME OF ENGINEERING FIRM: Bob Pettit Associates

Responsible Engineer: Robert Pettit

Mailing Address: 10720 Miller Rd Ste 218 Dallas TX 75238

Telephone: 214 221 9955 Fax: _____

LEGAL DESCRIPTION OF PROPERTY: (State or Attach) Attached

TYPE OF DEVELOPMENT: (Check all that apply)

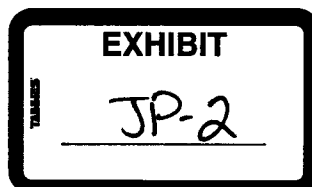
- ☒ Residential Subdivision ☐ Apartments ☐ Manufactured Home Park ☐ RV Park
☐ Commercial/Industrial Park ☐ Other Large Meter Applicant (>1" Meter)

SPECIAL SERVICE NEEDS: _____

ADDITIONAL INFORMATION:

1. Is the property located in the corporate limits or ETJ of a municipality? . . Yes ☒ No _____
If yes, provide the name of the municipality: Proper ETJ

2. Are additional phases planned for this development? Yes _____ No ☒
If yes, please explain: _____



REQUIRED ATTACHMENTS: Please indicate whether the following items are attached:

1. Three (3) copies of the preliminary plat Yes ☒ No ☐
2. Three (3) copies of the final plat *Pending* Yes ☒ No ☐
3. Three (3) copies of the water utility/line extension plans *Pending* Yes ☐ No ☐
4. A location map of the proposed development ... *ON PLAT* Yes ☒ No ☐
5. A valid check covering the estimated Service Investigation Fee Yes ☒ No ☐

This application must be completed by the Applicant only. Mustang Special Utility District will take no action related to the above-described development until this application is complete. A signed application will be considered complete only after the district has received all required attachments, including a valid check in the amount of the estimated Service Investigation Fee. Please contact the General Manager to obtain the estimated fee amount.

I CERTIFY, AS THE APPLICANT OR AS AN AUTHORIZED REPRESENTATIVE ON BEHALF OF THE APPLICANT, THAT THE FOREGOING REPRESENTATIONS CONTAINED IN THIS APPLICATION ARE TRUE AND CORRECT.

SIGNED

[Signature]
2007

By: _____

Print Name: John Dowdall

Title: Managing Partner

FOR ADMINISTRATIVE USE

SERVICE INVESTIGATION FEE:

Amount _____

Check # _____

Date Paid: _____

Received By: _____

LIST ITEMS NOT ATTACHED:

Date Received: _____ By: _____

Date Received: _____ By: _____

Date Received: _____ By: _____

COMMENTS:

JOHN DOWDALL
5305 VILLAGE CREEK DR.
PLANO, TX 75093-4810

SchwabOne

200

DATE 10/25/03

3-5/310
150

PAY TO THE
ORDER OF

Mustang Special Utility District \$4420.00
Four Thousand Four Hundred Twenty and 00/100

Charles Schwab
PNC BANK, N.A.
Philadelphia, PA

FOR Application Service

[Signature]

⑆03⑆0000053⑆ 7026599355⑆ 20200

MUSTANG SPECIAL UTILITY DISTRICT

ANNEXATION PETITION

(Texas Water Code § 49.301)

TO THE BOARD OF DIRECTORS OF MUSTANG SPECIAL UTILITY DISTRICT:

The undersigned Petitioner hereby petitions the Board of Directors of Mustang Special Utility District (the "District") pursuant to Water Code § 49.301 to annex into the District the following described territory, to-wit:

The tract of land described by metes and bounds on Exhibit "A" attached hereto and included herein for all purposes (the "Property").

The Petitioner certifies that it is vested with 100% of the fee title to the Property and that this petition is signed and duly acknowledged by each person required and authorized to bind the Petitioner in the manner provided by law for the Petitioner to convey of real estate.

EXECUTED on this the 24 day of October, 2003.

Petitioner: FISHTRAP PROPERTIES

By: X John Dowdall

Printed Name: John Dowdall

Title: Managing Partner

Address: 5305 Village Creek

Plano, TX 75093

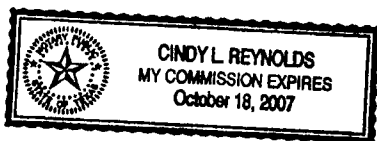
Phone # 972-447-0650

STATE OF TEXAS §

COUNTY OF Collin §

This instrument was acknowledged before me on Oct 24, 2003, by John Dowdall, Managing Partner of Fishtrap Properties, on behalf and with authority of said entity.

Seal



Cindy L Reynolds
Notary Public, State of Texas

LEGAL DESCRIPTION

BEING all that tract of land in Denton County, Texas, a part of the P. Barnes Survey, Abstract No. 79, a part of the J. Gonzales Survey, Abstract No. 447, a part of the B. R. Hodges Survey, Abstract No. 593, a part of the J. Kennedy Survey, Abstract No. 1688, and being all of that 107.577 acre tract of land conveyed to Fishtrap Properties, Ltd. as recorded in Volume 4626, Page 2922, Denton County Deed Records, and being further described as follows:

BEGINNING at a one-half inch iron rod found the southwest corner of said 107.577 acre tract of land, said point being in the east line of Farm-to-Market Highway No. 1385 (a 80 foot wide right-of-way), said point being the northwest corner of a 64.2 acre tract of land conveyed to M. Taylor Hansel as recorded in Document No. 94-R0091793, Denton County Deed Records;

THENCE along the west line of said 107.577 acre tract of land and along the east line of Farm-to-Market Highway No. 1385 as follows:

Northeasterly, 77.13 feet along a curve to the left which has a central angle of 03 degrees 43 minutes 35 seconds, a radius of 1185.91 feet, a tangent of 38.58 feet, and whose chord bears North 03 degrees 58 minutes 48 seconds East, 77.12 feet to a one-half inch iron rod found for corner;

North 02 degrees 07 minutes 00 seconds East, 1324.90 feet to a one-half inch iron rod found for corner;

North 01 degrees 01 minutes 00 seconds East, 830.80 feet to a one-half inch iron rod found for corner;

North 02 degrees 07 minutes 00 seconds East, 311.85 feet to a one-half inch iron rod found for corner;

Northeasterly, 58.19 feet along a curve to the right which has a central angle of 11 degrees 58 minutes 48 seconds, a radius of 278.31 feet, a tangent of 29.20 feet, and whose chord bears North 08 degrees 06 minutes 24 seconds East, 58.09 feet to a P.K. nail set at the northwest corner of said 107.577 acre tract of land, said point being in the center of Fish Trap Road;

THENCE along the north line of said 107.577 acre tract of land and along the center of Fish Trap Road as follows:

South 86 degrees 13 minutes 02 seconds East, 482.34 feet to a P.K. nail set for corner;

South 87 degrees 56 minutes 23 seconds East, 765.27 feet to a P.K. nail set at the northeast corner of said 107.577 acre tract of land, said point being the northwest corner of a 3.300 acre tract of land conveyed to Ronnie Isbell as recorded in Volume 2113, Page 985, Denton County Deed Records;

THENCE along the east line of said 107.577 acre tract of land as follows:

South 01 degrees 27 minutes 19 seconds West, 968.09 feet to a one-half inch iron rod found at the southwest corner of said 3.300 acre tract of land;

South 88 degrees 32 minutes 34 seconds East, 150.13 feet to a one-half inch iron rod found at the southeast corner of said 3.300 acre tract of land;

South 01 degrees 28 minutes 00 seconds West, 698.87 feet to a one-half inch iron rod set for corner at the base of a 14 inch hackberry tree;

South 57 degrees 18 minutes 16 seconds East, 865.68 feet to a concrete monument found for corner;

South 57 degrees 53 minutes 28 seconds East, 249.55 feet to a concrete monument found for corner;

South 33 degrees 31 minutes 58 seconds West, 221.36 feet to a concrete monument found for corner;

South 22 degrees 39 minutes 39 seconds West, 709.91 feet to a concrete monument found for corner;

South 29 degrees 36 minutes 28 seconds West, 67.81 feet to a concrete monument found at the southeast corner of said 107.577 acre tract of land and in the north line of said 64.2 acre tract.

THENCE North 72 degrees 10 minutes 59 seconds West, 2051.39 feet along the south line of said 107.577 acre tract of land and along the north line of said 64.2 acre tract of land to the POINT OF BEGINNING and containing 4,686,065 square feet or 107.577 acres of land.

MUSTANG SUD 5551 1753
5315 Hwy 377
Aubrey, Tx 76227

ANNEXATION ORDER

THE STATE OF TEXAS	§	
COUNTY OF DENTON	§	180275
MUSTANG SPECIAL UTILITY DISTRICT	§	

The Board of Directors of Mustang Special Utility District met in special session, open to the public on the date hereinafter set out; whereupon the roll was called of the members of the Board of Directors, to-wit:

George Foley	President
Mike Frazier	Vice President
Peggy Morris	Secretary
Bill Hathaway	Board Member
Ann Hunt	Board Member
Bruce Arledge	Board Member
Robert Houlihan	Board Member
Fred Teves	Board Member
M.L. Snow	Board Member

All members of the Board were present

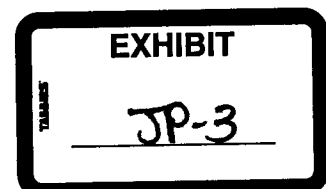
WHEREUPON, among other business conducted by the Board, there came on to be considered an Annexation Petition, a copy of which is set out in **EXHIBIT "A"**, which is attached hereto and made a part hereof for all purposes, (hereinafter called the "Petition"). After consideration of the Petition presented to the Board, Director Ann Hunt introduced the Order set out below and moved its adoption, which motion was seconded by Director Bruce Arledge and, after full discussion and the question being put to the Board of Directors, said motion was carried by the following vote:

"Aye" 9 ; "No" 0 .

WHEREAS, an Annexation Petition, has been submitted to this Board of Directors, praying that approximately 107.577 acres of land be added to and become a part of the District as provided in Texas Water Code, as amended and said Petition is in all respects in conformity with law.

WHEREAS, the land described in said Petition lies within Denton County, Texas.

WHEREAS, the legal title to and ownership of all land described in said Petition is vested in the party which executed said Petition; and



WHEREAS, said Petition and the evidence thereon has been duly heard and fully considered by this Board of Directors.

1. The Petition attached hereto as **EXHIBIT "A"** describes the lands sought to be added by metes and bounds, is signed and executed by the current owner thereof in the same manner provided by law for the conveyance of real estate, is in proper form, and meets all legal requirements.

2. The addition of the tract of land described in said Petition to the District would be of advantage to the District and to the advantage of the owners thereof and to the future owners and residents thereof.

3. The existing and proposed water and sanitary sewer facilities of the District will be sufficient to supply such services and facilities to all of such land sought to be added without injury to the lands currently in the District.

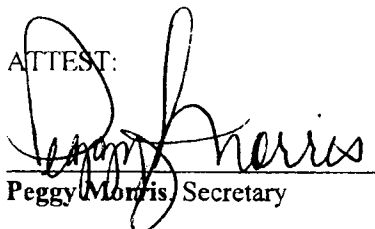
4. All legal requirements have been met and established at this hearing for the addition of the tract described below and all recitals and statements of fact in this Order are true and correct.

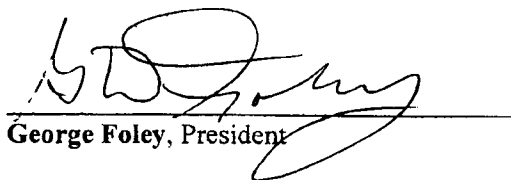
IT IS, THEREFORE, ORDERED BY THE BOARD OF DIRECTORS OF MUSTANG SPECIAL UTILITY DISTRICT THAT:

- A. The above-mentioned Petition is hereby granted in all respects and the tracts of land described in **EXHIBIT "A"** to said Petition are hereby added to, and shall become a part of Mustang Special Utility District in all respects, as provided by law.
- B. The Petition and this Order shall be filed for record and be recorded in the office of the County Clerk of Denton, Texas.
- C. The President is authorized to execute and the Secretary is authorized to attest this Order on behalf of the Board of Directors.

PASSED, ADOPTED, ORDERED and APPROVED this 27rd day of October, 2003.

ATTEST:


Peggy Morris, Secretary


George Foley, President

(DISTRICT SEAL)

THE STATE OF TEXAS

§

COUNTY OF DENTON

§

§

Before me, the undersigned authority, on this day personally appeared **George Foley**, President of Mustang Special Utility District, a political subdivision of the State of Texas, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity herein stated and as other act and deed of said District.

Given under my hand and seal of office on this 27th day of October, 2003.



Beth Ann Kazel
Notary Public in and for the State of Texas

THE STATE OF TEXAS

§

COUNTY OF DENTON

§

MUSTANG SPECIAL UTILITY DISTRICT

§

I, the undersigned Secretary of the Board of Directors of the Mustang Special Utility District, certify that the attached and foregoing is a true and correct copy of the ORDER ADDING LANDS of said Board and an excerpt of the minutes of the meeting of the Board of Directors showing adoption and passage thereof; the original of said order and minute entry is on file in the District's office.

WITNESS MY HAND AND THE OFFICIAL SEAL OF THE DISTRICT 27th day
of October, 2003.

Peggy Morris
Peggy Morris, Secretary

(DISTRICT SEAL)

5551 1756

EXHIBIT

"A"

MUSTANG SPECIAL UTILITY DISTRICT

ANNEXATION PETITION

(Texas Water Code § 49.301)

TO THE BOARD OF DIRECTORS OF MUSTANG SPECIAL UTILITY DISTRICT:

The undersigned Petitioner hereby petitions the Board of Directors of Mustang Special Utility District (the "District") pursuant to Water Code § 49.301 to annex into the District the following described territory, to-wit:

The tract of land described by metes and bounds on Exhibit "A" attached hereto and Included herein for all purposes (the "Property").

The Petitioner certifies that it is vested with 100% of the fee title to the Property and that this petition is signed and duly acknowledged by each person required and authorized to bind the Petitioner in the manner provided by law for the Petitioner to convey of real estate.

EXECUTED on this the 24 day of October, 2003.

Petitioner: FISHTRAP PROPERTIES

By: X John Dowdall

Printed Name: John Dowdall

Title: Managing Partner

Address: 5305 Village Creek

Plano, TX 75093

Phone # 972-447-0650

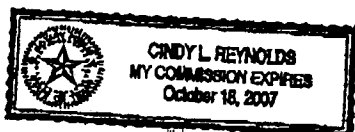
STATE OF TEXAS

COUNTY OF Collin

§
§
§

This instrument was acknowledged before me on Oct 24, 2003 by John Dowdall, Managing Partner of Fishtrap Properties, on behalf and with authority of said entity.

Seal



Cindy L. Reynolds
Notary Public, State of Texas

EXHIBIT "A"

LEGAL DESCRIPTION

BEING all that tract of land in Denton County, Texas, a part of the P. Barnes Survey, Abstract No. 79, a part of the J. Gonzales Survey, Abstract No. 447, a part of the B. R. Hodges Survey, Abstract No. 593, a part of the J. Kennedy Survey, Abstract No. 1688, and being all of that 107.577 acre tract of land conveyed to Fishtrap Properties, Ltd. as recorded in Volume 4828, Page 2922, Denton County Deed Records, and being further described as follows:

BEGINNING at a one-half inch iron rod found the southwest corner of said 107.577 acre tract of land, said point being in the east line of Farm-to-Market Highway No. 1385 (a 80 foot wide right-of-way), said point being the northwest corner of a 64.2 acre tract of land conveyed to M. Taylor Hansel as recorded in Document No. 94-R0091793, Denton County Deed Records;

THENCE along the west line of said 107.577 acre tract of land and along the east line of Farm-to-Market Highway No. 1385 as follows:

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North 02 degrees 07 minutes 00 seconds East, 1324.90 feet to a one-half inch iron rod found for corner;

North 01 degrees 01 minutes 00 seconds East, 830.80 feet to a one-half inch iron rod found for corner;

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THENCE North 72 degrees 10 minutes 59 seconds West, 2051.39 feet along the south line of said 107.577 acre tract of land and along the north line of said 64.2 acre tract of land to the POINT OF BEGINNING and containing 4,686,065 square feet or 107.577 acres of land.

**NON-STANDARD SERVICE CONTRACT
BY AND BETWEEN
MUSTANG SPECIAL UTILITY DISTRICT
AND
FISHTRAP PROPERTIES, L.L.C.,
A TEXAS LIMITED LIABILITY COMPANY
RELATING TO PHASE I OF GLENBROOK ESTATES**

This Non-standard Service Contract ("Contract") is entered into by and between Mustang Special Utility District (the "District") and Fishtrap Properties, L.L.C. ("Developer"), a Texas limited liability company.

WHEREAS, Developer is engaged in developing Phase I of a 108± acre tract of land out of the P. Barnes Survey, Abstract No. 679, J. Gonzales Survey, Abstract No. 447, J. Kennedy Survey, Abstract No. 1688, B.R. Hodges Survey, Abstract No. 593, all as shown in Volume 4626, Page 2922 of the Denton County Records in Denton County, Texas, and more particularly described or shown in Exhibit "A" attached hereto and incorporated herein by reference (the "Property");

WHEREAS, Developer intends to develop a residential subdivision on the Property known as Glenbrook Estates, in Denton County, Texas (the "Development"), in accordance with plans and specifications submitted to the District for review and approval;

WHEREAS, the Property is located within the District;

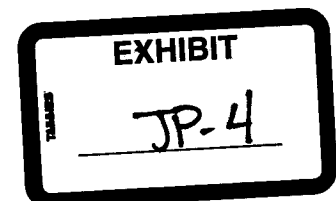
WHEREAS, Developer has requested the District to provide water and sewer service to the Property through an extension of the District's water supply and sewage collection systems, such extension being hereinafter referred to as the "Off-Site Facilities;"

WHEREAS, Developer intends to construct, or cause to be constructed or acquired, water distribution and sewer collection facilities on the Property through which the District will provide water and sewer service to a maximum of Two Hundred Twenty-Two (222) standard service connections (i.e. 5/8" x 3/4" meters) in the Development, such facilities being hereinafter referred to as the "On-Site Facilities;"

WHEREAS, the Off-Site Facilities and On-Site Facilities shall be hereinafter collectively referred to as the "Utility Service Improvements;"

WHEREAS, the District declares the Development a "High Density Development" pursuant to its Rate Order;

WHEREAS, the District has agreed to take the actions necessary to make water and sewer service available and to serve the Property pursuant to the terms and conditions of this Contract;



WHEREAS, the parties acknowledge and agree that the Developer is pursuing the creation of a political subdivision of the State of Texas under Article XVI, Section 59 and Article III, Section 52 of the Constitution of Texas to construct, acquire, finance and own fresh water supply and distribution facilities, sanitary sewer collection and treatment facilities, flood control and drainage facilities and roadways (herein collectively designated "Infrastructure"), and the District agrees to support the creation and funding of the political subdivision in accordance with the provisions of the "Addendum" to this Contract attached hereto

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that for and in consideration for the mutual promises hereinafter expressed, and other good and valuable consideration, the sufficiency of which is hereby acknowledged by the parties, Developer and the District agree as follows:

1. Engineering and Design of the Off-Site Facilities.

- A. The Off-Site Facilities shall be engineered and designed by a Texas Licensed Professional Engineer in accordance with the applicable specifications of the District and all governmental agencies having jurisdiction. All plans and specifications for the Off-Site Facilities must be reviewed and approved by the District's consulting engineer prior to the issuance of any invitation for bids for construction of the Off-Site Facilities. Upon approval of the plans and specifications by the District's consulting engineer, the plans and specifications shall become part of this Contract by reference and shall more particularly define the "Off-Site Facilities."
- B. The Off-Site Facilities must be sized to provide continuous and adequate water service to the Property based on plats and plans for the Development submitted to the District by Developer. The District may require the Off-Site Facilities to be upsized in anticipation of the needs of other or future customers of the District, subject to an obligation by the District to reimburse Developer for the additional cost of such upsizing as provided for herein below. Notwithstanding anything herein to the contrary, the District shall have no obligation to reimburse Developer for any Off-Site Facilities that utilize up to an eight inch (8") internal diameter service line.

2. Engineering and Design of the On-Site Facilities.

The On-Site Facilities shall be engineered and designed by a Texas Licensed Professional Engineer in accordance with the applicable specifications of the District and all governmental agencies having jurisdiction. All plans and specifications for the Off-Site Facilities must be reviewed and approved by the District's consulting engineer prior to the issuance of any invitation for bids for construction of the On-Site Facilities. After such approval of the plans and specifications by the District's consulting engineer, the plans and specifications shall become part of this Contract by reference and shall more particularly define the "On-Site Facilities."

3. Required Easements or Rights-of-Way.

Upon proper completion of construction of the Utility Service Improvements, and final inspection and approval thereof by the District, Developer shall dedicate the Utility Service Improvements to the District by an appropriate legal instrument approved by the District's attorney. The Utility Service Improvements shall thereafter be owned by the District subject to Developer's maintenance bond in an amount of not less than twenty percent (20%) of the total construction cost of the Utility Service Improvements and for a term of not less than two (2) years. Developer's maintenance bond is subject to the approval of the District's attorney. Any connection of individual customers or members to the Utility Service Improvements shall be made by the District.

6. Cost of the Utility Service Improvements.

- A. Only to the extent that the costs of the District itemized in this Paragraph 6.A. exceed the actual cash expended by the Developer on such costs, the Developer shall reimburse the District for a proportionate share of the following costs associated with the performance of obligations under this Contract:
- (1) engineering and design;
 - (2) easement and right-of-way acquisitions;
 - (3) construction;
 - (4) inspections;
 - (5) attorney's fees related to proceedings before the Texas Commission on Environmental Quality;
 - (6) insurance and bond premiums; and
 - (7) governmental or regulatory proceedings before the Texas Commission on Environmental Quality required to lawfully provide service.
- B. Subject to the limitations set forth in Paragraph 6.A. and 6.A.(5) and 6.A.(7) above, Developer shall indemnify the District and hold the District harmless from all of the foregoing costs.
- C. As reflected in the approved plans and specifications for the Off-Site Facilities, the District has required Developer to oversize all or a portion of the Off-Site Facilities in anticipation of the needs of other customers of the District. The District shall reimburse Developer pro rata for the additional costs of construction attributable to oversizing the Off-Site Facilities, as determined by the District's consulting engineer, in accordance with paragraph 7 below.

7. Pro Rata Reimbursement.

- A. For a period not to exceed five (5) years following the acceptance date of the Off-Site Facilities constructed pursuant to this Contract, the District will collect from any applicant that connects or desires to connect to the Off-Site Facilities a pro-rata fee that is determined in accordance with the formula set forth in Exhibit C~~B~~C attached hereto and incorporated herein by reference.
- B. The District will tender pro-rata reimbursements only to Developer at the address set forth in paragraph 12 below. It will be the duty of Developer to notify the District in writing of any change of address in accordance with paragraph 12.
- C. The District may assess a five percent (5%) administrative fee for the administration of pro-rata reimbursements which shall be deducted from all pro-rata fees collected by the District before remittance to Developer.

8. Service Investigation Fee.

- A. Simultaneous with Developer's execution and delivery of this Contract to the District, Developer shall pay a Service Investigation Fee of \$3,000.00 to the District plus any additional sums required by the District to cover administrative, legal and engineering fee that will be incurred by the District to investigate the District's ability to provide water service to the Property and Development including, without limitation, fees incurred for:
 - (1) reviewing and approving plats, plans and specifications;
 - (2) obtaining or determining cost estimates for construction;
 - (3) advertising and accepting bids for construction;
 - (4) preparing a non-standard service contract between the District and Developer; and
 - (5) obtaining or providing other services as required by the District for such investigation.
- B. The District shall refund the remaining balance of the fee, if any, upon completing its service investigation, including the completion of all legal and engineering services associated with processing Developer's non-standard service request. If the fee paid by Developer is not sufficient to pay all expenses incurred or to be incurred by the District in performing the service investigation, Developer shall pay or reimburse the District for such expenses upon written request, and the District shall have no obligation to complete processing Developer's non-standard service request until the requested payment or reimbursement has been paid.

9. Service Connection Fees.

- A. The District currently charges a Connection Fee of \$2,200.00 for a standard water service connection and Connection Fee of ~~\$1,500.00~~ for a standard sewer service connection. For purposes of this Contract, the Connection Fee for water service includes all fees and

\$ 2,000 CB

charges required for a residential customer to obtain water and sewer service from the District except for the cost of meter installation and the customer Deposit. Developer shall pay to the District a total Connection Fee of ~~\$821,400~~ for the Two Hundred Twenty-Two (222) standard (residential) service connections in the Development according to the following schedule: ~~\$821,400 CB~~ ^{\$932,400 CB}

(1) Payment 1: Developer shall pay the sum of ~~\$410,700~~ ^{\$466,200 CB} to the District for 222 connections prior to commencing construction of the Utility Service Improvements for the Development.

(2) Payment 2: Developer shall pay the sum of ~~\$410,700~~ ^{\$466,200 CB} to the District for 222 connections prior to the District approving and accepting dedication of the Utility Service Improvements.

B. Against the Connection Fees to be paid by Developer to the District, the District will credit Developer for the reasonable costs incurred and paid by Developer for construction of the Off-Site Facilities to provide water service to the Property as determined by the District's consulting engineer.

10. Service From the Utility Service Improvements.

A. After proper completion and dedication of the Utility Service Improvements to the District, the District shall provide continuous and adequate water service and sewer service to the Property, subject to all duly adopted rules and regulations of the District and payment of the following:

- (1) all standard rates, fees and charges adopted by the District;
- (2) all service investigation fees; and
- (3) all connection fees.

B. It is understood and agreed by the parties that the obligation of the District to provide water service in the manner contemplated by this Contract is subject to the issuance of all permits, certificates, or approvals required to lawfully provide retail water service by the Texas Commission on Environmental Quality and all other governmental agencies having jurisdiction.

C. Without the prior approval of the District, the Developer shall not:

- (1) construct or install additional water or sewer lines or facilities to service areas outside the Property;
- (2) add any additional lands to the Property for which water or sewer service is to be provided pursuant to this Contract; or

- (3) connect or serve any person or entity who, in turn, sells water or sewer service directly or indirectly to any other person or entity.
- (4) **By execution of this Contract, Developer acknowledges that the District's water distribution system provides potable water for domestic consumption only and does not provide "fire flows" as defined by the Uniform Fire Code or similar code or regulation to fight structure fires.**

11. Effect of Force Majeure

In the event either party is rendered unable by force majeure to carry out any of its obligations under this Contract, in whole or in part, then the obligations of that party, to the extent affected by the force majeure shall be suspended during the continuance of the inability, provided however, that due diligence is exercised to resume performance at the earliest practical time. As soon as reasonably possible after the occurrence of the force majeure relied upon to suspend performance, the party whose contractual obligations are affected thereby shall give notice and full particulars of the force majeure to the other party.

The cause, as far as possible, shall be remedied with all reasonable diligence. The term "force majeure" includes acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, orders of the government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightening, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, restraints of government and civil disturbances, explosions, breakage or accidents to equipment, pipelines or canals, partial or complete failure of water supply, and any other inability of either party, whether similar to those enumerated or otherwise, that are not within the control of the party claiming the inability and that could not have been avoided by the exercise of due diligence and care. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty and that the requirement that any force majeure be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party if the settlement is unfavorable in the judgment of the party having the difficulty.

12. Notices

Any notice to be given hereunder by either party to the other party shall be in writing and may be effected by delivery in person or by facsimile, or by sending said notices by certified mail, return receipt requested, to the address set forth below. Notice shall be deemed given by mail when deposited with the United States Postal Service with sufficient postage affixed.

To District:

Mustang Special Utility District
Attn: General Manager
5315 Highway 377 S.
Aubrey, Texas 76227
Fax: 940-440-3313

To Developer:

Fishtrap Properties, LTD,
RLC PROPERTIES, INC. KENILWORTH DEVELOPMENT

Attn: Mr. John Dowdall
5308 Village Creek
Plano, Texas 75093
Fax: 972/732-6644

Attn: Robert Crews
5950 Berkshire Ste 950
Dallas, Texas 75225
Fax: 214/739-8858

Either party may change the address for notice to it by giving written notice of such change in accordance with the provisions of this paragraph.

13. Breach of Contract and Remedies

- A. If either party breaches any term or condition of this Contract, the non-breaching party may, at its sole option, provide the breaching party with notice of the breach within sixty (60) days of discovery of the breach by the non-breaching party. Upon its receipt of a notice of breach, the breaching party shall have sixty (60) days to cure the breach. If the breaching party does not cure the breach within the sixty (60) days, the non-breaching party shall have all rights and remedies at law and in equity including, without limitation, the right to enforce specific performance of this Contract by the breaching party and the right to perform the obligation in question and to seek restitution for all damages incurred in connection therewith.
- B. Termination of this Contract by either party shall not affect any previous conveyance.
- C. The rights and remedies granted in this Contract to the parties in the event of default are cumulative, and the exercise of such rights shall be without prejudice to the enforcement of any other right or remedy authorized by law or this Contract.

14. Indemnity

Developer shall indemnify and save harmless the District and its officers, agents, representatives and employees from all suits, actions, losses, damages, claims or liability of any character, type or description, including without limiting the generality of the foregoing all expenses of litigation, court costs and attorney's fees, for injury or death to any person, or injury to any property, received or sustained by any person or persons or property, arising out of, or occasioned by, the acts of Developer or its agents, representatives or employees in connection with or related to the Development, the Utility Service Improvements or execution or performance of this Contract.

15. No Third Party Beneficiaries

This Contract is solely for the benefit of the parties hereto, and no other person has any right, interest or claim under this Contract.

16. Context

Whenever the context requires, the gender of all words herein shall include the masculine, feminine and neuter, and the number of all words shall include singular and plural.

17. Litigation Expenses

Either party to this Contract who is the prevailing party in any legal proceeding against the other party, brought in relation to this Contract, shall be entitled to recover court costs and reasonable attorneys' fees from the non-prevailing party.

18. Intent

The parties hereto covenant and agree that they shall execute and deliver such other and further instruments and documents as are, or may become, necessary or convenient to effectuate and carry out the intent of this Contract.

19. Authority

The signatories hereto represent and affirm that they have authority to execute this Contract on behalf of the respective parties hereto.

20. Severability

The provisions of this Contract are severable, and if any word, phrase, clause, sentence, paragraph, section, or other part of this Contract or the application thereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Contract and the application of such word, phrase, clause, sentence, paragraph, section, or other part of this Contract to other persons or circumstances shall not be affected thereby and this Contract shall be construed as if such invalid or unconstitutional portion had never been contained therein.

21. Entire Agreement

This Contract, including any exhibits and/or addendums attached hereto and made a part hereof, constitutes the entire agreement between the parties relative to the subject matter of this Contract. All prior agreements, covenants, representations, or warranties, whether oral or in writing, between the parties are merged herein.

22. Amendment

No amendment of this Contract shall be effective unless and until it is duly approved by each party and reduced to a writing signed by the authorized representatives of the District and the Developer, respectively, which amendment shall incorporate this Contract in every particular not otherwise changed by the amendment.

23. Governing Law

This Contract shall be construed under and in accordance with the laws of the State of Texas and all obligations of the parties are expressly deemed performable in Denton County, Texas.

24. Venue

Any action at law or in equity brought to enforce or interpret any provision of this Contract shall be brought in a state court of competent jurisdiction with venue in Denton County, Texas.

25. Successors and Assigns

This Contract shall be binding on and shall inure to the benefit of the heirs, successors and assigns of the parties.

26. Assignability

The rights and obligations of the Developer hereunder may not be assigned without the prior written consent of the District.

27. Effective Date

This Contract shall be effective from and after the date of due execution by all parties.

IN WITNESS WHEREOF each of the parties has caused this Contract to be executed by its duly authorized representative in multiple copies, each of equal dignity, on the date or dates indicated below.

EXECUTED on this the 10 day of Nov, 2003.

**Fishtrap Properties, LTD,
a Texas limited partnership**

By: RLC PROPERTIES, INC.
a Texas corporation, General Partner

By: [Signature]
Robert L. Crews, President

11/10/03
Date of Execution

BY: KENILWORTH DEVELOPMENT, INC.,
a Texas corporation, General Partner

By: [Signature]
John S. Dowdall, President

11/10/03
Date of Execution

EXECUTED on this the 18 day of Nov, 2003.

MUSTANG SPECIAL UTILITY DISTRICT

By: [Signature]
General Manager

EXHIBIT cAc
TO
NON-STANDARD SERVICE CONTRACT

()

PROPERTY DESCRIPTION

**EXHIBIT cBc
TO
NON-STANDARD SERVICE CONTRACT**

(_____)

PRO-RATA FEE FORMULA

Acres in connecting applicant's
development.

CCCCCCCCCCCCC

Total potential acres served by
the Off-Site Facilities constructed
by Developer.

(less)

Total acres in the Development.

(x) Actual cost of the
Off-Site Facilities

(=) Pro-Rata Fee

EXAMPLE:

$$\frac{100(a)}{500(b) - 100(c)} \quad (x) \quad \$50,000.00(d) \quad (=) \quad \$12,500.00(e)$$

Where:

- (a) = Acres in connecting applicant's new development.
- (b) = Total potential acres served by the Off-Site Facilities constructed by Developer as determined by the District's engineer.
- (c) = Total acres in the Development.
- (d) = Actual cost of the Off-Site Facilities.
- (e) = Pro-rata fee to be collected from any water service applicant that connects or desires to connect to the Off-Site Facilities.

ADDENDUM

1. The parties acknowledge that Developer is engaged in a process that will result in the creation of a political subdivision of the State of Texas ("Prosper Water Control and Improvement District No. 1", herein sometimes designated "Prosper WC&ID No. 1") which would have authority to issue tax-exempt obligations to finance Infrastructure to serve the Property, including, but not limited to, the "Utility Service Improvements."

2. The District agrees to support the creation and funding of Prosper WC&ID No. 1 to facilitate the issuance of tax-exempt obligations ("Obligations") by Prosper WC&ID No. 1 to repay to the Developer all eligible costs incurred pursuant to this Contract and all costs attendant to the construction, acquisition and ownership of all of the Infrastructure.

3. The parties agree to follow all procedures required by law to facilitate the issuance by Prosper WC&ID No. 1 of Obligations to be repaid from the imposition of an ad valorem tax by Prosper WC&ID No. 1 on all taxable property within its boundaries.

4. The parties agree that the District shall operate and maintain the Utility Service Improvements, and shall serve as the retail provider of water and sewer services to the customers located within the Property.

5. The parties agree that the "net revenues" from the operation of the Utility Service Improvements shall be made available to the District, to be used for any lawful purpose, including repayment of the costs incurred by the District or the Developer under this Contract.

6. The parties acknowledge that the Glenbrook Water Supply Corporation may undertake to perform some of the obligations (for example, easement acquisition) allocated to the Developer under this Agreement.

FILE COPY

MUSTANG

Special Utility District

5315 HWY 377 SB
Aubrey, Texas 76227

Ph. 940-440-2111

Fax 940-440-3313

Resolution 121503-3

A RESOLUTION OF THE MUSTANG SPECIAL UTILITY DISTRICT BOARD OF DIRECTORS APPROVING A NON-STANDARD SERVICE CONTRACT BY AND BETWEEN MUSTANG SPECIAL UTILITY DISTRICT AND FISHTRAP PROPERTIES, L.L.C., EXHIBIT A (Phase I).

WHEREAS, Developer is engaged in developing Phase I of a 108+/- acre tract of land out of the P. Barnes Survey, Abstract No. 679, J. Gonzales Survey, Abstract No. 447, J. Kennedy Survey, Abstract No. 1688, B.R. Hodges Survey, Abstract No. 593, all as shown in Volume 4626, Page 2922 of the Denton County Records in Denton County, Texas;

WHEREAS, the Property is located within the District;

WHEREAS, the Developer has requested the District to provide water and sewer service to the Property through an extension of the District's water supply and sewage collection systems.

THEREFORE, IT IS HEREBY RESOLVED BY THE MUSTANG SPECIAL UTILITY DISTRICT BOARD OF DIRECTORS:

The Non-Standard Service Contract by and between Mustang Special Utility District and Fishtrap Properties, L.L.C., Exhibit A (phase I) is approved.

ADOPTED, this 15th day of December 2003 at a regular scheduled meeting, with a quorum present, of the Mustang Special Utility District Board of Directors.

Signed: _____


George Foley, President
Mustang SUD Board of Directors

Attest: _____


Peggy Morris, Secretary
Mustang SUD Board of Directors

**NON-STANDARD SERVICE CONTRACT
BY AND BETWEEN
MUSTANG SPECIAL UTILITY DISTRICT
AND
FISHTRAP PROPERTIES, L.L.C.,
A TEXAS LIMITED LIABILITY COMPANY
RELATING TO PHASE I OF GLENBROOK ESTATES**

This Non-standard Service Contract ("Contract") is entered into by and between Mustang Special Utility District (the "District") and Fishtrap Properties, L.L.C. ("Developer"), a Texas limited liability company.

WHEREAS, Developer is engaged in developing Phase I of a 108± acre tract of land out of the P. Barnes Survey, Abstract No. ~~679~~, J. Gonzales Survey, Abstract No. 447, J. Kennedy Survey, Abstract No. 1688, B.R. Hodges Survey, Abstract No. 593, all as shown in Volume 4626, Page 2922 of the Denton County Records in Denton County, Texas, and more particularly described or shown in Exhibit "A attached hereto and incorporated herein by reference (the "Property");

WHEREAS, Developer intends to develop a residential subdivision on the Property known as Glenbrook Estates, in Denton County, Texas (the "Development"), in accordance with plans and specifications submitted to the District for review and approval;

WHEREAS, the Property is located within the District;

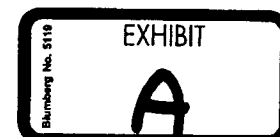
WHEREAS, Developer has requested the District to provide water and sewer service to the Property through an extension of the District's water supply and sewage collection systems, such extension being hereinafter referred to as the "Off-Site Facilities;"

WHEREAS, Developer intends to construct, or cause to be constructed or acquired, water distribution and sewer collection facilities on the Property through which the District will provide water and sewer service to a maximum of Two Hundred Twenty-Two (222) standard service connections (i.e. 5/8" x 3/4" meters) in the Development, such facilities being hereinafter referred to as the "On-Site Facilities;"

WHEREAS, the Off-Site Facilities and On-Site Facilities may be hereinafter collectively referred to as the "Utility Service Improvements;"

WHEREAS, the District has agreed to take the actions necessary to make water and sewer service available and to serve the Property pursuant to the terms and conditions of this Contract;

WHEREAS, the parties acknowledge and agree that the Developer is pursuing the creation of a political subdivision of the State of Texas under Article XVI, Section 59 and Article III, Section 52 of the Constitution of Texas to construct and finance fresh water supply and distribution facilities, sanitary sewer collection and treatment facilities, flood control and drainage facilities and roadways (herein collectively designated



"Infrastructure"), and the District agrees to support the creation and funding of the political subdivision in accordance with the provisions of the "Addendum" to this Contract attached hereto

WHEREAS, on the 18th day of November, 2003, the general manager of the District executed a Non-Standard Service Contract with the Developer relating to Phase I of Glenbrook Estates (the "Prior Contract"); and

WHEREAS, it is the intent of the parties to this Contract that if any of the terms and conditions of this Contract are inconsistent with the terms and conditions of the Prior Contract, then the terms and conditions of this contract shall control.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that for and in consideration for the mutual promises hereinafter expressed, and other good and valuable consideration, the sufficiency of which is hereby acknowledged by the parties, Developer and the District agree as follows:

1. Design and Construction of the Off-Site Facilities.

The Off-Site Facilities will be engineered and designed by the District's engineer. All required Off-Site Facilities relating to water service will be constructed by the District at the cost of the District. All required Off-Site Facilities related to sewer service will be constructed as provided herein.

2. Engineering and Design of the On-Site Facilities.

The On-Site Facilities shall be engineered and designed by a Texas Licensed Professional Engineer in accordance with the applicable specifications of the District and all governmental agencies having jurisdiction. All plans and specifications for the Off-Site Facilities must be reviewed and approved by the District's consulting engineer prior to the issuance of any invitation for bids for construction of the On-Site Facilities. After such approval of the plans and specifications by the District's consulting engineer, the plans and specifications shall become part of this Contract by reference and shall more particularly define the "On-Site Facilities."

3. Required Easements or Rights-of-Way.

- A. Developer shall be responsible for dedicating or acquiring any easements across privately owned land or sites which the District determines are necessary for the construction or operation of the On-Site Facilities and for obtaining any governmental approvals necessary to construct the On-Site Facilities in public right-of-ways.
- B. Any easements acquired by Developer shall be in a form approved by the District and shall be assigned to the District upon proper completion of the construction of the On-Site Facility. The legal instruments by which Developer will acquire any such easements or assign such easements to the District must

be approved by the District's attorney prior to the acquisition of such easements by Developer.

4. Construction of the On-Site Facilities.

- A. To construct the On-Site Facilities, Developer shall comply with the competitive bidding requirements which will permit reimbursement to the Developer from proceeds of Obligations issued by Prosper WC&ID No. 1, and shall award the contract for construction subject to the District's approval.
- B. Upon the selection and approval of a contractor, Developer shall prepare and submit a construction contract to the District for its review and approval.
- C. The contractor shall obtain and tender payment and performance bonds in the full amount of the contract price. The bond forms and the underwriters are subject to the District's approval.
- D. The On-Site Facilities shall be constructed in accordance with the approved plans and specifications and the District's rate order, rules and regulations. The District shall have the right to inspect and approve all phases of the construction of the On-Site Facilities. Developer must give written notice to the District of the date on which construction is scheduled to commence so that the District may assign an inspector. The District may charge reasonable inspection fees based on the actual costs of labor, travel and incidental expenses of the inspectors, plus ten percent (10%) overhead.

5. Dedication of On-Site Facilities to the District.

Upon proper completion of construction of the On-Site Facilities, and final inspection and approval thereof by the District, Developer shall dedicate the On-Site Facilities to the District by an appropriate legal instrument approved by the District's attorney. The Utility Service Improvements shall thereafter be owned by the District subject to Developer's maintenance bond in an amount of not less than twenty percent (20%) of the total construction cost of the On-Site Facilities and for a term of not less than two (2) years. Developer's maintenance bond is subject to the approval of the District's attorney. Any connection of individual customers or members to the On-Site Facilities shall be made by the District.

6. Cost of the On-Site Facilities.

- A. Developer shall reimburse the District for the following costs associated with the performance of obligations under this Contract:
 - (1) engineering and design;
 - (2) easement and right-of-way acquisitions;
 - (3) construction;

- (4) inspections;
 - (5) attorney's fees related to proceedings before the Texas Commission on Environmental Quality;
 - (6) insurance and bond premiums; and
 - (7) governmental or regulatory proceedings before the Texas Commission on Environmental Quality required to lawfully provide service.
- B. Developer shall indemnify the District and hold the District harmless from all of the foregoing costs.

7. Service Investigation Fee.

- A. Simultaneous with Developer's execution and delivery of this Contract to the District, Developer shall pay a Service Investigation Fee of \$3,000.00 to the District plus any additional sums required by the District to cover administrative, legal and engineering fee that will be incurred by the District to investigate the District's ability to provide water service to the Property and Development including, without limitation, fees incurred for:
- (1) reviewing and approving plats, plans and specifications;
 - (2) obtaining or determining cost estimates for construction;
 - (3) advertising and accepting bids for construction;
 - (4) preparing a non-standard service contract between the District and Developer; and
 - (5) obtaining or providing other services as required by the District for such investigation.
- B. The District shall refund the remaining balance of the fee, if any, upon completing its service investigation, including the completion of all legal and engineering services associated with processing Developer's non-standard service request. If the fee paid by Developer is not sufficient to pay all expenses incurred or to be incurred by the District in performing the service investigation, Developer shall pay or reimburse the District for such expenses upon written request, and the District shall have no obligation to complete processing Developer's non-standard service request until the requested payment or reimbursement has been paid.

8. Service Connection Fees

- A. The District currently charges a Connection Fee of \$2,200.00 for a standard water service connection. For purposes of this Contract, the Connection Fee for water service includes all fees and charges required for a residential customer to

obtain water service from the District except for the cost of meter installation and the customer Deposit. Developer shall pay to the District a total water Connection Fee of \$488,400.00 for the Two Hundred Twenty-Two (222) standard (residential) service connections in the Development according to the following schedule:

- (1) Payment 1: Developer shall pay the sum of \$244,200.00 to the District for 222 connections prior to commencing construction of the On-Site Facilities for the Development; and
- (2) Payment 2: Developer shall pay the sum of \$244,200.00 to the District for 222 connections prior to the District approving and accepting dedication of the On-Site Facilities.

B. The District currently charges a Connection Fee of \$2,000.00 for a standard sewer service connection. The District and the Developer, however, acknowledge that the Doe Creek Wastewater Treatment Plant ("WWTP") has not been constructed by the Upper Trinity Regional Water District ("UTRWD"); therefore the District does not know the costs that it will incur for treatment capacity to serve the Development. Thus the District's sewer connection fee for service through the Doe Creek WWTP is subject to change, however, neither the District nor the Developer anticipate that such connection fee will be less than \$2,000.00 per connection. Therefore, the Developer will pay the District \$444,000.00 plus any additional amounts necessary for the District to secure capacity for the treatment of 70,000 gallons per day at the Doe Creek WWTP. In the interim, the District has capacity in the Riverbend WWTP for one hundred (100) residential units. The Developer, at its option and expense, may request that the District construct whatever facilities are necessary to obtain temporary sewer treatment service through the Riverbend WWTP.

9. Service From the Utility Service Improvements.

A. After proper completion and dedication of the Utility Service Improvements to the District, the District shall provide continuous and adequate water service and sewer service to the Property, subject to all duly adopted rules and regulations of the District and payment of the following:

- (1) all standard rates, fees and charges adopted by the District;
- (2) all service investigation fees;
- (3) all connection fees; and
- (4) the District obtaining the legal right to provide water and sewer service to the Development; and
- (5) the District obtaining sufficient sewer treatment capacity from the Upper Trinity in the future Doe Creek wastewater treatment plant.

- B. It is understood and agreed by the parties that the obligation of the District to provide water service in the manner contemplated by this Contract is subject to the issuance of all permits, certificates, or approvals required to lawfully provide retail water service by the Texas Commission on Environmental Quality ("TCEQ") and all other governmental agencies having jurisdiction. In this regard, the Developer acknowledges that the TCEQ has granted to the City of Prosper a water CCN that includes the area described in Exhibit "A" attached hereto. Both the District and the Developer have or will file a Motion to Overturn the TCEQ's order granting a water CCN to Prosper.
- C. Without the prior approval of the District, the Developer shall not:
- (1) construct or install additional water or sewer lines or facilities to service areas outside the Property;
 - (2) add any additional lands to the Property for which water or sewer service is to be provided pursuant to this Contract; or
 - (3) connect or serve any person or entity who, in turn, sells water or sewer service directly or indirectly to any other person or entity.
 - (4) **By execution of this Contract, Developer acknowledges that the District's water distribution system provides potable water for domestic consumption only and does not provide "fire flows" as defined by the Uniform Fire Code or similar code or regulation to fight structure fires.**

10. Effect of Force Majeure

In the event either party is rendered unable by force majeure to carry out any of its obligations under this Contract, in whole or in part, then the obligations of that party, to the extent affected by the force majeure shall be suspended during the continuance of the inability, provided however, that due diligence is exercised to resume performance at the earliest practical time. As soon as reasonably possible after the occurrence of the force majeure relied upon to suspend performance, the party whose contractual obligations are affected thereby shall give notice and full particulars of the force majeure to the other party.

The cause, as far as possible, shall be remedied with all reasonable diligence. The term "force majeure" includes acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, orders of the government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightening, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, restraints of government and civil disturbances, explosions, breakage or accidents to equipment, pipelines or canals, partial or complete failure of water supply, and any other inabilityes' of either party, whether similar to those enumerated or otherwise, that are not within the control of the party claiming the inability and that could not have been avoided by the exercise of due diligence and care. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty and that the requirement that any force majeure be remedied with all reasonable dispatch

shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party if the settlement is unfavorable in the judgment of the party having the difficulty.

11. Notices

Any notice to be given hereunder by either party to the other party shall be in writing and may be accepted by delivery in person or by facsimile, or by sending said notices by certified mail, return receipt requested, to the address set forth below. Notice shall be deemed given by mail when deposited with the United States Postal Service with sufficient postage affixed.

To District: Mustang Special Utility District
Attn: General Manager
5315 Highway 377 S.
Aubrey, Texas 76227
Fax: 940-440-3313

To Developer: Fishtrap Properties, L.L.C.
Attn: Mr. John Dowdall
5308 Village Creek
Plano, Texas 75093
Fax: 972/732-6644

Either party may change the address for notice to it by giving written notice of such change in accordance with the provisions of this paragraph.

12. Breach of Contract and Remedies

- A. If either party breaches any term or condition of this Contract, the non-breaching party may, at its sole option, provide the breaching party with notice of the breach within sixty (60) days of discovery of the breach by the non-breaching party. Upon its receipt of a notice of breach, the breaching party shall have sixty (60) days to cure the breach. If the breaching party does not cure the breach within the sixty (60) days, the non-breaching party shall have all rights and remedies at law and in equity including, without limitation, the right to enforce specific performance of this Contract by the breaching party and the right to perform the obligation in question and to seek restitution for all damages incurred in connection therewith.
- B. Termination of this Contract by either party shall not affect any previous conveyance.
- C. The rights and remedies granted in this Contract to the parties in the event of default are cumulative, and the exercise of such rights shall be without prejudice to the enforcement of any other right or remedy authorized by law or this Contract.

13. Indemnity

Developer shall indemnify and save harmless the District and its officers, agents, representatives and employees from all suits, actions, losses, damages, claims or liability of any character, type or description, including without limiting the generality of the foregoing all expenses of litigation, court costs and attorney's fees, for injury or death to any person, or injury to any property, received or sustained by any person or persons or property, arising out of, or occasioned by, the acts of Developer or its agents, representatives or employees in connection with or related to the Development, the Utility Service Improvements or execution or performance of this Contract.

14. No Third Party Beneficiaries

This Contract is solely for the benefit of the parties hereto, and no other person has any right, interest or claim under this Contract.

15. Context

Whenever the context requires, the gender of all words herein shall include the masculine, feminine and neuter, and the number of all words shall include singular and plural.

16. Litigation Expenses

Either party to this Contract who is the prevailing party in any legal proceeding against the other party, brought in relation to this Contract, shall be entitled to recover court costs and reasonable attorneys' fees from the non-prevailing party.

17. Intent

The parties hereto covenant and agree that they shall execute and deliver such other and further instruments and documents as are, or may become, necessary or convenient to effectuate and carry out the intent of this Contract.

18. Authority

The signatories hereto represent and affirm that they have authority to execute this Contract on behalf of the respective parties hereto.

19. Severability

The provisions of this Contract are severable, and if any word, phrase, clause, sentence, paragraph, section, or other part of this Contract or the application thereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Contract and the application of such word, phrase, clause, sentence, paragraph, section, or other part of this Contract to other persons or circumstances shall not be affected thereby and this Contract shall be construed as if such invalid or unconstitutional portion had never been contained therein.

20. Entire Agreement

This Contract, including any exhibits and/or addendums attached hereto and made a part hereof, constitutes the entire agreement between the parties relative to the subject matter of this Contract. All prior agreements, covenants, representations, or warranties, whether oral or in writing, between the parties are merged herein.

21. Amendment

No amendment of this Contract shall be effective unless and until it is duly approved by each party and reduced to a writing signed by the authorized representatives of the District and the Developer, respectively, which amendment shall incorporate this Contract in every particular not otherwise changed by the amendment.

22. Governing Law

This Contract shall be construed under and in accordance with the laws of the State of Texas and all obligations of the parties are expressly deemed performable in Denton County, Texas.

23. Venue

Any action at law or in equity brought to enforce or interpret any provision of this Contract shall be brought in a state court of competent jurisdiction with venue in Denton County, Texas.

24. Successors and Assigns

This Contract shall be binding on and shall inure to the benefit of the heirs, successors and assigns of the parties.

25. Assignability

The rights and obligations of the Developer hereunder may not be assigned without the prior written consent of the District.

26. Effective Date

This Contract shall be effective on November 18, 2003.

IN WITNESS WHEREOF each of the parties has caused this Contract to be executed by its duly authorized representative in multiple copies, each of equal dignity, on the date or dates indicated below.

EXECUTED on this the 14 day of December 2003

FISHTRAP PROPERTIES, L.L.C.

By: [Signature]
Name: John G. Dwyer
Title: Manager

EXECUTED on this the 16 day of December, 2003.

MUSTANG SPECIAL UTILITY DISTRICT

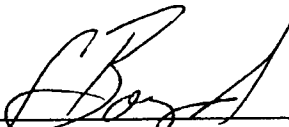
By: 
General Manager

EXHIBIT "A"
TO
NON-STANDARD SERVICE CONTRACT

(_____)

PROPERTY DESCRIPTION

**NON-STANDARD SERVICE CONTRACT
BY AND BETWEEN
MUSTANG SPECIAL UTILITY DISTRICT
AND
FISHTRAP PROPERTIES, L.L.C.,
A TEXAS LIMITED LIABILITY COMPANY
RELATING TO PHASE II OF GLENBROOK ESTATES**

This Non-standard Service Contract (cContractc) is entered into by and between Mustang Special Utility District (the "District") and Fishtrap Properties, L.L.C. ("Developer"), a Texas limited liability company.

WHEREAS, Developer is engaged in developing Phase II of a 108± acre tract of land out of the P. Barnes Survey, Abstract No. 679, J. Gonzales Survey, Abstract No. 447, J. Kennedy Survey, Abstract No. 1688, B.R. Hodges Survey, Abstract No. 593, all as shown in Volume 4626, Page 2922 of the Denton County Records in Denton County, Texas, and more particularly described or shown in Exhibit "A" attached hereto and incorporated herein by reference (the "Property");

WHEREAS, Developer intends to develop a residential subdivision on the Property known as Glenbrook Estates, in Denton County, Texas (the "Development"), in accordance with plans and specifications submitted to the District for review and approval;

WHEREAS, the Property is located within the District;

WHEREAS, Developer has requested the District to provide water and sewer service to the Property through an extension of the District's water supply and sewage collection systems, such extension being hereinafter referred to as the "Off-Site Facilities;"

WHEREAS, Developer intends to construct, or cause to be constructed or acquired, water distribution and sewer collection facilities on the Property through which the District will provide water and sewer service to a maximum of Two Hundred Twenty-Four (224) standard service connections (i.e. 5/8" x 3/4" meters) in the Development, such facilities being hereinafter referred to as the "On-Site Facilities;"

WHEREAS, the Off-Site Facilities and On-Site Facilities shall be hereinafter collectively referred to as the "Utility Service Improvements;"

~~**WHEREAS**, the District declares the Development a "High Density Development" pursuant to its Rate Order;~~

WHEREAS, the District has agreed to take the actions necessary to make water and sewer service available and to serve the Property pursuant to the terms and conditions of this Contract;

FILE COPY

EXHIBIT

JP-5

WHEREAS, the parties acknowledge and agree that the Developer is pursuing the creation of a political subdivision of the State of Texas under Article XVI, Section 59 and Article III, Section 52 of the Constitution of Texas to construct, acquire, finance and own fresh water supply and distribution facilities, sanitary sewer collection and treatment facilities, flood control and drainage facilities and roadways (herein collectively designated "Infrastructure"), and the District agrees to support the creation and funding of the political subdivision in accordance with the provisions of the "Addendum" to this Contract attached hereto

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that for and in consideration for the mutual promises hereinafter expressed, and other good and valuable consideration, the sufficiency of which is hereby acknowledged by the parties, Developer and the District agree as follows:

1. Engineering and Design of the Off-Site Facilities.

- A. The Off-Site Facilities shall be engineered and designed by a Texas Licensed Professional Engineer in accordance with the applicable specifications of the District and all governmental agencies having jurisdiction. All plans and specifications for the Off-Site Facilities must be reviewed and approved by the District's consulting engineer prior to the issuance of any invitation for bids for construction of the Off-Site Facilities. Upon approval of the plans and specifications by the District's consulting engineer, the plans and specifications shall become part of this Contract by reference and shall more particularly define the "Off-Site Facilities."
- B. The Off-Site Facilities must be sized to provide continuous and adequate water service to the Property based on plats and plans for the Development submitted to the District by Developer. The District may require the Off-Site Facilities to be upsized in anticipation of the needs of other or future customers of the District, subject to an obligation by the District to reimburse Developer for the additional cost of such upsizing as provided for herein below. Notwithstanding anything herein to the contrary, the District shall have no obligation to reimburse Developer for any Off-Site Facilities that utilize up to an eight inch (8") internal diameter service line.

2. Engineering and Design of the On-Site Facilities.

The On-Site Facilities shall be engineered and designed by a Texas Licensed Professional Engineer in accordance with the applicable specifications of the District and all governmental agencies having jurisdiction. All plans and specifications for the Off-Site Facilities must be reviewed and approved by the District's consulting engineer prior to the issuance of any invitation for bids for construction of the On-Site Facilities. After such approval of the plans and specifications by the District's consulting engineer, the plans and specifications shall become part of this Contract by reference and shall more particularly define the "On-Site Facilities."

3. Required Easements or Rights-of-Way.

- A. Developer shall be responsible for dedicating or acquiring any easements across privately owned land or sites (including off-site) which the District determines are necessary for the construction or operation of the Utility Service Improvements and for obtaining any governmental approvals necessary to construct the Utility Service Improvements in public right-of-ways; provided, however, that if the Developer has made its best effort to acquire the necessary easements, without success, then the District will utilize its eminent domain powers to acquire the easements.
- B. Any easements acquired by Developer shall be in a form approved by the District and shall be assigned to the District upon proper completion of the construction of the Utility Service Improvements. The legal instruments by which Developer will acquire any such easements or assign such easements to the District must be approved by the District's attorney prior to the acquisition of such easements by Developer.

4. Construction of the Utility Service Improvements.

- A. To construct the Utility Service Improvements, Developer shall comply with the competitive bidding requirements which will permit reimbursement to the Developer from proceeds of Obligations issued by Prosper WC&ID No. 1, and shall award the contract for construction subject to the District's approval. The District may reject any bid.
- B. Upon the selection and approval of a contractor, Developer shall prepare and submit a construction contract to the District for its review and approval.
- C. The contractor shall obtain and tender payment and performance bonds in the full amount of the contract price. The bond forms and the underwriters are subject to the District's approval.
- D. Upon execution of the approved construction contract, Developer shall escrow the full amount of the contract price with the District or execute a Three-Way Contract approved by the District's attorney. If the contract price is escrowed with the District by Developer, the District shall pay the contractor's pay requests pursuant to the terms and conditions of the construction contract.
- E. The Utility Service Improvements shall be constructed in accordance with the approved plans and specifications and the District's tariff, rate order, rules and regulations. The District shall have the right to inspect and approve all phases of the construction of the Utility Service Improvements. Developer must give written notice to the District of the date on which construction is scheduled to commence so that the District may assign an inspector. The District may charge reasonable inspection fees based on the actual costs of labor, travel and incidental expenses of the inspectors, plus ten percent (10%) overhead.

5. Dedication of Utility Service Improvements to the District.

Upon proper completion of construction of the Utility Service Improvements, and final inspection and approval thereof by the District, Developer shall dedicate the Utility Service Improvements to the District by an appropriate legal instrument approved by the District's attorney. The Utility Service Improvements shall thereafter be owned by the District subject to Developer's maintenance bond in an amount of not less than twenty percent (20%) of the total construction cost of the Utility Service Improvements and for a term of not less than two (2) years. Developer's maintenance bond is subject to the approval of the District's attorney. Any connection of individual customers or members to the Utility Service Improvements shall be made by the District.

6. Cost of the Utility Service Improvements.

- A. Only to the extent that the costs of the District itemized in this Paragraph 6.A. exceed the actual cash expended by the Developer on such costs, the Developer shall reimburse the District for a proportionate share of the following costs associated with the performance of obligations under this Contract:
 - (1) engineering and design;
 - (2) easement and right-of-way acquisitions;
 - (3) construction;
 - (4) inspections;
 - (5) attorney's fees related to proceedings before the Texas Commission on Environmental Quality;
 - (6) insurance and bond premiums; and
 - (7) governmental or regulatory proceedings before the Texas Commission on Environmental Quality required to lawfully provide service.
- B. Subject to the limitations set forth in Paragraph 6.A. and 6.A.(5) and 6.A.(7) above, Developer shall indemnify the District and hold the District harmless from all of the foregoing costs.
- C. As reflected in the approved plans and specifications for the Off-Site Facilities, the District has required Developer to oversize all or a portion of the Off-Site Facilities in anticipation of the needs of other customers of the District. The District shall reimburse Developer pro rata for the additional costs of construction attributable to oversizing the Off-Site Facilities, as determined by the District's consulting engineer, in accordance with paragraph 7 below.

7. Pro Rata Reimbursement.

- A. For a period not to exceed five (5) years following the acceptance date of the Off-Site Facilities constructed pursuant to this Contract, the District will collect from any applicant that connects or desires to connect to the Off-Site Facilities a pro-rata fee that is determined in accordance with the formula set forth in Exhibit CBC attached hereto and incorporated herein by reference.
- B. The District will tender pro-rata reimbursements only to Developer at the address set forth in paragraph 12 below. It will be the duty of Developer to notify the District in writing of any change of address in accordance with paragraph 12.
- C. The District may assess a five percent (5%) administrative fee for the administration of pro-rata reimbursements which shall be deducted from all pro-rata fees collected by the District before remittance to Developer.

8. Service Investigation Fee.

- A. Simultaneous with Developer's execution and delivery of this Contract to the District, Developer shall pay a Service Investigation Fee of \$3,000.00 to the District plus any additional sums required by the District to cover administrative, legal and engineering fee that will be incurred by the District to investigate the District's ability to provide water service to the Property and Development including, without limitation, fees incurred for:
 - (1) reviewing and approving plats, plans and specifications;
 - (2) obtaining or determining cost estimates for construction;
 - (3) advertising and accepting bids for construction;
 - (4) preparing a non-standard service contract between the District and Developer; and
 - (5) obtaining or providing other services as required by the District for such investigation.
- B. The District shall refund the remaining balance of the fee, if any, upon completing its service investigation, including the completion of all legal and engineering services associated with processing Developer's non-standard service request. If the fee paid by Developer is not sufficient to pay all expenses incurred or to be incurred by the District in performing the service investigation, Developer shall pay or reimburse the District for such expenses upon written request, and the District shall have no obligation to complete processing Developer's non-standard service request until the requested payment or reimbursement has been paid.

9. Service Connection Fees.

- A. The District currently charges a Connection Fee of \$2,200.00 for a standard water service connection and Connection Fee of \$1,500.00 for a standard sewer service connection. For purposes of this Contract, the Connection Fee for water service includes all fees and

492,800
336,000
828,800

1,690,200

charges required for a residential customer to obtain water and sewer service from the District except for the cost of meter installation and the customer Deposit. Developer shall pay to the District a total Connection Fee of \$828,800 for the Two Hundred Twenty-Four (224) standard (residential) service connections in the Development according to the following schedule:

828,800

- (1) Payment 1: Developer shall pay the sum of \$414,400 to the District for 224 connections prior to commencing construction of the Utility Service Improvements for the Development.

821,400

- (2) Payment 2: Developer shall pay the sum of \$414,400 to the District for 224 connections prior to the District approving and accepting dedication of the Utility Service Improvements.

- B. Against the Connection Fees to be paid by Developer to the District, the District will credit Developer for the reasonable costs incurred and paid by Developer for construction of the Off-Site Facilities to provide water service to the Property as determined by the District's consulting engineer.

10. Service From the Utility Service Improvements.

- A. After proper completion and dedication of the Utility Service Improvements to the District, the District shall provide continuous and adequate water service and sewer service to the Property, subject to all duly adopted rules and regulations of the District and payment of the following:

- (1) all standard rates, fees and charges adopted by the District;
- (2) all service investigation fees; and
- (3) all connection fees.

- B. It is understood and agreed by the parties that the obligation of the District to provide water service in the manner contemplated by this Contract is subject to the issuance of all permits, certificates, or approvals required to lawfully provide retail water service by the Texas Commission on Environmental Quality and all other governmental agencies having jurisdiction.

- C. Without the prior approval of the District, the Developer shall not:

- (1) construct or install additional water or sewer lines or facilities to service areas outside the Property;
- (2) add any additional lands to the Property for which water or sewer service is to be provided pursuant to this Contract; or

- (3) connect or serve any person or entity who, in turn, sells water or sewer service directly or indirectly to any other person or entity.
- (4) **By execution of this Contract, Developer acknowledges that the District's water distribution system provides potable water for domestic consumption only and does not provide "fire flows" as defined by the Uniform Fire Code or similar code or regulation to fight structure fires.**

11. Effect of Force Majeure

In the event either party is rendered unable by force majeure to carry out any of its obligations under this Contract, in whole or in part, then the obligations of that party, to the extent affected by the force majeure shall be suspended during the continuance of the inability, provided however, that due diligence is exercised to resume performance at the earliest practical time. As soon as reasonably possible after the occurrence of the force majeure relied upon to suspend performance, the party whose contractual obligations are affected thereby shall give notice and full particulars of the force majeure to the other party.

The cause, as far as possible, shall be remedied with all reasonable diligence. The term "force majeure" includes acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, orders of the government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightening, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, restraints of government and civil disturbances, explosions, breakage or accidents to equipment, pipelines or canals, partial or complete failure of water supply, and any other inability of either party, whether similar to those enumerated or otherwise, that are not within the control of the party claiming the inability and that could not have been avoided by the exercise of due diligence and care. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty and that the requirement that any force majeure be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party if the settlement is unfavorable in the judgment of the party having the difficulty.

12. Notices

Any notice to be given hereunder by either party to the other party shall be in writing and may be effected by delivery in person or by facsimile, or by sending said notices by certified mail, return receipt requested, to the address set forth below. Notice shall be deemed given by mail when deposited with the United States Postal Service with sufficient postage affixed.

To District:

Mustang Special Utility District

Attn: General Manager

5315 Highway 377 S.

Aubrey, Texas 76227

Fax: 940-440-3313

To Developer:

Fishtrap Properties, LTD,

RLC PROPERTIES, INC. KENILWORTH DEVELOPMENT