

**Section 2.03. Wastewater Flow.** The District agrees to receive, transport and treat Wastewater in accordance with the specifications and restrictions of this Article. The District agrees to provide adequate facilities and processes to meet volume and peaking requirements of Customer as provided herein.

**Section 2.04. Construction of Project and System.** Subject to cost participation by Customer as provided herein, District agrees to use its best efforts to issue its Bonds, payable from and secured by Annual Payments made under this Contract and other similar contracts, to acquire and construct the Project and other System facilities when and as needed, as determined by the District to provide Wastewater treatment services to Participating Customers, Members and other Customers. Except as provided herein, it is anticipated that such acquisition and construction will be in phases and that each phase will be financed in part by the District through the issuance of one or more series or issues of its Bonds; and the District agrees to use its best efforts to issue its Bonds for such purpose. Also, at the discretion of the District, Bonds may be issued to refund any Bonds; and, may be issued to extend, enlarge, repair, renovate, equip, operate, maintain and otherwise improve the System and any System facilities. District agrees that such improvements for the Project and System will be made in accordance with generally accepted engineering practices. It is anticipated that such improvements will be financed by cost participation by FWSD; however, the District may issue one or more series or issues of its Bonds payable from and secured by Annual Payments made under this Contract and other similar contracts. However, unless District in its sole discretion, determines it is in the interest of District to issue Bonds to help finance the Project, FWSD will provide funds for all construction and engineering costs of Initial Facilities authorized for the Project.

**Section 2.05. Bond Proceeds.** The proceeds from the sale and delivery of such Bonds may be used to fund, to the extent deemed advisable by the District, a debt service reserve fund, a contingency fund, and interest on the Bonds during construction; and, such proceeds also will be used for the payment of the District's expenses and costs in connection with the Project and System (including all engineering and design costs and expenses, and the cost of the land and interests therein related to the System) and the Bonds, including, without limitation, all financing, legal, printing, and other expenses and costs related to the issuance of such Bonds and the System.

**Section 2.06. Bond Resolution.** Each Bond Resolution of the District shall specify the exact principal amount of the Bonds to be issued thereunder, which shall mature within the maximum period, and shall bear interest at not to exceed the maximum rates then permitted by law. Each Bond Resolution shall create and provide for the maintenance of a revenue fund, an interest and sinking fund, a debt service reserve fund, and any other funds deemed advisable, all in the manner and amounts as provided in such Bond Resolution. Customer agrees that if and when such Bonds are actually issued and delivered to the purchaser thereof, either for the purpose of initially acquiring and constructing the Project, or subsequently for improving and/or extending the System, the Bond Resolution authorizing the Bonds shall for all purposes be deemed to be in compliance with this Contract in all respects, and the Bonds issued thereunder will constitute Bonds as defined in this Contract for all purposes.

**Section 2.07. Flow Rates.**

(a) Customer agrees that during each Annual Payment Period while the System is in operation, it shall be obligated to transport and discharge into the System at its Point of Entry, all of the Wastewater which is generated and collected within its boundaries, subject to the restrictions hereinafter stated.

(b) The combined maximum hourly rate at which Wastewater is discharged by Customer at its Point of Entry shall not exceed a rate which, if continued for a period of twenty-four hours would equal 3.75 times the estimated average daily contributing flow of Wastewater for the then current Annual Payment Period. The total quantity of Wastewater discharge into the System shall never exceed the amount which the System is capable of receiving, treating, and disposing, unless approved by the Board, subject to the terms and conditions to be established by the District.

(c) Notwithstanding the foregoing, no participant or Customer shall ever make any discharge into the System which would cause the System to be overloaded or be in violation of permits from the State and/or the United States of America.

**Section 2.08. Point(s) of Entry.** Wastewater meeting the quality requirements of Section 2.15 of this Contract will be received into the System at the Point(s) of Entry for Customer, as shown on Exhibit A hereto, which Exhibit is attached hereto and incorporated herein for all purposes, or at such other Points of Entry that may be established by mutual agreement between the District and Customer, if such other Points of Entry are determined by the District to be economical and beneficial to the System, and if Customer pays the costs thereof.

**Section 2.09. Capacity.** It is the intention of the parties hereto that the System shall be acquired, constructed, extended, and improved so that at all reasonable times it will be capable of receiving, transporting, treating, and disposing of all eligible Wastewater generated within the collection system of, and delivered to the Point(s) of Entry for FWSD and each Customer participating in the System. When the System needs to be expanded, it is anticipated that the District will, from time to time, issue its Bonds in such amounts as are, within its judgment and discretion, sufficient to provide the necessary capacity for then existing Customers or to extend the System to serve other Customers.

**Section 2.10. Quantity/Operation and Maintenance Expense.** The District agrees to accept Wastewater under this Contract from Customer at its Point of Entry. Customer agrees to deliver to its Point of Entry or to pay for certain minimum quantity of Wastewater specified in Exhibit B hereto to assure adequate funds to the District to fulfill its obligations under this Contract, including Operation and Maintenance Expense.

**Section 2.11. Capacity/Fixed Costs.** For the purpose of calculating the minimum fixed (or capacity cost) portion of each Annual Requirement for which Customer is liable, without offset or counterclaim, Customer, during each Annual Payment Period, hereby subscribes to, contracts for, and shall be deemed to have taken and used the minimum contracted capacity (regardless of whether or not such amount is or was actually taken or used) specified for Customer in Exhibit B hereto.

**Section 2.12. Additional Capacity.** To pay the cost of additional capacity in certain facilities of the Project or System for future growth, District may receive funds from Texas Water Development Board (TWDB) for State Participation in the System. If State Participation is offered by TWDB and accepted by District, the State through the TWDB will own certain capacity in the System under an agreement with the District. Under said agreement, District will have an obligation to repurchase the additional capacity when actually used to meet future flow requirements, or according to an agreed schedule of repurchase. If any such State Participation is provided in the Project, FWSD shall have the "first right" to such additional capacity in the Project. Subject to the "first right" of FWSD, District may make such additional capacity available to future Customers in accordance with Section 2.14. The purpose of State Participation in the Project or System is to encourage regional wholesale service and to provide capacity for future growth by FWSD and for other future Customers.

**Section 2.13. Repurchase of Capacity owned by State.** Participants in the System whose actual usage later exceeds initial contracted capacities shall be obligated to provide funds for District to repurchase appropriate capacity from State as provided in any Master Agreement for the System between District and Texas Water Development Board. Also, Customer may exercise its right to acquire said additional capacity on a first come, first serve basis. Future participants shall have the right to acquire any such additional capacity not already contracted by others.

**Section 2.14. Payment for Additional Capacity.** To acquire any capacity funded by State Participation in the System, FWSD and future Customers must pay certain costs to District for the repurchase of capacity, if any, owned by State. The Board will establish and maintain a policy for repurchase of State Participation. The current policy of the Board is that any party must pay an Equity Fee to pay interest that has accrued to date for State Participation in the System, such accrued interest to be calculated to the date of subscription and for the amount of capacity being subscribed. After payment of such Equity Fee, the party subscribing to said additional capacity shall pay principal and interest thereon and all other costs provided by Contract to meet Annual Requirement. Said Equity Fee shall not apply to the initial capacity subscribed herein (Exhibit B), but may apply when additional capacity is subscribed in the future by Customer, at which time the revised total capacity in System shall be substituted for the amount specified in Exhibit B hereof. Customer understands and agrees that the amount and the terms of said Equity Fee are, and shall remain, the subject of policy to be established by the Board; accordingly, Customer agrees to abide by said policy for subscription to additional future capacity in the System.

**Section 2.15. Quality.** The obligation of the District to receive Customer's Wastewater into the System depends upon compliance by Customer with the provisions of this Section. In order to permit the District to properly treat and dispose of Customer's Wastewater; to protect the public health; to permit cooperation with other agencies which have requirements for the protection of the physical, chemical, and bacteriological quality of public water and water courses; and, to protect the properties of the System; Customer hereby agrees to the following provisions concerning quality of Wastewater:

1. **Admissible Discharges into District's System.** Discharges into the System shall consist only of Wastewater and other waste which are free from the prohibited constituents listed on Exhibit C, and limited in B.O.D., Suspended Solids, dissolved sulfides, and pH as provided in said Exhibit C, which is attached hereto and incorporated herein for all purposes and, which may

be updated by the District from time to time in order to comply with current or future State or federal regulations regarding pollutants.

2. **Prohibited Discharge Limitations Subject to Change.** Notwithstanding the foregoing provisions of this Section, Customer agrees and understands that the District has a responsibility to operate the System in a cost-effective, environmentally safe manner and that federal and State regulatory agencies periodically modify standards on prohibited discharges; therefore, revisions to, additions to, or deletions from the items listed or incorporated in this Section may become necessary in the future to comply with the requirements applicable to the District and such revised standards. It is the intention of this Contract that prohibited discharge requirements be reviewed periodically by the District and revised in accordance with the latest standards of any federal or State regulatory agency having jurisdiction over such standards. Any required revision shall be made and written notice thereof given to each Participating Member or Customer. Customer shall be responsible for integrating such changes into the local Industrial Waste ordinance, resolution or regulation and notifying all affected retail users of the change within ninety (90) days following written notice to Customer of such changes. Any such change shall be incorporated automatically in Exhibit C hereto, to the extent applicable, unless an objection from Customer shall be filed with the District within sixty (60) days, in which case the District shall hold a hearing relating to such change or changes prior to incorporating such change or changes in Exhibit C.

3. **Normal Quality/Extra Strength.** To determine normal quality of Wastewater, the District may collect samples of Wastewater at each Point of Entry and cause same to be analyzed in accordance with testing procedures as set forth in the latest edition of Standard Methods of Examination of Water and Wastewater, published by American Public Health Association, Inc., or by such other procedures as may be established or authorized by the Board. Composite samples may be taken monthly, or at other intervals as necessary to determine Wastewater quality. Such Wastewater shall not exceed the limits of concentration specified in Exhibit C for Normal Wastewater. Should the analysis disclose concentrations higher than those listed, the District immediately will inform the respective participant of the violation of this Section, and the participant will take immediate steps to correct such excessive concentration. However, with the approval of the District, Wastewater with concentrations of B.O.D. and T.S.S. greater than specified above may be discharged by Customer or other participants into the System on an emergency and temporary basis, subject to the payment of a surcharge which shall be in addition to all other payments required by this Contract. The amount of such surcharge shall be based on analysis of samples of the Wastewater taken by the District or its agent.

4. **Additional Charge.** An additional charge shall be made for excess strength discharges at the Point of Entry of any Customer into the System. A surcharge for each mg/l of B.O.D. in excess of 250 mg/l and for each mg/l of T.S.S. in excess of 250 mg/l shall be assessed by resolution of the Board, which resolution will establish the amount of the surcharge and will specify how it will be applied. Customer agrees that the Board, within its judgment, has the right to raise the allowable discharge strengths; but, the Board may lower the allowable strength only by amendment to this Contract. Customer shall pay the District for concentrations of B.O.D. and T.S.S. exceeding 250 mg/l at a rate which shall be determined by the Board and which shall be in an amount sufficient to cover and pay all additional costs for transportation, treatment and disposal related to such excess concentration discharges.

5. **Basis for Billing.** Customer agrees that the results from analysis of composite samples of the Wastewater taken by the District or its agent shall be the basis for billing purposes related to excess strength.

**Section 2.16. Metering of Wastewater.**

(a) Unless otherwise mutually agreed in writing, District agrees to furnish and install, at or near each Point of Entry, as part of the Project, standard type devices and equipment and related facilities for measuring and sampling all Wastewater to be discharged into the System. The District will own, operate and maintain at its expense the measuring equipment and devices so installed. Such meters and other equipment shall remain the property of the District. The District or its designee may from time to time inspect, calibrate, and adjust its meters as necessary to maintain accurate measurements of the Wastewater entering the System. Customer shall have access to its metering equipment at all reasonable times for inspection and examination, but the reading, calibration, and adjustment thereof shall be done only by employees or agents of the District. Customer may witness such reading, calibration and adjustment of meters. All readings of meters will be entered upon proper books of record maintained by the District. Customer may have access to said record books during normal business hours.

(b) District shall provide for the calibration of meters at least one time per fiscal year. Upon request, District will make or cause to be made one (1) additional calibration in any fiscal year at no charge to Customer. All requested calibrations in excess of one (1) will be made at the expense of Customer, except when the accuracy of the meter is beyond the limits specified herein, in which case the District shall bear such expense. If, for any reason, any meter is out of service or out of repair, or if, upon any test, the percentage of inaccuracy of any meter is found to be in excess of five (5%) percent of the volume so indicated by the meter, the meter records shall be corrected for a period of time extending back to the time when such inaccuracy began, if such time is ascertainable, and if not ascertainable, then for a period extending back one-half (1/2) of the time elapsed since the date of the last calibration, but in no event further back than a period of six (6) months.

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

(d) If either party at any time observes a variation between the delivery meter and the check meter, if any such check meter shall be installed, such party will promptly notify the other party, and the parties hereto shall then cooperate to procure an immediate calibration test and joint observation of any adjustment and the same meter or meters shall then be adjusted to accuracy.

(e) If for any reason any meters are out of repair so that the amount of Wastewater received cannot be ascertained or computed from the reading thereof, the Wastewater quantity

through the period such meters are out of service or out of repair shall be estimated and agreed upon by the parties hereto upon the basis of the best data available. For such purpose, the best data available shall be deemed to be the registration of any check meter or meters if the same have been installed and are accurately registering. Otherwise, the amount of Wastewater for such period may be estimated:

(1) by correcting the error if the percentage of the error is ascertainable by calibration tests or mathematical calculation, or

(2) by estimating the quantity during the preceding periods under similar conditions when the meter or meters were registering accurately.

(f) Each party shall give the other party forty-eight (48) hours notice of the time of all tests of meters so that the other party may conveniently have a representative present.

**Section 2.17. Unit of Measurement.** The unit of measurement for Wastewater discharged into the System hereunder shall be 1,000 gallons, U. S. Standard Liquid Measure.

**Section 2.18. Access.**

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

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

**Section 2.19. Resale.** Customer hereby agrees not to accept and transport to its Point of Entry any Wastewater from outside Customer boundaries or prescribed service area (as may be adjusted from time to time pursuant to Exhibit D hereof) unless Customer has received prior written approval from the District. Approval to provide wastewater collection service on a retail basis to individual customers outside such boundaries may be granted by the Executive Director of the District. Approval to make wholesale agreements to receive Wastewater or to provide wastewater collection service for other public or utility entities shall require the specific approval of the Board. In granting such authorization, District may establish the terms and conditions for the acceptance and conveyance of such Wastewater including, but not restricted to, the setting of monetary rates for such Wastewater service.

**Section 2.20. Reporting Requirements.** Approximately sixty (60) days after the end of each Annual Payment Period, Customer shall furnish in writing to the District the following information:

(1) The number of active domestic sewer connections in the Customer's system which will be served by the System;

(2) The number of commercial and business connections to be served by the System;

(3) The number of industrial connections to be served by the System, with name and location of each;

(4) An estimate of the projected annual wastewater flow into the System by Customer for the next five (5) years.

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

**Section 2.21. Industrial Waste Pretreatment Program.**

(a) The effects of certain types of Industrial Waste upon sewers and sewage treatment processes are such as to require that careful consideration be made of each industrial connection. To accomplish the purpose of the National Industrial Waste Control Program, when Customer has an industrial customer, Customer shall obtain approval by the U. S. Environmental Protection Agency of its Industrial Waste Pretreatment Program. If Customer chooses to administer its own program, it shall regulate by individual permit the discharge of Industrial Waste generated by a SIU into its sewer system. Customer will authorize discharge of Industrial Waste into its sewers subject to the general provision that no harm will result from such discharge. Customer will require each such industrial user to file an appropriate application, a copy of which shall be forwarded to the District, containing the following information:

- (1) Name and address of applicant;
- (2) Type of industry;
- (3) Total quantity of plant waste produced;
- (4) Quantity of plant wastes proposed to be discharged;
- (5) Typical analysis of the waste; and
- (6) Type of pretreatment proposed by applicant.

To facilitate inspection and control of Industrial Waste, Customer will require industries to separate Industrial Waste from sanitary sewage until such Industrial Waste has passed through a monitoring portal which shall be located so as to be accessible at all times to inspectors of Customer and the District. If inspection indicates that damage might result from the discharge, the permit shall be revoked unless and until the industry promptly establishes acceptable remedial measures. As necessary and indicated, the District may collect and analyze samples of all Wastewater at each Point of Entry. Such Wastewater shall not contain prohibited constituents nor exceed the limits of concentration specified in Section 2.15 of this Contract. Should the analysis disclose prohibited constituents or concentrations higher than those stipulated, the District will inform Customer of such unauthorized wastes. It shall be the obligation of Customer to require the offending originator of said waste to immediately cease discharge of such unauthorized waste and

to initiate and undertake remedial pre-treatment or other legal means before further discharge into Customer's sewers.

(b) If Customer desires that District administer its Industrial Waste Pretreatment Program, District agrees to contract to provide such service at actual cost thereof.

**Section 2.22. Regulations, Resolutions, Orders.** Customer agrees that prior to serving any Industrial User it will enact regulations, resolutions, or orders, as appropriate, as necessary to include the following provisions:

(1) For each existing and future SIU, Customer shall require said user to complete and submit a permit application containing information specified in a sample application form to be furnished by the District. Customer shall provide the District with a completed copy of the permit application within thirty (30) days after receipt by Customer. The District may provide written comments to Customer regarding said application within thirty (30) days of receipt. Failure to comment shall be construed as concurrence by the District. After approval of the permit application by Customer, Customer shall issue a discharge permit containing standard requirements as specified in a sample permit form to be furnished by the District. Such a discharge permit shall be required of all SIU's before said industrial user will be allowed to discharge Industrial Wastes into the Customer's Wastewater collection system. The District reserves the right upon notice to each Customer to review each proposed permit before issuance. In the absence of such notice, such review and issuance shall be accomplished by Customer without the necessity for District review and approval, except for providing a copy of application to District as above required, subject to periodic inspection of records by the District. It is mutually agreed that unless Customer obtains approval by the U. S. Environmental Protection Agency of its Industrial Pretreatment Program that it will contract with the District to administer said pretreatment program and will pay the cost of such program, including all monitoring, sampling and testing or will cause said cost to be paid by the affected industry.

(2) Customer shall require Significant Industrial Users to comply with applicable Federal Categorical Pretreatment Standards as well as any applicable state and local standards.

(3) Customer shall maintain certain information contained in permit applications as confidential at SIU's request.

(4) Customer shall not allow a user to employ dilution as a means of reducing pollutant concentrations in an SIU's waste stream.

(5) Upon notice, Customer and the District shall be authorized to enter SIU premises at any time for independent monitoring, inspection, or review of applicable records to determine compliance.

(6) Customer shall develop and require adherence to SIU compliance schedules.

(7) Customer shall require self-monitoring and reporting at SIU's expense.



(8) Customer shall choose or designate an approved laboratory to analyze Industrial Wastes.

(9) Customer shall require SIU's to pay applicable fees for:

- (i) sampling and testing to determine compliance;
- (ii) disconnection/reconnection of service resulting from noncompliance;
- (iii) excess concentrations above the criteria for Normal Wastewater;
- (iv) additional costs incurred by Customer or the District in transporting or treating wastes; and
- (v) filing, review, revision, or renewal of permit application

(10) Customer shall provide prompt notification to the permit holder and the District for instances of violation.

(11) Customer shall deny/revoke permit, disallow/disconnect service, assess civil or criminal penalties, and seek other available legal and equitable remedies against SIU for:

- (i) discharge to Wastewater collection system resulting in violation of applicable POTW discharge permit conditions;
- (ii) hazard to health or life of POTW personnel or users of receiving waters;
- (iii) violation of any applicable ordinance or regulation; and
- (iv) false information transmitted to Customer through permit application, monitoring reports, etc.;

Upon request by District, Customer shall furnish to the District all documents and records, in addition to those outlined herein, as necessary to demonstrate compliance by all industries with the applicable pretreatment program and this Contract.

### **Section 2.23. Other Contracts.**

(a) The District reserves the right to enter into contracts to provide Wastewater services of the System to other Customers under contracts similar to this Contract. Each such contract shall comply with the requirements of this Contract, shall substantially restate the essential provisions of this Contract, and shall be structured to be similar hereto to the fullest extent applicable and practicable, with such additions or changes as are necessary to meet the actual circumstances, with the effect that each Customer will substantially adopt the provisions of this Contract, as supplemented and necessarily changed by its contract. However, the District shall not obligate itself to receive Wastewater into the System from a future Customer if, in the judgment and discretion of the District, such obligation would jeopardize the District's ability to

meet its obligation to receive, transport, treat and dispose of Wastewater discharged into the System by Customer under this Contract.

(b) The parties hereto recognize and acknowledge that it is the policy and practice of the District that any other party that desires to receive service from the System shall contract directly with the District to become a Customer of the District or a Participating Member. However, Customer may propose, and with the approval of the Board, Customer may negotiate and enter into subcontracts with another utility entity for Wastewater service. Any such Wastewater to be discharged into the System under such subcontract shall be generated within the planned boundaries of the System, but may be outside the boundaries of Customer; such Wastewater will be discharged into Customer's sewers, to be transported into the System at Customer's Point of Entry along with Customer's Wastewater. In such case the additional Wastewater shall be regarded as being Customer's Wastewater for all purposes of this Contract. If such arrangement is approved by the District, such transaction shall not relieve Customer of its obligations to the District under the terms of this Contract, including payment of the Annual Requirement.

(c) When District enters into contracts to provide services of the System to future Customers, such contracts shall require a pro rata refund of applicable prior costs, if any, paid by FWSD, not including State Participation costs required by Section 2.14 or any cost for temporary or package-type facilities. If State Participation has been repurchased in whole or in part, or if FWSD has paid for System capacity for which said future Customer will subscribe or beneficially use, District agrees to provide in said contracts for pro rata reimbursement plus interest thereon to FWSD for any prior cost so paid for said capacity. The reimbursement provision of this Section shall expire fifteen (15) years after Contract Date. Thereafter, District shall not be obligated to collect such prior costs from future Customers nor to reimburse same to FWSD.

#### **Section 2.24. Customer Advisory Council.**

(a) Each Customer of the System may appoint one representative to the Customer Advisory Council for the System. The Council shall elect such officers as it deems necessary. The Council shall consult with and advise the District with regard to engineering design, financial matters, budgets, operation and maintenance, contracts for additional Customers, improvements and extensions of the System and other pertinent matters relating to the System. The members of the Council shall play an important role in the efficient functioning of the System, in representing the interest of the Customer and in keeping the Customer well informed. The Council shall have access to and may inspect at reasonable times all physical elements of the System and all records and accounts of the District pertaining to the System.

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

**Section 2.25. Water Conservation, Drought Contingency Plan.** It is the policy of the District to prepare, adopt and maintain a regional water conservation plan which incorporates loss reduction measures and demand management practices which insure that the District's water supply and the capacity of the System are used in an economically efficient and environmentally sensitive manner. Similarly, it is the policy of the District to prepare, adopt and maintain a drought and emergency contingency plan for water supply. Customer agrees to cooperate in the

implementation of both plans and to adopt and enforce such or similar plans for use within its jurisdiction.

### ARTICLE III Fiscal Provisions

**Section 3.01. Annual Requirement.** Subject to the terms and provisions of this Contract, and after accounting for any cost participation by Customer, the District will provide and pay for the cost of the acquisition, construction and improvement of the Project and System facilities, by issuing its Bonds in amounts which will be sufficient to accomplish such purposes. It is acknowledged and agreed that payment to be made under this Contract and similar contracts with other Customers, if any, will be the primary source available to the District to provide the Annual Requirement. In compliance with the District's duty to fix and from time to time to revise the rates and charges for services of the System, the Annual Requirement may change from time to time. Each such Annual Requirement shall be allocated to Customer and among other Customers as herein provided; and, the Annual Requirement for each Annual Payment Period shall be provided for in each Annual Budget and shall at all times be not less than an amount sufficient to pay or provide for the payment of:

1. An **"Operation and Maintenance Component"** equal to the amount paid or payable for all Operation and Maintenance Expenses of the System; and
2. A **"Capital Component"** equal to:
  - (i) the principal of, redemption premium, if any, and interest on the Bonds, as such principal, redemption premium, if any, and interest become due, less interest to be paid out of Bond proceeds or from other sources if permitted by any Bond Resolution, and all amounts required to redeem any Bonds prior to maturity when and as provided in any Bond Resolution, plus the fees, expenses and charges of each paying agent/registrar for paying the principal of and interest on the Bonds, and for authenticating, registering and transferring Bonds on the registration books of the District maintained with the paying agent/registrar; and
  - (ii) the proportionate amount of any special, contingency or reserve funds required to be accumulated and maintained by the provisions of any Bond Resolution; and
  - (iii) an amount in addition thereto sufficient to restore any deficiency in any of such funds required to be accumulated and maintained by the provisions of any Bond Resolution; and
  - (iv) any premium that the Board may establish on interest rates on Bonds issued for the Project or System, for which revenues of other projects of District are pledged to support the Bonds.
3. An **"Operation and Maintenance Reserve"** in an amount deemed appropriate and necessary by the Board for Operation and Maintenance Expenses of the

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

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

**Section 3.02. Annual Budget.** Each annual budget for the System shall always provide for amounts sufficient to pay the Annual Requirement. The annual budget for the System for all or any part of the first Annual Payment Period during which the System is placed into operation shall be prepared by the District based on estimates made by the District. On or before June 15 of each year after the Project is first placed in operation, the District shall furnish to Customer a preliminary estimate of the Annual Payment required from Customer for the next following Annual Payment Period. Not less than forty days before the commencement of the Annual Payment Period after the System is first placed into operation, and not less than forty days before the commencement of each Annual Payment Period thereafter, the District shall cause to be prepared as herein provided its preliminary budget for the System for the next ensuing Annual Payment Period. A copy of such preliminary budget shall be filed with Customer for review before action by the Board. Customer may submit comments about the preliminary budget directly to the Board. The Board may adopt the preliminary budget or make such amendments thereto, as the Board may deem proper. The budget thus approved by the Board shall be the annual budget for the next ensuing Annual Payment Period. The annual budget (including the first annual budget) may be amended by the District at any time to transfer funds from one account or fund to another account or fund so long as such transfer will not increase the total budget. The amount for any account or fund, or the amount for any purpose, in the annual budget may be increased through formal action by the Board even though such action might cause the total amount of the Annual Budget to be exceeded; provided that such action shall be taken only in the event of an emergency or special circumstances which shall be clearly stated in a resolution at the time such action is taken by the Board.

**Section 3.03. Payments by Customer.**

(a) For the Wastewater services to be provided to Customer under this Contract, Customer agrees to pay, at the time and in the manner hereinafter provided, its proportionate share (Annual Payment) of the Annual Requirement. Customer shall pay the Annual Payment for each Annual Payment Period directly to the District, in monthly installments in accordance with the schedule of payments furnished by the District, as hereinafter provided.

(b) Customer shall pay its Annual Payment, including a capacity charge for fixed costs, and a volume charge for variable costs of Wastewater flow. The District shall estimate its cost and shall establish a capacity charge and a price per 1,000 gallons of volume for purposes of determining the monthly payment to be made by Customer. Customer shall pay a capacity charge in approximately equal monthly installments, based on the capacity specified in Exhibit B. Such capacity charge shall be sufficient to cover the fixed cost portion of the Annual Requirement.

Customer shall pay a volume charge based on the actual volume of Wastewater delivered to each respective Point of Entry. The volume charge shall be sufficient to cover the variable cost portion of the Annual Requirement and specifically the costs associated with receiving, pumping, transporting, treating and disposing of the Wastewater and residual bio-solids (sludge).

**Section 3.04. Fiscal Policy.** It is hereby provided that in estimating costs for services, the District is specifically authorized, in its discretion, to include in such estimate of costs reasonable contributions to reserve funds and to assume that the Annual Payment Period may be a dry year. Such policy could cause revenues to be increased if the year is actually normal or wet instead of dry as assumed. This fiscal policy is expressly approved by Customer and is deemed by the parties hereto to be beneficial in the fiscal management of the System, and will assure the timely availability of funds even under unexpected circumstances. Upon receipt during any Annual Payment Period of an amount sufficient to meet the then current Annual Budget of the System for the remainder of the then current Annual Payment Period, the District shall deposit subsequent revenues received into appropriate reserve or contingency accounts. If there is a shortfall in revenues, the District may withdraw from the reserves, adjust the Annual Requirement, revise the payment schedule or do any combination thereof.

**Section 3.05. Minimum Payments/Schedule.**

(a) It is agreed that if, during any Annual Payment Period, the estimated and/or actual flow of Wastewater delivered by Customer to the System is, for any reason whatsoever, less than any minimum amount prescribed by this Contract, Customer shall pay its Annual Payment according to such minimum amount. However, if Customer's estimated and/or actual metered amount of Wastewater is equal to, or in excess of, such minimum amount, its Annual Payment shall be calculated on the basis of estimated and actual volumes. Any future contracts with other Customers also shall provide for equitable minimum amounts.

(b) All such payments for each Annual Payment Period shall be made in accordance with a written schedule of payments for the appropriate Annual Payment Period which will be supplied to Customer by District. Such schedule of payments may be based on the use of monthly flow volumes as determined by meter readings or estimates of flow or may be based on other factors determined by the District; but, in no case shall Customer's Annual Payment requirement exceed its pro rata share of the System costs.

**Section 3.06. Redetermination of Annual Requirements.** Notwithstanding the foregoing, the Annual Requirement, and Customer's share thereof (Annual Payment), may be redetermined at any time during any Annual Payment Period, to the extent deemed necessary or advisable by the District, if:

(i) The District commences furnishing services of the System to an additional Customer;

(ii) Unusual, extraordinary, or unexpected expenditures for Operation and Maintenance Expenses are required which are not provided for in the District's annual budget or reserves for the System;

(iii) Operation and Maintenance Expenses of the System are substantially less than estimated;

(iv) District issues Bonds which require an increase in the Capital Component of the Annual Payment; or

(v) The District receives either significantly more or significantly less revenues than the amounts which are provided in the District's annual budget for the System.

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

**Section 3.07. Other Revenues.** All surcharges collected from any Customer under Section 2.15 of this Contract shall be used to cover the extra costs of treating excessive strength Wastewater for the respective Customer. Under this Section, any revenues, payments and surcharges derived from extra services shall be devoted to paying the cost of said extra services and shall not be used to make the Annual Payment which is the obligation of Customer under this Contract.

**Section 3.08. Prompt Payment/Disputed Bills.** Customer hereby agrees that it will make payments required by this Contract to the District within twenty (20) days of the date a bill for service is rendered. If Customer, at any time, disputes the amount to be paid by it to the District, Customer shall nevertheless promptly make such payment or payments; but, if it is subsequently determined by agreement or court decision that such disputed payments should have been less, or more, the District shall promptly revise and reallocate the charges in such manner that Customer will recover its overpayment or the District will recover the amount due it. All amounts due and owing to the District by Customer, or due and owing to Customer by the District, shall, if not paid when due, bear interest at the rate of ten (10%) percent per annum from the date when due until paid.

**Section 3.09. Delinquent Bills.** As provided in Section 4.10, Customer specifically agrees to make all payments required by this Contract without offset or counterclaim. Nonetheless, if any Customer in the System shall become delinquent in such payments, District shall, to the extent permitted by law, discontinue the services of the System to any such Customer which remains delinquent in any payments due hereunder for a period of sixty (60) days, and is not obligated to resume such services while such Customer is so delinquent. It is further provided and agreed that if Customer should remain delinquent in any payments due hereunder for a period of one hundred twenty (120) days, and if such delinquency continues during any period thereafter, Customer's minimum amount specified by contract, shall be deemed to have been zero (0.0) gallons during all periods of such delinquency, for the purpose of calculating and redetermining the percentage of each Annual Requirement to be paid by the non-delinquent Customers; and, the District shall redetermine such percentage in such event on a basis so that the non-delinquent Customers, collectively, shall be required to pay all of the Annual Requirement. The Board may authorize the use of available System reserves as a source of funds to help offset said delinquent payments. However, the District shall pursue all legal remedies against any such delinquent Customer to enforce and protect the rights of the District, other Members and Customers, and the holders of the Bonds. The delinquent Customer shall not be relieved of the liability to the District for payment of all amounts which would have been due hereunder had no default occurred or the percentage had not been redetermined as provided in this Section. It is understood that the foregoing provisions are for the benefit of the holders of the Bonds so as to insure that all of the Annual Requirement will be paid by the non-delinquent Customers during each Annual Payment

Period regardless of the delinquency of a particular Customer. If any amount due and owing the District by Customer is placed with an attorney for collection, Customer shall pay to the District all attorneys' fees, in addition to all other payments provided for herein, including interest.

**Section 3.10. Updated Schedule of Payment.** If, during any Annual Payment Period, Customer's Annual Payment is redetermined as provided or required in the foregoing Sections, the District will promptly furnish Customer with an updated schedule of monthly payments reflecting such redetermination.

**Section 3.11. Service Areas.** For purposes of determining the Annual Requirement and for delivery of services, the District shall maintain separate cost centers for the Northeast Regional Service Area and for such other wastewater service areas the District may establish. Nonetheless, the Board reserves the right to combine two or more regional service areas for operational or billing purposes, if in the Board's judgment, such action is in the best interest of the District.

**Section 3.12. Extensions and Enlargements.** The District shall have the continuing responsibility to maintain adequate capacity in the System to meet the needs of Customer over the term of this Contract, and any extension thereof. Customer shall have the responsibility to keep the District informed of its projected needs for Wastewater service to allow adequate time for the District to plan and implement necessary improvements to the System. Likewise, the District shall have the continuing responsibility to plan for the needs of future Customers within the Northeast Regional Service Area.

#### ARTICLE IV

##### **Miscellaneous Provisions and Special Conditions**

**Section 4.01. Operation and Maintenance of System.** The District will continuously operate and maintain the System in an efficient manner and in accordance with good business and engineering practices, and at reasonable cost and expense. The District recognizes its right and duty to operate the various facilities of the System in the most prudent and economical manner for the benefit of all Customers.

**Section 4.02. Project Schedule.** It is the intent of the parties that the Project will be placed in operation as soon as practicable, and FWSD agrees to proceed diligently with the design and construction of the first phase of the Project, subject to the terms and conditions in this Contract. In connection therein, Customer agrees to provide all necessary funds required by the provisions of Exhibit D hereto.

**Section 4.03. Permits, Financing and Applicable laws.** It is understood that any obligations on the part of the District to acquire, construct, and complete the Project and other System facilities and to provide Wastewater services of the Project and other System facilities to Customer shall be:

1. conditioned upon the District's ability to obtain all necessary permits, material, labor, and equipment;

2. conditioned upon FWSD funding the cost, including engineering and construction, of the Project as specified herein;
3. conditioned upon the ability of the District to finance its share of the cost, if any, of the Project and other System facilities through the actual sale of District Bonds; and
4. subject to all present and future valid laws, orders, rules, and regulations of the United States of America, the State of Texas, and any regulatory body having jurisdiction.

**Section 4.04. Title to Wastewater and Liability for Damages and Responsibility for Treatment and Disposal of Wastewater/Reuse; Indemnification.** Liability for damages arising from the transportation, delivery, reception, treatment, and/or disposal of all Wastewater discharged into the System hereunder shall remain with each Customer to the Point of Entry, and title to such Wastewater shall be in the name of each Customer to the Point of Entry, and upon passing through Point of Entry, title to such Wastewater and liability for such damages shall pass to the District. District and Customer agree to indemnify to the extent permitted by law and to save and hold the other party harmless from any and all claims, demands, causes of action, damages, losses, costs, fines, and expenses, including reasonable attorney's fees, which may arise or be asserted by anyone at any time on account of the transportation, delivery, reception, treatment, and/or disposal while title to the Wastewater is in such party, or on account of a prohibited discharge by a Customer. Both Customer and District agree to be responsible for their own respective negligent acts. The District has the responsibility as between the parties for the proper reception, transportation, treatment, and disposal of all Wastewater discharged into the System, but not for prohibited discharges by any party at any Point of Entry. After treatment of such Wastewater, the District may, reclaim, and sell the water, sludge or any other product for reuse. Any net revenues and other benefits of such reclamation, sale and reuse shall be fairly apportioned among Participating Members and Customers, and other parties participating in such sale and reuse.

**Section 4.05. Payments.** As provided in Exhibit D hereto, Customer agrees to levy taxes, and the District shall have the right to demand payment by Customer of any obligations assumed by it or imposed on it under and by virtue of this Contract from funds raised or to be raised by taxes. Customer may make payments from its water and wastewater (sewer) system revenues, or from any other lawful source, including impact fees and ad valorem taxes.

**Section 4.06. Operating Expenses.** Customer represents and covenants that all payments to be made by it under this Contract shall constitute reasonable and necessary "operating expenses" of its combined waterworks and sewer system, and that all such payments will be made from the revenues of its combined waterworks and sewer system, from taxes or any other lawful source. Customer represents and has determined that the services to be provided by the System, including the Project and other System facilities, are absolutely necessary and essential to the present and future operation of its Wastewater system, and that the System is the best long-term method for discharging, treating and disposing of its Wastewater; and, accordingly, all payments required by this Contract to be made by Customer shall constitute reasonable and necessary operating expenses of its respective system as described above, with the effect that the obligation to make such payments from revenues of such system(s) shall have priority over any



obligation to make any payments from such revenues (whether of principal, interest, or otherwise) with respect to all bonds or other obligations heretofore or hereafter issued by Customer.

**Section 4.07. Rates for Water and Wastewater Services.** Customer agrees throughout the term of this Contract to continuously operate and maintain its waterworks system and its wastewater (sewer) system, and to fix and collect such rates and charges for water and wastewater services to be supplied by its systems as will produce revenues in an amount equal to at least:

1. all of the expenses of operation and maintenance of such system or systems, including specifically, its payments under this Contract, and
2. all other amounts as required by law and the provisions of the ordinance or resolutions authorizing its revenue bonds or other obligations now or hereafter outstanding, including the amounts required to pay all principal of and interest on such bonds and other obligations.

Notwithstanding the foregoing, in fixing and collecting such rates and charges, Customer may take into consideration the amount of any ad valorem taxes levied, assessed and collected in accordance with Section 4.05.

**Section 4.08. Use of Funds and System.** The District covenants and agrees that neither the proceeds from the sale of the Bonds, nor the monies paid it pursuant to this Contract, nor any earnings from the investment of any of the foregoing, will be used for any purposes, except those directly relating to the System, and the Bonds as provided in this Contract; provided that the District may rebate any excess arbitrage earnings from such investment earnings to the United States of America in order to prevent any Bonds from becoming "arbitrage bonds" within the meaning of the Internal Revenue Code of 1986 (the "Code") or any amendments thereto in effect on the date of issue of such Bonds. Customer covenants and agrees that it will not use, or permit the use of, the System in any manner that would cause the interest on any of the Bonds to be or become subject to federal income taxation under said Code or any amendments thereto in effect on the date of issue of such Bonds.

**Section 4.09. Rights-of-Way.**

- (a) Customer hereby grants to the District without additional cost to the District, the perpetual use of the streets, easements, and rights-of-way under its control for the construction, operation, and maintenance of the System and the Project.
- (b) Customer agrees that District may use streets, alleys and public rights-of-way within Customer's boundaries for pipeline purposes to provide Wastewater service to Customer or to other Customers without charges or tolls, provided that District makes the necessary repairs to restore to their original condition the streets, alleys or public rights-of-way so used.
- (c) FWSD hereby consents to the District exercising its power of eminent domain, if necessary, to obtain property or rights-of-way within the boundaries of FWSD for the Project and the System.

**Section 4.10. Unconditional Obligation to Make Payments.** Recognizing the fact that FWSD urgently requires the facilities and services of the Project and the System, and that such facilities and services are essential and necessary for actual use and for standby purposes; and, recognizing the fact that the District will use payments received from FWSD, other Participating Customers and future Customers, if any, to pay and secure its Bonds; it is hereby agreed that FWSD shall be unconditionally obligated to pay, without offset or counterclaim, its proportionate share of the Annual Requirement, as provided and determined in this Contract (including the obligation to pay for certain "minimums" as described in Section 2.11 hereof, regardless of whether or not the District actually acquires, constructs or completes the Project or the System or is actually delivering services of the System to FWSD, or whether or not FWSD actually receives or uses services of the System (whether due to Force Majeure or any other reason whatsoever), regardless of any other provisions of this or any other contract or agreement between any of the parties hereto. This covenant by FWSD shall be for the benefit of and enforceable by the holders of the Bonds as well as the District.

**Section 4.11. Insurance.** The District agrees to carry and arrange for fire, casualty, public liability, and/or other insurance, including self insurance, on the System for purposes and in amounts which, as determined by the District, ordinarily would be carried by a privately owned utility company owning and operating such facilities, except that the District shall not be required to provide liability insurance except to insure itself against risk of loss due to claims for which it can, in the opinion of the District's legal counsel, be liable under the Texas Tort Claims Act or any similar law or judicial decision. Such insurance will provide, to the extent feasible and practicable, for the restoration of damaged or destroyed properties and equipment, to minimize the interruption of the services of such facilities. All premiums for such insurance shall constitute an Operation and Maintenance Expense of the System.

**Section 4.12. Future Capacity.**

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

(b) This Contract includes a definition of the Northeast Regional Service Area, which area is considered the future long-term service area for the System. It is agreed to be in the best interest of the parties hereto to make future extensions from the System to serve other Customers within the Northeast Regional Service Area.

**Section 4.13. Special Provisions.** The parties hereto acknowledge and agree to the Special Provisions which are set forth in Exhibit D hereto, which Exhibit is incorporated herein for all purposes. The Special Provisions in Exhibit D of this Contract reflect circumstances or issues

for FWSD which may be different from those of other Customers and therefore constitute a modification of, or a requirement in addition to, the standard provisions otherwise contained in this Contract. If any provision of Exhibit D is different from or conflicts with the general provisions set forth in the main body of this Contract, the provisions of said exhibits shall prevail.

**Section 4.14. Exhibits.** Several special Exhibits styled Exhibit A through Exhibit D are referenced elsewhere in this Contract and attached hereto as part of this Contract.

**Exhibit A** This Exhibit identifies the boundaries of FWSD and proposed Point of Entry to the System.

**Exhibit B** This Exhibit indicates the quantities subscribed by FWSD.

**Exhibit C** This Exhibit describes prohibited discharges and requirements for Normal Wastewater for all Customers.

**Exhibit D** This Exhibit contains special provisions applicable to FWSD regarding its participation in the Doe Branch and Riverbend Plants.

**Section 4.15. Permit Compliance.** The Project and System must operate under the terms and conditions of applicable State and federal permits. Accordingly, the District agrees to use its best efforts to operate and maintain the System in an efficient and professional manner, endeavoring to provide satisfactory service to Customer while complying with applicable permits. If the District becomes aware of a condition, an action or inaction, that could cause the System to be in violation of such permits, the District will take immediate steps to remedy the potential violation. If the condition, action or inaction appears to be the responsibility of Customer, the District will give notice to Customer to take timely steps to remedy the potential violation. If the District receives a fine or penalty for a violation of an applicable permit, and if the cause of such fine or penalty is determined, after investigation, to have been the responsibility of a specific Customer, Customer hereby expressly agrees that the District shall require the Customer that caused the violation, fine or penalty to reimburse the District for actual cost thereof, in addition to taking the necessary steps to remedy the circumstance causing the violation.

## **ARTICLE V**

### **Standard Provisions**

**Section 5.01. Force Majeure.** If by reason of force majeure, any party hereto shall be rendered unable wholly or in part to carry out its obligations under this Contract, other than the obligation of Customer to make the payments required under this Contract, then if such party shall give notice and full particulars of such force majeure in writing to the other parties within a reasonable time after occurrence of the event or cause relied on, the obligation of the party giving such notice, so far as it is affected by such force majeure, shall be suspended during the continuance of the inability then claimed, but for no longer period, and any such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "**Force Majeure**" as employed herein shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of public enemy, orders of any kind of the Government of the United States or the State of Texas, or any civil or military authority, insurrection, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of

government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, partial or entire failure of water supply, or on account of any other causes not reasonably within the control of the party claiming such inability.

**Section 5.02. Term of Contract.** This Contract shall be effective on and from the Contract Date, and shall continue in force and effect for twenty-five (25) years, or for such period of time that Bonds issued by the District for the Project or the System remain outstanding, whichever period is greater; provided, however, the term of the Contract and the expiration date may be extended for a period of time not to exceed twenty (20) years by mutual agreement of Customer and the District as to the terms and conditions. The District's obligation to provide the contracted for services shall commence from the date that the District gives written notice that the Project is operational and functional to provide Wastewater services to Customer. This Contract and its attachments constitute the sole agreement between the parties hereto with respect to the Project and System.

**Section 5.03. Modification.** No change, amendment or modification of this Contract shall be made or be effective which will affect adversely the prompt payment when due of all monies required to be paid by Customer under this Contract or any similar contract; and, no such change, amendment or modification shall be made or be effective which would cause a violation of any provisions of any Bond Resolution.

**Section 5.04. Addresses and Notice.** Unless otherwise provided herein, any notice, communication, request, reply or advice (herein severally and collectively, for convenience, called "Notice") herein provided or permitted to be given, made or accepted by any party to any other party must be in writing and may be given or be served by depositing the same in the United States mail postpaid and registered or certified and addressed to the party to be notified, with return receipt requested, or by delivering the same to an officer of such party, or by prepaid telegram when appropriate, addressed to the party to be notified. Notice deposited in the mail in the manner described above shall be conclusively deemed to be effective, unless otherwise stated herein, from and after the expiration of three days after it is so deposited. Notice given in any other manner shall be effective only if and when received by the party to be notified. For the purposes of notice, the addresses of the parties shall, until changed as hereinafter provided, be as follows:

If to the District, to:

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

If to FWSD No. 10, to:

General Counsel, Denton County FWSD #10  
c/o Law Offices of Clay E. Crawford, P.C.  
4265 San Felipe, Suite 1050  
Houston, Texas 77027

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

**Section 5.05. State or Federal Laws, Rules, Orders or Regulations.** This Contract is subject to all applicable Federal and State laws and any applicable permits, ordinances, rules, orders and regulations of any local, state or federal governmental authority having or asserting jurisdiction, but nothing contained herein shall be construed as a waiver of any right to question or contest any such law, ordinance, order, rule or regulation in any forum having jurisdiction.

**Section 5.06. Remedies Upon Default.** It is not intended hereby to specify (and this Contract shall not be considered as specifying) an exclusive remedy for any default, but all such other remedies (other than termination) existing at law or in equity may be availed of by any party hereto and shall be cumulative. However, recognizing that the District's undertaking to provide and maintain the services of the System is an obligation, failure in the performance of which cannot be adequately compensated in money damages alone, the District agrees, in the event of any default on its part, that Customer shall have available to it the equitable remedy of mandamus and specific performance in addition to any other legal or equitable remedies (other than termination) which may also be available. Recognizing that failure in the performance of Customer's obligations hereunder could not be adequately compensated in money damages alone, Customer agrees in the event of any default on its part that the District shall have available to it the equitable remedy of mandamus and specific performance in addition to any other legal or equitable remedies (other than termination) which may also be available to the District. Notwithstanding anything to the contrary contained in this Contract, any right or remedy or any default hereunder, except the right of the District to receive the Annual Payment which shall never be determined to be waived, shall be deemed to be conclusively waived unless asserted by a proper proceeding at law or in equity within two (2) years plus one (1) day after the occurrence of such default. No waiver or waivers of any breach or default (or any breaches or defaults) by any party hereto or of performance by any other party of any duty or obligation hereunder shall be deemed a waiver thereof in the future, nor shall any such waiver or waivers be deemed or construed to be a waiver of subsequent breaches or defaults of any kind, character or description, under any circumstance.

**Section 5.07. Severability.** The parties hereto specifically agree that in case any one or more of the sections, subsections, provisions, clauses or words of this Contract or the application of such sections, subsections, provisions, clauses or words to any situation or circumstance should be, or should be held to be, for any reason, invalid or unconstitutional, under the laws or constitutions of the State or the United States of America, or in contravention of any such laws or constitutions, such invalidity, unconstitutionality or contravention shall not affect any other sections, subsections, provisions, clauses or words of this Contract or the application of such sections, subsections, provisions, clauses or words to any other situation or circumstance, and it is intended that this Contract shall be severable and shall be construed and applied as if any such invalid or unconstitutional section, subsection, provision, clause or word had not been included herein, and the rights and obligations of the parties hereto shall be construed and remain in force accordingly.

**Section 5.08. Venue.** All amounts due under this Contract, including, but not limited to, payments due under this Contract or damages for the breach of this Contract, shall be paid and be due in Denton County, Texas, which is the County in which the principal administrative offices of the District are located. It is specifically agreed among the parties to this Contract that Denton County, Texas is the place of performance of this Contract; and in the event that any legal proceeding is brought to enforce this Contract or any provision hereof, the same shall be brought in Denton County, Texas.

**Section 5.09. Prior Contract.** Pursuant to Section 5.03 of the Original Contract, this Contract does hereby modify and restate in its entirety the Original Contract, effective from and after the Contract Date as specified above. The Original Contract shall terminate as of the Contract Date.

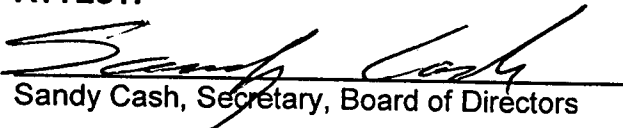
**IN WITNESS WHEREOF**, the parties hereto acting under authority of their respective governing bodies have caused this Contract to be duly executed in several counterparts, each of which shall constitute an original, all as of the day and year first above written, which is the Contract Date.

**UPPER TRINITY REGIONAL WATER DISTRICT**



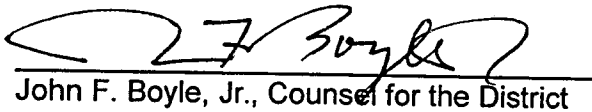
Richard Lubke, President, Board of Directors

**ATTEST:**

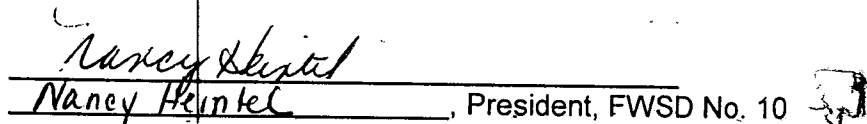
  
Sandy Cash, Secretary, Board of Directors

[District Seal]

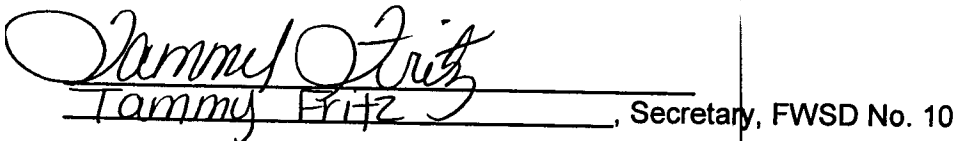
**APPROVED AS TO FORM AND LEGALITY:**

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

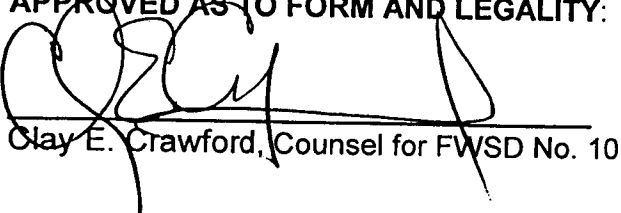
**DENTON COUNTY FRESH WATER SUPPLY DISTRICT NO.10**

  
Nancy Heintzel, President, FWSD No. 10

**ATTEST:**

  
Tammy Fritz, Secretary, FWSD No. 10

**APPROVED AS TO FORM AND LEGALITY:**

  
Clay E. Crawford, Counsel for FWSD No. 10



# EXHIBIT A

## UPPER TRINITY REGIONAL WATER DISTRICT NORTHEAST REGIONAL WATER RECLAMATION SYSTEM

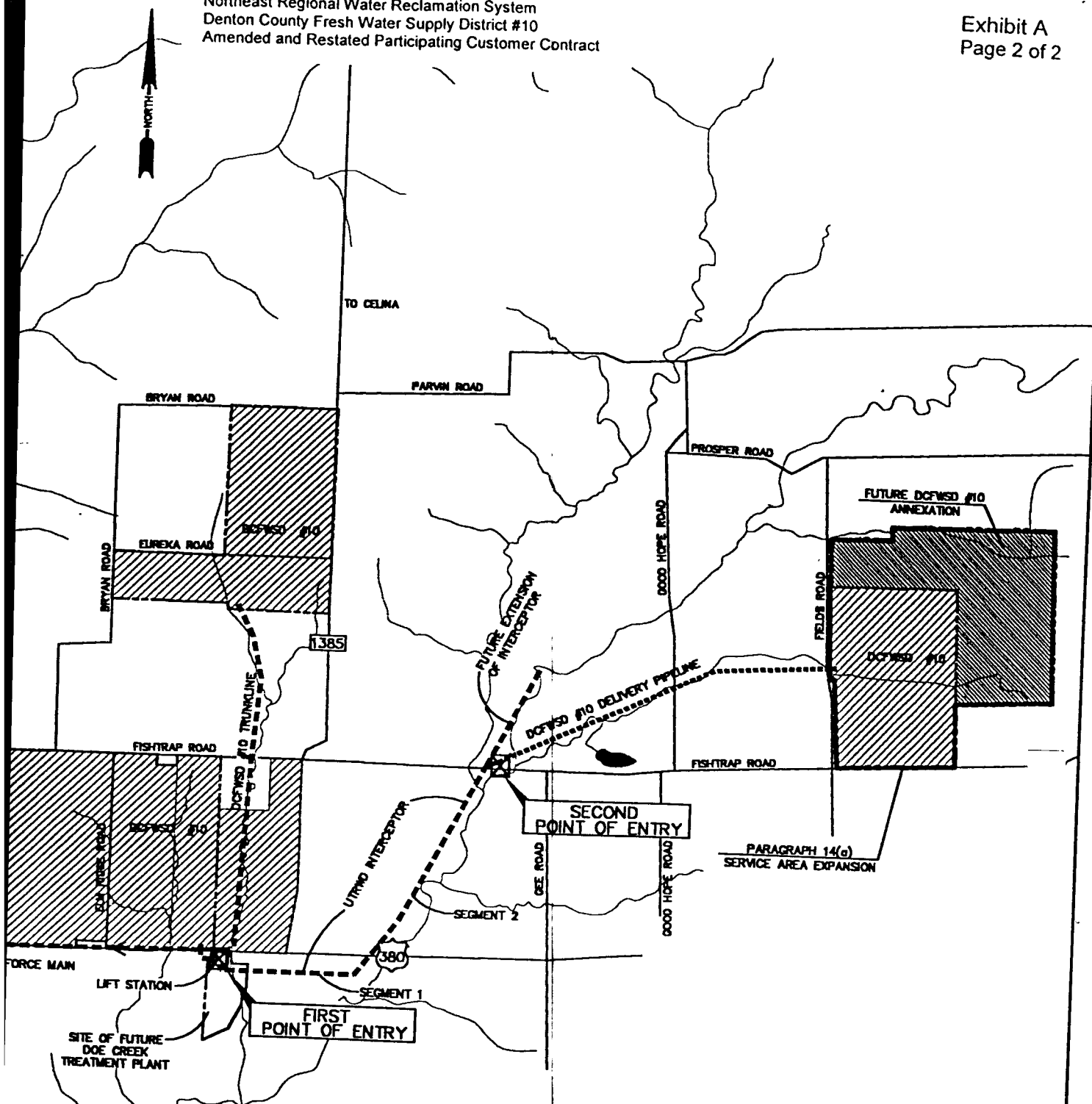
### AMENDED AND RESTATED PARTICIPATING CUSTOMER CONTRACT DENTON COUNTY FRESH WATER SUPPLY DISTRICT NO. 10

#### Boundary Map and Points of Entry for FWSD

The primary Point of Entry for FWSD will be located south of FWSD No. 10 on the south side of U.S. 380 west of F.M. 1385 in a manhole / vault equipped as a sampling and metering station. A second Point of Entry on the Doe Branch Interceptor north of U.S. 380 will serve that portion of FWSD's service area east of F.M. 1385. Page 2 of this Exhibit A illustrates the approximate location of the Points of Entry. Page 3 outlines the boundaries of FWSD as they exist as of the Contract Date.

**NOTE:** Upon mutual agreement of Customer and District, an updated or corrected Exhibit A may be substituted for this Exhibit A.





**LEGEND**

- ..... DELIVERY PIPELINE
- INTERCEPTOR

**EXHIBIT-A**  
**DCFWSO NO. 10**  
**BOUNDARY AND**  
**POINT OF ENTRY**  
**(SEWER)**

**P** **Petitt and Associates, Inc.**  
 ENGINEERING & SURVEYING

18720 MILLER ROAD, SUITE 218  
 Dallas, Texas 75238

Tel. No. (214) 221-9955  
 Fax No. (214) 340-3550

## EXHIBIT B

### UPPER TRINITY REGIONAL WATER DISTRICT NORTHEAST REGIONAL WATER RECLAMATION SYSTEM

### AMENDED AND RESTATED PARTICIPATING CUSTOMER CONTRACT DENTON COUNTY FRESH WATER SUPPLY DISTRICT NO. 10

#### Subscribed Capacity Minimum Flow and Average Flow According to Article II of the Contract

The provisions of this Exhibit B form a part of the Contract and are applicable to the District and to FWSD as if set forth in their entirety in the body of the Contract. The following quantities are mutually agreed to for the purposes noted.

| Phase                    | Minimum Flow (MGD)<br>for Financial Purposes | Average Annual Flow<br>(MGD) for Subscribed<br>Capacity |
|--------------------------|--|---|
| Phase 1: 0.5 MGD Planned | 0.05 MGD                                     | 0.11 MGD  |
| Phase 2: 1.5 MGD Planned | 0.10 MGD                                     | 0.36 MGD  |

The Northeast Regional Water Reclamation System (System) will include a minimum of two wastewater treatment plants; specifically, the Riverbend Plant and the Doe Branch Plant. All of the above subscribed capacity for FWSD shall be in the Riverbend Plant; and it is mutually agreed that FWSD has the option to increase said subscribed capacity in the Riverbend Plant to a maximum of 945,000 gallons average daily flow in the future. When FWSD desires additional capacity above 945,000 gallons average daily flow, the District will determine whether to provide the requested capacity at Riverbend or at the Doe Branch Plant.

It is mutually agreed that certain interim measures, as outlined in Exhibit D of this Contract, are necessary before the Doe Branch Plant is constructed to enable orderly and efficient development within FWSD and orderly development of the System. By mutual agreement of FWSD and District, FWSD may transport all or a portion of its Wastewater to the Doe Branch Plant. Further, FWSD does hereby covenant to participate with a minimum of 0.25 MGD subscribed capacity in the first construction of treatment capacity for the Doe Branch Plant initiated by District after January 1, 2005. After said 0.25 MGD of subscribed capacity in the Doe Branch Plant, FWSD may request additional capacity in said plant according to the provisions of this Contract.

### **Riverbend Treatment Plant.**

FWSD's initial subscribed capacity is in the Riverbend Plant, and shall be retained by FWSD according to the provisions outlined in this Exhibit B and Exhibit D. FWSD may request District to transfer its subscribed capacity (which capacity may be increased in the future) in the Riverbend Plant to FWSD No. 9 (in whole or in part, from time to time), which request will not be unreasonably denied, subject to FWSD No. 9 agreement.

**Riverbend Plant Phased Construction.** Construction of the Riverbend Plant treatment capacity for the Initial Participating Customers was originally planned to be accomplished in two (2) or more phases: Phase 1 of 0.5 MGD, and Phase 2 with a total treatment capacity of 1.5 MGD. To gain construction cost savings, FWSD and other Initial Participating Customers provided appropriate funds for the construction of a treatment plant with a 1.5 MGD capacity, and therefore the District combined Phase 1 and 2 and is constructing the Riverbend Plant with a treatment capacity of 1.5 MGD. However, FWSD's subscribed capacity shall be limited to the Phase 1 capacity until TCEQ has issued the District's pending discharge permit amendment allowing the discharge of 1.5 MGD from the Riverbend Plant. It is mutually agreed that capacity for Mustang SUD, the Town of Lincoln Park, other Members and other Customers of District may participate in future expansions above the initial constructed capacity of 1.5 MGD in the Riverbend Plant.

### **Doe Branch Treatment Plant.**

Construction of treatment plant capacity in the Doe Branch Plant for FWSD is expected to be accomplished in phases; to be determined by the District, consistent with the discharge permit approved by TCEQ, and adequate for the needs of FWSD and other Customers. FWSD shall have the continuing right to transport all of its Wastewater from within its service area to the Riverbend Plant up to the maximum amount noted herein and to receive service from said plant according to the provisions contained in Exhibit D of this Contract.

### **Additional Capacity.**

When FWSD desires additional capacity above the amount subscribed herein, to provide for future growth requirements, FWSD shall give appropriate notice to District to allow adequate time for District to coordinate financing, design and construction of additional capacity. The District, at its discretion, will determine whether to provide the requested increase in capacity at either the Riverbend Plant or the Doe Branch Plant. However, it is the intent of the Parties hereto that the Doe Branch Plant will provide for the future needs of FWSD over and above the capacity provided herein at the Riverbend Plant. The District then will use such increased capacity as the new subscribed capacity for allocation of costs to Customer as provided in the Contract. It is mutually agreed that other Customers may participate in the System to allow the District to fulfill its responsibility of providing adequate service for the region.

## EXHIBIT C

### UPPER TRINITY REGIONAL WATER DISTRICT NORTHEAST REGIONAL WATER RECLAMATION SYSTEM

### AMENDED AND RESTATED PARTICIPATING CUSTOMER CONTRACT DENTON COUNTY FRESH WATER SUPPLY DISTRICT NO. 10

#### Prohibited Discharges and Requirements For Normal Wastewater

The provisions of this Exhibit C form a part of the Contract and are applicable to the District and Customer as if set forth in their entirety in the body of the Contract.

#### Wastes Not Admissible:

Gasoline; cleaning solvents; non emulsified oils and greases; mineral oils; ashes; cinders; sand; gravel; tar; asphalt; ceramic wastes; plastics; other viscous substances; feathers; hair; rags; metal; metal fillings; glass; wood shavings; sawdust; unshredded garbage; toxic, corrosive, explosive or malodorous gases; acetylene generation sludge; cyanides or cyanide or cyanogen compounds capable of liberating hydrocyanic gas on acidification in excess of 2 mg/l by weight as CN; radioactive materials which will permit a transient concentration higher than 100 microcuries per liter; emulsified oil and grease, exclusive of soaps, exceeding on analysis an average of 100 mg/l of ether-soluble matter; acids or alkalis having a pH value lower than 6.0 or higher than 10.0; other similar substances as those named in this paragraph in quantities capable of causing obstruction to the flow of Wastewater in mains or interfere with the operation of the System; and, Wastewater containing specific pollutant concentrations in excess of any of the numerical limitations named hereunder shall be prohibited from discharge to the System:

| <u>Pollutant</u>     | <u>Maximum Allowable<br/>Concentration (ug/l)</u> |
|----------------------|---|
| Arsenic              | 100   |
| Barium               | 1,000   |
| Cadmium              | 50  |
| Chromium             | 500   |
| Copper               | 500   |
| Lead                 | 500   |
| Manganese            | 1,000   |
| Mercury              | 5   |
| Nickel               | 1,000   |
| Selenium             | 50  |
| Silver               | 50  |
| Zinc                 | 1,000   |
| Total Toxic Organics | 1,000   |

**Requirements for Normal Wastewater:**

- a) Biochemical Oxygen Demand (B.O.D.). B.O.D. of Wastewater delivered to the System, as determined by standard methods, shall not exceed 250 mg/l.
- b) Total Suspended Solids. Total Suspended Solids delivered to the System as determined by Standard Methods, shall not exceed 250 mg/l.
- c) Hydrogen Ion Concentration (pH). The pH of Wastewater delivered to the System shall not be lower than 6.0 nor higher than 10.0. No acids shall be discharged into the System unless neutralized to a pH of 6.0 or more.
- d) Hydrogen Sulfide Concentration. Dissolved sulfides in Wastewater at the Point of Entry to the System shall not exceed 0.1 mg/l.

**Revisions to the List of Prohibited Discharges:**

- a) In the event there is any conflict between this Exhibit C and applicable regulations of the TCEQ or of the United States Environmental Protection Agency, the applicable regulations shall govern.
- b) This Exhibit C is subject to revision as necessary to correlate with, to comply with, and to remain current with future regulations and requirements of TCEQ and United States Environmental Protection Agency. If the District determines that a change in this Exhibit C is necessary to respond to such revision, District shall furnish a revised Exhibit C to Customer according to the provisions of the Contract.

## EXHIBIT D

### UPPER TRINITY REGIONAL WATER DISTRICT NORTHEAST REGIONAL WATER RECLAMATION SYSTEM

### SPECIAL PROVISIONS FOR DENTON COUNTY FRESH WATER SUPPLY DISTRICT NO. 10

### AMENDED AND RESTATED PARTICIPATING CUSTOMER CONTRACT FOR WASTEWATER TREATMENT

The provisions of this Exhibit D form a part of the Contract and are applicable to the Upper Trinity Regional Water District (the "District") and to Denton County Fresh Water Supply District No. 10 ("FWSD") as if set forth in their entirety in the body of the Contract. If any provision of this Exhibit D conflicts with the general provisions in the main body of the Contract, the provisions of this Exhibit D shall prevail.

1. **Creation of FWSD.** Elections held on November 7, 2000 ordered by the temporary directors of FWSD pursuant to Chapters 49, 51 and 53 of the Texas Water Code, confirmed the creation of the FWSD, pursuant to Article XVI (Section 59), Article III (Section 52) and Article III (Section 52a) of the Constitution of the State of Texas and authorized the exercise of sanitary sewer powers. The creation of the FWSD, such elections, and other actions taken by the FWSD pursuant thereto were validated by Senate Bill 1444, Acts of the 77<sup>th</sup> Legislature of the State of Texas, Regular Session 2001. FWSD is authorized to conserve, transport and distribute fresh water from any source for domestic and commercial purposes. Also, FWSD is authorized to purchase, construct, own and operate a sanitary sewer system.
2. **Payments From Ad Valorem Taxes and Revenues.** The FWSD election held on the 20th day of January 2001, and the subsequent Canvassing Order of its Board of Directors dated January 25, 2001 authorized the FWSD to levy, establish, assess and collect an ad valorem tax ("Contract Tax") on all taxable property within its boundaries, unlimited as to rate and amount, sufficient to accomplish the payment of FWSD's obligations approved by it and imposed on it by virtue of the Original Contract, as such Original Contract may be amended from time to time, including this amended Contract. Such election and other actions taken by the FWSD pursuant thereto were validated by Senate Bill 1444, Acts of the 77<sup>th</sup> Legislature of the State of Texas, Regular Session 2001. Prior to the District issuing Bonds to expand or improve the System, or to reimburse FWSD for any capital funds provided by FWSD to construct the Project or System, FWSD hereby covenants that, subject to compliance with Section 49.108, Texas Water Code, as amended, to the extent applicable, it will levy said Contract Tax and will assess and collect such ad valorem tax each year in an amount fully sufficient to accomplish the payment of the obligations approved by it and imposed as it by virtue of this Contract. FWSD covenants to achieve through a Joint Utility Contract the levy of like taxes on any subdivided district. FWSD further pledges any taxes or revenues (herein "Joint Utility Contract Revenues") to be received

from any district created by future division of FWSD into two or more districts, to the payment of such obligations, and hereby covenants to collect such Joint Utility Contract Revenues in an amount sufficient to satisfy said subdivided district's obligations under an appropriate Joint Utility Contract. Notwithstanding the foregoing, if in advance of the time when ad valorem taxes are scheduled to be assessed and collected for any year, revenues, including revenues from any Joint Utility Contract, or other legally available funds are budgeted and appropriated for the payment of FWSD's obligations under this Contract, the amount of ad valorem taxes required to be assessed and collected pursuant to this Paragraph may be reduced to the extent and by the amount of such revenues or other funds budgeted and appropriated for payment of such obligations.

3. **Master Plans.** FWSD agrees to maintain master plans for both the water and wastewater systems within its service area. To that end, FWSD agrees to provide the District with an initial copy of such plans and updated master plans for both water and wastewater at least every five years.
4. **Wastewater Collection Systems.** FWSD agrees to install, own, operate and maintain (or to contract with others for operation and maintenance) a wastewater collection system to serve all reasonably foreseeable Wastewater needs within FWSD boundaries, including all retail customers receiving water service pursuant to a separate water supply agreement between FWSD and District. Said wastewater collection system shall be designed, constructed, and operated in accordance with generally accepted standards for municipal wastewater collection systems.
5. **Required to Connect.** FWSD will require customers within the boundaries of its service area to connect to its future wastewater collection system under reasonable rules as the collection system is installed and extended.
6. **Infiltration and Inflow.** FWSD agrees to design, construct and maintain its wastewater collection system as reasonable and necessary to limit infiltration of ground water and inflow of surface water. This requirement is intended to keep peak Wastewater flows entering the System at levels below the maximum amount provided in this Contract and to reduce the quantity of Wastewater being metered for, and charged to, FWSD.
7. **Cost Elements.** Generally, operating expenses will be shared System-wide based on flow. Capital costs shall be allocated directly to the benefiting party. The costs for which FWSD agrees to be responsible and to pay, as its share of the Annual Requirement are as follows:
  - a) **Treatment Plant Operation and Maintenance Expense.** A full pro rata share based on total FWSD flow, subject to the minimum quantity specified in Exhibit B, including a full pro rata share of cost of future replacement or rehabilitation of capital facilities.
  - b) **Treatment Plant Capital Costs.** A pro rata share based on the capacity subscribed in Exhibit B of this Contract.
  - c) **Common-To-All Facilities.** All facilities that are installed and intended for the general benefit of, and for use by, participants in the Project and System are considered to be "common-to-all." Such facilities may include major trunk lines, lift stations, metering facilities, etc. Capital cost of such facilities shall be shared among all participants according to subscribed capacity. Operation and Maintenance Expense shall be allocated according to actual flows into the System. Delivery and Treatment Facilities are typically designed with extra capacity or "oversize" to accommodate future growth and future Customers. Each participant is responsible for all costs for adequate capacity to accommodate the build-out of their respective

service areas. Any extra capacity or oversize for future Customers or participants in the System shall be considered to be Common-to-All Facilities.

d) Delivery Facilities. FWSD shall be responsible for all costs (capital costs as well as operation and maintenance costs) for delivery of Wastewater to its Point of Entry and for the trunk line from its Point of Entry to the Treatment Plant or to Common-To-All facilities. If more than one participant is sharing the use of such Delivery Facilities, costs shall be pro rated.

(e) Oversize for Future. To provide capacity for future growth of FWSD and for service to other Customers in the future, elements of the Project and System will be oversized in a prudent manner. Cost of oversize elements will be borne by Customers on a pro rata basis according to contracted capacity in Exhibit B.

(f) Doe Branch Plant. Until subscribed capacity is provided for FWSD in the Doe Branch Plant, as outlined in this Contract, all capital and Operation and Maintenance cost associated with the Doe Branch Treatment Plant shall be the responsibility of other Customers having capacity therein.

(g) Prior District Costs. The District has incurred and will continue to incur costs to develop the Doe Branch Plant, including the cost to acquire the Doe Branch Plant site, engineering costs, project coordination and management costs related to development of the Doe Branch portion of the System. To reimburse the District, said costs will be included in the Demand Charge for Customers and spread over a five (5) year period starting when the Doe Branch Plant is operational; FWSD agrees to pay a pro rata share thereof based on its subscribed capacity when provided in the Doe Branch Plant.

8. Capacity / Phased Development. FWSD expects that the service area within its boundaries will be developed in phases over a five to ten year period. The initial capacities subscribed herein is the anticipated average annual flow to be generated in a maximum flow year during the initial two years of this Contract. It is the intention of the parties that FWSD and other Participating Customers in the System during said two-year period, will jointly support an expansion of the System treatment capacity for the mutual benefit of all participants. In conjunction with planning for said expansion, FWSD shall advise District of its future needs and will subscribe to the appropriate capacity to satisfy its requirements over the planning horizon then mutually agreed for said expansion. If FWSD at any time during the life of the Contract, determines that it will need capacity greater than subscribed herein, it shall give District sufficient advance notice for District to plan, design, finance and construct the appropriate facilities needed to provide the required System capacity.

9. Easements and Property. FWSD agrees to convey to District, without costs, any easements necessary for District to construct and operate Project or System facilities within FWSD boundaries. Said easement(s) shall be for the exclusive use of District and shall be conveyed using the District's standard easement documents. To enable FWSD to plan for and to install public improvements within its boundaries, District will not unreasonably deny FWSD the right to cross easements of the District with roads, pipelines and utility easements in accordance with standards of the District. Further, any easements to be granted by FWSD to District under this Paragraph shall be subject to rights of existing easements granted prior to January 1, 2001.

10. Assignment or Sale. FWSD hereby agrees that it will not assign, sell, or convey its retail wastewater collection system to any party, without the prior written approval of District, which approval will not be unreasonably denied. Any such approval relating to a Member of the District will be denied only if the requested sale, assignment or conveyance would cause the interest on any of the Bonds to



be or become subject to federal income taxation under the Internal Revenue Code of 1986, as amended. Further, any such assignment, sale or conveyance, if approved, would require the benefiting party to assume all obligations of this Contract.

11. **Capacity for Adjacent Areas.** FWSD shall provide for future Wastewater flows from adjacent areas which, by reason of topography or sound engineering practices, should flow into and through FWSD's service area. Accordingly, if requested by District, FWSD does hereby agree to plan, design and construct its internal collection system to include adequate capacity to serve adjacent property within the drainage basin(s) that flow into or through the boundaries of FWSD. The areas to be provided for shall be generally defined by natural drainage patterns. The areas and flows to be so provided for shall be determined by mutual agreement during final design of the Project and the internal collection system. Off-site or on-site Delivery Facilities to the Treatment Plant shall be designed and constructed to accommodate the potential Wastewater flows described above from the adjacent areas outside FWSD boundaries. Notwithstanding the preceding provisions of this Paragraph, that portion of FWSD's internal collection system east of FM 1385 and south of Parvin Road shall be constructed with adequate capacity for FWSD's expected internal build-out needs. Before construction of said internal facilities, FWSD's engineer shall certify to the District that the proposed internal collection facilities and Delivery Pipeline to the Second Point of Entry are adequately sized for ultimate build-out of that portion of FWSD's service area, with an appropriate safety factor.

12. **Future Customers / Prior Costs.** In the future, any party other than FWSD that desires to discharge Wastewater into the FWSD internal wastewater collection system or into the off-site facilities of the System owned and operated by the District shall first request and receive the District's permission and must provide approved facilities to measure its Wastewater flow into the System. Further, for up to fifteen (15) years from Contract Date, any such requesting entity shall pay appropriate prior costs paid by FWSD as reasonably determined by District for previously constructed permanent facilities to be used to receive and transport the new entity's Wastewater. District will use such funds received from the requesting entity to reimburse FWSD for a pro rata share of such prior costs for any such off-site permanent facilities and its on-site internal collection system. As a minimum, said prior costs shall be equal to a pro rata share of actual original cost for the amount of capacity to be contracted to the requesting party. The District may deduct an allowance for depreciation of facilities based on a twenty-year depreciation period, beginning five (5) years after Contract Date. For off-site facilities in the Project to be used by such future Customer, pursuant to Paragraph 20 of this Exhibit D, the District at its discretion also may require a requesting party to pay a pro rata share of any principal and interest payments paid by FWSD to then current date. Further, such prior Project costs, subject to reimbursement by future participants, shall include an agreed allowance of \$100,000 for cost paid by FWSD to obtain the original discharge permit for the Doe Branch Plant, and an agreed allowance of \$75,000 for cost paid by the Initial Participating Customers to obtain the original discharge permit for the Riverbend Plant. For on-site facilities, the District at its discretion, may in lieu of pro rata share of prior costs, adopt a standard connection fee for future Customers based on the amount of capacity being requested by the benefiting party, which capacity will be determined for the expected two-hour peak flow to be generated by the requesting party. After any such reimbursement by District to FWSD as outlined above, the District will make appropriate adjustment in FWSD's share of the Annual Requirement, and thereafter will require the requesting party (new participant or Customer) to pay its share of the Annual Requirement for the System.

13. **Approval of Future Customers.** Provisions for service by FWSD to any customer (retail or wholesale) in the area outside FWSD boundaries shall require coordination and mutual agreement between FWSD and District, which agreement will not be unreasonably withheld.

(a) For any proposed wholesale Customer, the standard procedure shall be for said Customer to request service directly from the District. Before agreeing to provide such service, the District will conduct a feasibility analysis, including coordination of the point of entry with FWSD and a determination that the granting of such wholesale service will not exceed the available capacity provided for herein for off-site (outside FWSD boundaries) area. Further, the District will determine availability of capacity within the FWSD collection system and shall respect the prior right of FWSD to meet the needs of its own service area.

(b) For any proposed retail service outside FWSD boundaries, the standard procedure shall be for FWSD to request District's prior approval in writing to provide for coordination of such service and rates. For either wholesale or retail service, fees for prior cost may apply as herein provided.

(c) It is expected that Mustang SUD will provide wastewater collection services in the area adjacent to and within the Project area for retail customers within Mustang SUD's service area. Further, Mustang SUD has expressed a desire to participate in System capacity in the Riverbend Plant in connection with the first expansion above the initial (Phase 2) treatment plant capacity of 1.5 MGD. In the meantime, if Mustang SUD requests that FWSD provide service for up to 25 service connections for retail customers, FWSD shall make a recommendation to District whether adequate capacity is available and whether it would be feasible to provide the requested service; neither FWSD nor District will unreasonably deny approval of such service. Such retail service for Mustang SUD customers would be provided under the terms of the Contract, including subparagraphs (a) and (b) immediately proceeding. No similar provision for Mustang SUD is provided herein for retail service in the Doe Branch area since Mustang SUD is expected to be an initial participant in the construction of the Doe Branch Plant.

14. Expansion of Service Area. Under the Original Contract, FWSD had the right to receive wholesale Wastewater service directly from the District for an agreed service area within its initial boundaries, plus certain additional area if FWSD chose to expand its boundaries or service area. According to the Original Contract, the agreed area within its boundaries to be served was approximately 474 acres; the District approved an additional 376 acres to be served by FWSD, and no additional expansion of FWSD boundaries within the service area of Mustang SUD is authorized by this Contract.

(a) The District agrees to provide capacity in the System according to the provisions of this Contract for FWSD to serve up to an additional five hundred (500) acres, which property is generally located east of FM 1385 and north of U.S. Hwy 380, all of which is located in Denton County but outside the service area of Mustang SUD. FWSD is hereby authorized to construct the Initial Facilities and other facilities as outlined in this Exhibit D to provide service to said 500 acres. However, delivery of Wastewater to the System from said property is conditioned on (i) said 500 acres not being within an area for which someone other than FWSD holds an exclusive wastewater CCN issued by TCEQ, and conditioned upon (ii) FWSD obtaining both the water and wastewater CCNs for said 500 acres..

Provide  
proof.

(b) Further, the District agrees that FWSD may, in the future, serve additional property for which others do not hold an exclusive CCN and that is in the vicinity of the property mentioned in paragraph (a). Before service to additional property can be made available from the System under this paragraph (b), FWSD shall have obtained both the water and wastewater CCN from

TCEQ (or written permission from the holder of the CCN) for said additional property, and shall submit a request to District to include such property within the service area of the System.

Any additional area to be served by the System as outlined in paragraphs (a) and (b) above is subject to approval by District, including a determination by the District that such additional service is feasible and that adequate capacity in the System is available to provide said service. If FWSD so requests the District to provide such additional service from the System, District will not unreasonably withhold approval.

15. **Extra Capacity.** Under this Contract, FWSD has certain rights to serve additional areas pursuant to the immediately preceding paragraph of this Exhibit D. If timely requested by FWSD, District hereby agrees to include reasonable extra capacity in elements of the Project or System for such potential expansion of the area to be served by FWSD. Before FWSD may use said extra capacity to serve additional areas, FWSD must first obtain the written approval of the District, which approval will not be unreasonably withheld. This extra capacity shall not be contracted to others by District on a permanent basis without FWSD's prior written approval during the first fifteen (15) years of this Contract. Thereafter, use of any remaining capacity in the Project or System shall be subject to the District's discretion according to the terms of the foregoing provisions of this Paragraph.

#### **16. Construction of Certain Facilities.**

A. **Initial Facilities.** To expedite availability of service for retail customers within FWSD's service area and certain adjacent areas described in Paragraph 14(a), FWSD shall provide funds for certain Initial Facilities of the Project, more particularly described below. The District shall be responsible for design and construction of such Initial Facilities, except that FWSD may request authorization to design and construct said facilities, subject to approval by District, which approval will not be unreasonably denied. If so authorized by District, FWSD shall use an engineering firm approved by the District to design the Initial Facilities for construction according to District standards and generally accepted engineering practices. All plans, specifications and contract documents, whether prepared by the District or FWSD, relating to the Initial Facilities of the Project to be constructed by FWSD, shall be approved by both District and FWSD prior to advertising for construction bids, which approval will not be unreasonably withheld or delayed.

The Initial Facilities referred to above are more particularly defined as follows:

(i) **Transmission Mains.** Parallel force mains (16-inch and 8-inch) from the site of the future Doe Branch Plant and a 20-inch gravity from the end of said force mains east of Navo Road on north side of U.S. 380 to a point of connection with the existing Trunk Main that connects to the Riverbend Plant.

(ii) **Lift Station.** A lift station to be located south of U.S. 380 near its intersection with F.M. 1385 on the site of the future Doe Branch Plant. The lift station shall be designed and constructed as part of the permanent headworks for the future Doe Branch Plant.

If said Initial Facilities are to be constructed by FWSD, FWSD shall follow the guidelines for bidding, contract award and final acceptance set forth in Paragraph 34 (b) of this Exhibit for construction of District facilities. In addition, FWSD shall submit funds to District equal to five percent (5%) of the amount of the proposed construction contract to cover the cost of services and overhead of District for field engineering, and project administration. Upon completion of construction and final inspection and acceptance by District, FWSD shall submit a final accounting of the construction cost of the Initial Facilities.

**B. Other Facilities.** In addition to the Initial Facilities described above, FWSD also shall be responsible for providing the necessary funds for certain other facilities of the Project, more particularly described below. The District shall be responsible for design and construction of the Doe Branch Wastewater Interceptor, a gravity wastewater trunk main along Doe Branch Creek generally northward of the lift station constructed as part of the Initial Facilities at the headworks of the proposed Doe Branch Plant, and the Second Point of Entry for FWSD on said interceptor near Fishtrap Road.

(i) The Doe Branch Wastewater Interceptor will serve areas generally in the Doe Branch drainage basin in northeast Denton County and a portion of Collin County, including FWSD and the City of Celina. The first segment of the interceptor runs on the south side of U.S. Highway 380 eastward from the lift station to the point at which the interceptor turns northward. The second segment runs northward from the terminus of the first segment to the Second Point of Entry for FWSD on Doe Branch near Fishtrap Road, which segments are shown in Exhibit A. Both segments of the interceptor shall be consistent with the engineering report recently prepared by Alan Plummer Associates for the District, which report is titled "Northeast Denton County Regional Wastewater Treatment System - - Doe Branch Interceptor Route Selection Study". The first segment shall have a pipe size of 36-inch diameter. The second segment of the interceptor shall have a pipe size of 30-inch diameter. FWSD agrees to obtain the necessary easements for both segments of the interceptor, which easements shall be on District's standard easement form; any legal or administrative costs incurred by FWSD or others for the acquisition of said easements is not subject to future reimbursement by District.

(ii) The Second Point of Entry shall be designed and constructed by the District as a metering manhole, with internal structure and flume, ready for installation of the meter. However, at FWSD's request, installation of the meter and related instrumentation will be deferred until there is sufficient amount of Wastewater being transported through said Point of Entry to justify a need for the meter. Until said meter is installed, the Wastewater shall be metered at the headworks of the Doe Branch Plant. When requested by the District, FWSD hereby agrees to timely provide the necessary funds to enable District to install the meter and related instrumentation including the deferred funding of the meter at the Second Point of Entry, FWSD also agrees to provide all the funds required by District to construct the Doe Branch Wastewater Interceptor and the Second Point of Entry as described herein. The District shall own, operate and maintain said interceptor and said Point of Entry as part of the System. Bidding, funding, construction and Eligible Costs for reimbursement shall conform to Paragraphs 19 and 20 of this Exhibit D.

17. **FWSD Delivery Pipeline.** In order to collect and transport Wastewater from area authorized herein for FWSD to serve east of F.M. 1385 and north of U.S. 380, FWSD shall design, construct, own and operate wastewater trunk line (Delivery Pipeline) from its Second Point of Entry to the 500-acre development, all as shown in Exhibit A to this Contract. Before the Delivery Pipeline is to be constructed by FWSD, the plans and specifications therefor, shall be subject to the review and approval of District, which approval shall not be unreasonably withheld or delayed.

18. **State Participation Program / Equity Fee.** FWSD acknowledges that a portion of the System may be funded through the State Participation Program; and, if so, the State will have an equity ownership interest in the System. In such case, the District's policy is to purchase (buy-back) the State's interest over a reasonable period of time; and, to that end, District requires that any entity contracting for new or additional wastewater service capacity to pay an "Equity Fee" established by District. The "Equity Fee" is generally based on the amount of accrued interest cost on that portion of the System owned by the State and upon the amount of System capacity that would be contracted to FWSD or any other party requesting such capacity. Accordingly, FWSD agrees to pay any applicable

"Equity Fee" for System capacity requested by FWSD beyond the capacity provided in Exhibit B pursuant to this Contract according to the terms established by the District.

19. **Capital Funds For Permanent Doe Branch Plant and Pipeline Facilities.** The District shall manage the design and construction of permanent facilities in the System, based on funding being provided as follows, according to the provisions contained in this Exhibit D. The obligation to pay capital costs for the permanent facilities, including planning and engineering costs, shall be allocated among the Participating Customers generally according to the terms of this Contract.

- (a) After design of the facilities has been completed using funds advanced by Participating Customers for each phase of construction, the District will advertise and take competitive bids for construction. Further, District may take separate bids for different elements of the System, such as pipelines, pump stations or treatment works. Upon receipt of bids, District shall determine the lowest apparent bidder and shall calculate the pro rata share of the construction costs for FWSD and each of the other participants. Before a contract (or contracts) for construction is awarded, District shall give FWSD written notice of FWSD's share of the proposed amount of the contract to be awarded. Within forty-five (45) days of said notice, FWSD shall deposit with District its pro rata share of the proposed construction costs being recommended for contract award.
- (b) The funds so provided by FWSD for construction, along with pro rata funds from other participants, shall be deposited by District in an interest bearing construction account. District shall not award proposed construction contract(s) until deposit of said funds by FWSD and others. District may withdraw funds from the construction account as required to make periodic progress payments during construction, and to pay project management costs and final payments upon completion according to the construction contract(s) awarded for the particular project. District shall maintain an accounting of all expenditures for construction, which accounting shall be available for review by FWSD upon reasonable notice. Upon completion of construction, FWSD agrees to pay its share, if any, of contract change orders or extra costs required to complete the project. If such change orders exceed two percent (2%) of the construction costs and if funds are not available in the construction account, FWSD agrees to deposit additional funds during construction, if requested by District.
- (c) With each deposit of construction funds, FWSD shall deposit an additional ten percent (10%) to cover the District's cost of project management: for construction oversight, inspection, testing services, and general overhead of the District for that particular project. In a similar manner as for construction costs, District will maintain an accounting of all expenditures for project management, which accounting will be available for review by FWSD upon reasonable notice. After payment of all construction costs, change orders, any extra costs and project management costs, any surplus funds remaining in the interest bearing construction account shall be returned to FWSD and other participants on a pro rata basis.
- (d) If District applies for and receives State Participation funds for any portion of the Project or System from Texas Water Development Board, the amount of such funds will be deducted from the amount of funds otherwise required to be deposited by FWSD and other participants.
- (e) The District agrees to use its best efforts to construct the facilities when and as needed, as jointly determined by District, FWSD and other participants. District agrees that design and construction of all facilities will be made in accordance with generally accepted engineering practices. The District's ability to complete any facility may be dependent in part on receiving timely approval from other governmental bodies, including Corps of Engineers, Texas

Commission on Environmental Quality and Texas Water Development Board. Whether or not the facilities are completed, FWSD agrees to pay its pro rata share of cost actually incurred according to the terms of this Contract.

(f) As the Project and System grow, the District expects to be able to issue revenue bonds based on established revenues being generated within the service area of participants. Thereafter, to the extent such revenues are adequate for issuance of revenue bonds, it will be unnecessary for FWSD to deposit funds in advance for construction, subject to later reimbursement. Rather, FWSD will pay its share of System costs under the Contract provisions related to "Annual Requirements" set forth in the main body of this Contract.

20. **Reimbursement of Costs Advanced For Permanent Facilities.** (Administration of this Paragraph is to be coordinated with Paragraph 12 of this Exhibit D.) It is the mutual intent of District and FWSD to provide for future reimbursement of funds advanced by FWSD for the purchase of easements for the Project or System and for the cost of design and construction of permanent components of the Project and System (not including initial feasibility studies). Such reimbursements by District to FWSD shall be subject to future stream of revenues from the System being adequate to enable such reimbursement, and specifically shall be subject to the progress of development within FWSD's boundaries and service area and the levy of said Contract Tax by FWSD as required in Paragraph 2 of this Exhibit. The funds eligible for reimbursement shall be equal to funds actually deposited by FWSD and used by District for design and construction of permanent facilities of the Project or the System, including interest earned thereon (herein "Eligible Costs"). Eligible Costs shall not include any temporary, package-type treatment facilities or any initial feasibility studies. The cost for design and construction of the Initial Facilities and the other facilities described in Paragraph 16 above shall be included in the Eligible Costs. Said design and construction costs shall include project management, change orders, capitalized interest cost during the construction period (for a period not to exceed two (2) years and any other applicable construction costs) and including funds advanced for purposes of gaining a permit for Wastewater discharge. Upon completion of any given project, District shall prepare and furnish to FWSD an accounting of the Eligible Costs for reimbursement, including costs to oversize portions of the Project or System. Also upon completion of FWSD's internal collection system, FWSD shall prepare and furnish to District an accounting of applicable oversize costs eligible for reimbursement by future Customers. The procedures and funding sources for such future reimbursements are set forth below.

(a) The Eligible Costs to be reimbursed to FWSD for the advanced funding of Initial Facilities and other facilities of the Project or System will come first from fees to be collected from building activity within the FWSD. FWSD will collect a fee from building activity within its boundaries for wastewater treatment capacity. Said fees for wastewater treatment capacity to be established and collected by FWSD shall be equal to at least five hundred dollars (\$500) per residential unit, or the equivalent thereof. On a quarterly basis, FWSD shall provide to District an appropriate accounting of the fees collected, and shall forward to District ten percent (10%) of said fees, which amount the District will apply toward costs incurred by District for purchase of the Doe Branch Plant Site and other costs of developing and implementing the Project and System, which costs were not paid in advance by FWSD or other participants. The District shall verify said accounting and shall credit ninety percent (90%) of the fees collected toward the Eligible Costs, which costs are subject to reimbursement by District. If the fees so collected by FWSD exceed the Eligible Costs, the excess shall remain with FWSD. Within 90 days after each Fiscal Year, FWSD shall provide a consolidated report of all such fees collected for the year, and the disposition of said fees. The District shall determine the amount of remaining Eligible Costs and shall maintain a continuing record of costs for which the District expects to provide subsequent reimbursement to FWSD.

(b) If the building activity fees so collected for wastewater treatment capacity as outlined in sub paragraph (a) above are insufficient to cover the Eligible Costs, reimbursement of the remainder of Eligible Costs by District shall depend on establishing a stream of dependable revenues received by FWSD from retail customers actually connected to FWSD's internal collection system and providing Wastewater flow into the System. When, after at least two (2) years from Contract Date, FWSD determines that it has sufficient regular utility revenues, which may include applicable Contract Tax receipts, to warrant the District issuing Bonds for reimbursement of Eligible Costs to FWSD; then, FWSD may, from time to time, request such reimbursement by the issuance of Bonds (or from other sources available to District); FWSD shall submit appropriate documentation as to adequacy of revenues, which documentation shall be verified by a Certified Public Accountant. District shall review said documentation for accuracy and adequacy. Upon the District being satisfied that a dependable stream of revenues exists and can be reasonably relied upon to warrant issuance of Bonds, District shall issue Bonds (or use alternative funds available to District) from time to time in amounts it determines in its discretion to be prudent for reimbursement to FWSD of remaining Eligible Costs not already refunded to FWSD pursuant to Paragraph (a) immediately proceeding. The District may sell its Bonds in installments of \$500,000 or any multiple thereof, for such purpose in conjunction with other periodic District Bond issues. In the alternative, the District may sell its Bonds to reimburse FWSD in a single installment of not less than \$1,500,000 by means of a separate and distinct Bond issue. However, the District shall be obligated to sell the Bonds for purposes of reimbursing FWSD, whether by a single installment or multiple installments, at such times and in such amounts as determined by District. In making such determination, District shall verify that the annual payments being paid by FWSD to District are sufficient to amortize such Bond issues in accordance with the District's standard and customary financing structure.

(c) Certain costs will be subject to refund by District after pro rata payment is received from other future Customers. For up to fifteen (15) years from Contract Date, future Customers will be required to reimburse on a pro rata basis the prior cost of capacity provided through oversizing of pipelines and other facilities of the Project, and for oversizing of FWSD's internal collection system, if used by future Customers. The amount to be collected shall include an allowance to cover applicable costs other than actual construction costs, in that the total amount to be collected shall be based on one hundred ten percent (110%) of actual construction costs. Until all Eligible Costs have been reimbursed, any payments received from future Customers for pro rata reimbursement of prior costs will be subject to refund to FWSD. After Eligible Costs have been reimbursed under Paragraph (a) and (b) above, District will retain any such pro rata payments to help retire its Bonds. Concerning said pro rata share of actual costs so collected for reimbursement to FWSD, the District will retain the extra ten percent (10%) collected, as a direct credit to Project costs. Any such pro rata payments received by District from future Customers for oversize costs of FWSD's internal collection system shall be reimbursed to FWSD without retainage.

*as a direct  
credit to  
Eligible Cost?*

21. **Phased Construction/Participation.** The District shall proceed with the construction of the first phase of the Doe Branch Treatment Plant when: (i) FWSD needs additional capacity above its subscribed capacity in the Riverbend Plant, (ii) when requested to do so by FWSD or when requested by a Member of the District, whichever occurs first. The District agrees to not begin construction of the Project prior to January 1, 2005, unless a Member of the District requests service, which request shall be based on need and feasibility. If the District proceeds with the construction of the Doe Branch Plant prior to January 1, 2005 for a Member, FWSD shall not be obligated to participate in the Doe Branch

capacity. However, FWSD shall be required to subscribe to a minimum treatment capacity of 0.250 MGD in any construction or expansion of the Doe Branch Plant initiated after January 1, 2005.

FWSD shall have the continuing right to transfer Wastewater to the Riverbend Plant up to the maximum amount of subscribed capacity in the Riverbend Plant according to Exhibit B. If FWSD needs additional capacity above the amount allowed herein, FWSD No. 9 may authorize the District to temporarily use any of its available surplus capacity in Riverbend Plant for FWSD. FWSD may coordinate with FWSD No. 9, with written approval by FWSD No. 9 and the District, to utilize any surplus capacity FWSD No. 9 has in the Riverbend Plant. The District shall approve FWSD's use of such surplus capacity based on availability and feasibility, which approval shall not be unreasonably withheld. Prior to reaching its subscribed capacity in the Riverbend Plant, FWSD agrees to subscribe to adequate capacity in the Doe Branch Plant, and the District agrees to use its best efforts to provide such capacity as needed by FWSD. The District reserves the right to transfer all or a portion of FWSD's subscribed capacity in the System to the Doe Branch Plant at no additional cost to FWSD, and to reallocate any remaining capacity subscribed by FWSD in the Riverbend Plant to FWSD No. 9. Any surplus capacity in Riverbend created by such transfer of FWSD capacity to the Doe Branch Plant may be allocated or contracted to others according to standard procedures of the District.

✓ 22. **Eminent Domain.** In obtaining easements and property for the Project or System, District and FWSD acknowledge that the use of the power of eminent domain may be required, if and when negotiations are not successful in obtaining the required parcels. FWSD hereby confirms and agrees that it has the power of eminent domain which may be exercised within and without the boundaries of FWSD. Accordingly, FWSD is agreeable to use its power of eminent domain if requested by District concerning the acquisition of any specific parcel of property or an easement required for the Project.

23. **Contingency for Service.** Recognizing that development within the boundaries of FWSD is expected to proceed rather quickly after the Contract Date, FWSD and District agree to proceed to implement and complete the Initial Facilities and Project in the shortest practicable time, and to use best efforts to have necessary facilities in operating condition prior to completion of dwelling units within FWSD. However, in the event that dwelling units are completed prior to the Project being operational, FWSD may arrange for the construction of a specially designed holding tank. Said holding tank is not part of the Project and shall be ahead of the Point of Entry (alternatively, at the Point of Entry, if approved by District). FWSD shall own the tank and shall be responsible for monitoring and operating the tank, avoiding spills and providing security therefor. District and FWSD agree that FWSD may contract with licensed waste hauler(s) to pump and transport Wastewater (at FWSD's expense) from the holding tank to a District treatment plant. If it becomes necessary for FWSD to deliver Wastewater from FWSD's holding tank to a District treatment plant by tank truck, FWSD agrees to pay the District's reasonable treatment and overhead charges, in addition to all other cost, fees and charges applicable under this Contract. Notwithstanding other provisions of this Contract, FWSD shall hold title to, and responsibility for any Wastewater being so hauled, until such Wastewater is accepted by District at the treatment plant.

✓ 24. **Provision to Subdivide.** Section 53.029, Texas Water Code, authorizes a fresh water supply district under certain circumstances to subdivide into two or more new districts. Nothing contained in this Contract shall limit the authority of FWSD to subdivide, provided the District is notified in writing at least sixty (60) days in advance of such proposed subdivision; and, provided that the appropriate share of the obligations under this Contract are being assumed by the new subdivided districts in a manner that is approved in writing by the District. FWSD further pledges any taxes or revenues (herein "Joint Utility Contract Revenues") to be received from any district created by future division of FWSD into two or more districts, to the payments of such obligations, and hereby covenants to collect such Joint Utility Contract Revenues in an amount sufficient to satisfy said subdivided district's obligations under an



appropriate Joint Utility Contract. Instruments and contracts related to such proposal to divide shall be submitted to District for its review and approval. Review and approval by the District shall be limited to fiscal responsibility and operational compatibility. The foregoing provisions of this Paragraph notwithstanding, FWSD covenants that it will be entirely responsible for providing adequate funds to District to fulfill the obligations of this Contract, that it will enter into a Joint Utility Contract with any subdivided district, the terms of which shall require prior approval by District; and, that District will not be required to look to any subdivided district of FWSD to meet the obligations and requirements of this Contract. The District agrees to approve or disapprove such proposal by FWSD to subdivide within forty-five (45) days of receipt of written notice, and such approval shall not be unreasonably withheld.

- ✓ 25. **Transfer to a Municipality.** FWSD or any district created therefrom pursuant to Section 53.029 of the Texas Water Code, retains the right to transfer, assign and convey its rights, titles, interests and responsibilities under this Contract to any city, town or village that annexes said district in its entirety and assumes the responsibilities of this Contract as a matter of law or agrees to assume said rights, titles, interests and responsibilities in their entirety. Any other transfer, assignment and conveyance must be submitted to the District in writing for its approval. The District shall approve or disapprove said request within 120 days of receipt of written request and such approval shall not be unreasonably withheld.
- ✓ 26. **Standards/Specifications.** As a condition of receiving wastewater treatment service under this Contract, FWSD agrees to design, construct, operate and maintain its wastewater collection system to generally accepted municipal standards and applicable specifications published by North Central Texas Council of Governments. All pipelines shall be minimum four (4) inch diameter with sufficient capacity for build-out of FWSD including capacity for upstream areas required to be served under this Contract. Further, pipes, fittings and manholes shall conform to generally accepted specifications of typical municipal wastewater utilities. The District shall have the right to review and approve construction plans and pipe size for offsite lines connecting the FWSD internal system to the Project and System.
- ✓ 27. **Contract for Operation.** FWSD agrees and acknowledges that Mustang Special Utility District (MSUD) has a Certificate of Convenience and Necessity (CCN) for wastewater service for most of the area within the boundaries of FWSD. Accordingly, FWSD agrees to contract with MSUD for operation of FWSD's retail wastewater collection system or for such other services mutually agreed by FWSD and MSUD. If FWSD and MSUD do not contract for MSUD to operate that portion of the FWSD wastewater collection system outside MSUD's CCN, any alternative contracting party shall be subject to District's approval.
- ✓ 28. **Bonds Not Subject to Federal Income Tax.** The District recognizes that FWSD and MSUD have entered into, or will enter into, one or more agreements concerning coordination and operation of the wastewater collection system to be constructed to provide retail wastewater service within the boundaries of FWSD. In regard to such agreement(s), FWSD hereby covenants and agrees that it will not use or operate said retail collection system, or permit the use or operation of said system or of the District's System in any manner that could cause the interest on any of the District's Bonds to be or to become subject to federal income taxation under the Internal Revenue Code of 1986 or any amendments thereto in effect on the date of issue of such Bonds.
- ✓ 29. **Approval of Operating Contracts.** FWSD agrees that in regard to an agreement with any private party to operate or maintain its internal wastewater collection system, it will award such operating agreement(s) pursuant to Qualified Management Contracts, in compliance with the Internal Revenue Code. For a party other than MSUD, FWSD agrees that it will award such agreement(s) only after written approval by the District and its Bond Counsel, concluding that the proposed operating

agreement will not adversely affect the tax-exempt status of the District's Bonds, notes, and other obligations. FWSD agrees to provide to District for its review and approval any new or amended agreement or contract to operate the wastewater collection system. Each new or amended contract shall include provisions that such private operator takes the contract subject in all respects to this Contract. The District's review and approval of any new or amended agreements or contracts with a private operator to operate FWSD's wastewater collection system shall not be unreasonably withheld, and shall only be withheld if such agreements or contracts could adversely affect the tax exempt status of the District's Bonds, notes, and other obligations, in the opinion of the District's Bond Counsel. FWSD agrees to include the necessary provisions in its operating agreement to satisfy the Internal Revenue Code requirements. If FWSD enters into an operating contract with MSUD, or a public entity that is qualified to issue tax exempt municipal bonds, any such operating contract or agreement will not require prior approval by District; however, FWSD shall provide notice to District with a copy of such contract.

- ✓ 30. **Approval to Convey.** FWSD hereby agrees that it will not assign, sell, or convey its retail wastewater collection system to any party, including MSUD, without the prior written approval of District, which approval will not be unreasonably denied. Furthermore, any such approval relating to MSUD will be denied only if any requested sale, assignment or conveyance would cause the interest on any of the Bonds to be or become subject to federal income taxation under the Internal Revenue Code of 1986, as amended. Further, any such assignment, sale or conveyance if approved would require the benefiting party to assume all obligations of this Contract.
- ✓ 31. **Non-Member Customer Rates.** FWSD agrees and understands that this Contract provides for FWSD to be a Customer of the District's Northeast Regional Water Reclamation System as herein defined; and further, that FWSD is not entitled to be a Participating Member or Participating Utility of said System. The special privileges enjoyed by Participating Members and Participating Utilities are derived from their having carried the risks and costs of developing and organizing the District and developing service programs after the District was created by the State Legislature in 1989. Nevertheless, it is hereby acknowledged that this Contract, as compared to similar contracts with Participating Members and Participating Utilities, provides for FWSD to receive wastewater service under reasonably comparable terms. However, FWSD shall not be entitled to a direct representative on the Board, but will be represented by an at-large representative. Further, FWSD agrees that it is reasonable and necessary for the District to charge FWSD a higher "Customer" rate for wastewater service than the "Member" rate otherwise charged by District to Participating Members and Participating Utilities, which higher rates are agreed to be fully justified as a matter of equity and law. It is mutually agreed that the Customer rates and charges for services hereunder shall never be more than seven percent (7%) above like rates charged by District to Participating Members and Participating Utilities of District; and, it is further agreed that the extra percentage shall apply only to the variable volume rate and not to fixed or capital costs portions of rates and charges. Further, it is mutually agreed that FWSD shall be exempt from the Administrative Payment defined in Section 1.02 of this Contract.
- ✓ 32. **FWSD May Obtain Easement.** If requested by FWSD, District will authorize FWSD to use its own personnel and resources, without reimbursement, to negotiate for and obtain any property, easements and permits for the Project or System. Said property, easements and permits shall be obtained in the name of the District on standard forms of District. District shall use its funds to pay the actual cost of said property and easements, either on a contemporaneous basis or reimbursement basis, at the option of the District. In obtaining such property and easements, FWSD agrees to follow the rules, guidelines, form of easement and procedures of the District.

- ✓ 33. **Alternative Metering Provision.** Subject to prior written approval by the District's Executive Director, FWSD may propose that the amount of Wastewater delivered by FWSD to District at its first Point of Entry be determined by summation of water meter readings for all retail customers and other usage within FWSD's distribution system. Such approval by the Executive Director will be given only if such change is in the best interest of the District, and will promote increased efficiency. Further, such approval shall be granted only if an acceptable and reliable method is developed and approved for determination of the volume of flow from within FWSD's system. In the alternative, the Executive Director on his own initiative may authorize such system or an alternative system for determination of Wastewater delivered by FWSD.
34. **Construction of District Facilities.** In conjunction with development of infrastructure within FWSD's boundaries, it may be mutually convenient for FWSD to construct certain facilities for District. If so mutually agreed, District and FWSD may proceed with joint plans for design and construction on a cost reimbursement basis according to the following procedures:
- (a) Design shall be in accordance with District standards and generally accepted engineering practice. Unless the plans and specifications are prepared by District, all plans, specifications and contract documents relating to District facilities shall be submitted to District for review and approval by staff prior to FWSD advertising for construction bids. Such plans, specifications and contract documents shall clearly identify and itemize all District facilities to be constructed to allow the associated cost to be determined.
  - (b) FWSD shall serve as project manager for both parties and shall advertise, award and contract for construction of District facilities contemplated herein in full compliance with Sections 49.271 - 49.273 and 49.275 of the Water Code. Prior to award of contract for construction of District facilities, FWSD shall provide District with full and complete bid packet, including bid tabulation and recommendation of award by FWSD's engineer, including a certification that all applicable bidding procedures were followed. After consideration by its Board of Directors, District shall promptly notify FWSD of its action. If District concurs, FWSD shall proceed to execute the contract according to the terms and conditions contained herein. FWSD shall be responsible for field engineering and other activities to assure the facility is constructed according to plans and specifications. District shall have the right to inspect construction of District facilities as the work progresses and the right of final acceptance or rejection of completed work. Upon completion of construction and final acceptance by District, full fee simple ownership of the facility and its appurtenances shall be vested in District without further action by the parties.
  - (c) FWSD shall submit the contractor's request for monthly progress payment and related FWSD engineering fees along with its recommendation to District for review and concurrence. Within twenty (20) days after such concurrence, District shall reimburse FWSD its share of such payment due the contractor and FWSD's engineering fees. Construction change orders, if any, which do not exceed three percent (3.0%) of the original contract amount for construction of District facilities in the aggregate, or twenty-five thousand dollars (\$25,000) individually, may be approved on behalf of District by its Executive Director. Change orders which exceed the three percent (3.0%), or the twenty-five thousand dollars (\$25,000) guideline shall require approval in advance by District's Board of Directors. Any change order relating to construction of District facilities must be approved by District prior to execution.
35. **Greenbelt / Watershed Protection.** To help protect the quality of the District's water supply in Lewisville Lake, FWSD agrees to arrange for natural riparian lands to be set-aside as greenbelts within FWSD's service area. Said greenbelts shall be dedicated in perpetuity and shall be under the control

of and administered by FWSD, an appropriate public agency or a local homeowners association. Such greenbelts shall be left largely in their natural state, but may be used for multiple purposes such as buffer zones, hiking or jogging trails, wetlands, stormwater retention and playgrounds. Further, FWSD agrees to work with District in a mutually beneficial manner to promote and develop water impoundments for aesthetic, water quality and water supply reuse purposes according to a master plan for a "chain of lakes" concept, if such plan is adopted by the District.

36. **FWSD's Interest in the Riverbend Plant.** FWSD previously entered into the Original Contract with the District to participate in the Riverbend Plant, whereby the District agreed to provide wholesale wastewater treatment services to FWSD. However, FWSD and District have determined that FWSD may be served better from the proposed Doe Branch Plant. Therefore, FWSD retains an option to assign all or part of its subscribed capacity, rights and obligations in the Riverbend Plant to FWSD No. 9 if FWSD's Wastewater is transferred from the Riverbend Plant to the Doe Branch Plant according to the provisions of this Exhibit D. Such assignment shall require approval in advance by District in a direct agreement with FWSD No. 9, which assignment will not be unreasonably denied. FWSD No. 9 shall thereafter, pursuant to said agreement with District, be responsible for all of FWSD's rights and obligations in the Riverbend Plant, including the rights for reimbursement by the District for funds previously deposited with the District by FWSD. However, if the discharge permit for the Doe Branch plant is not issued by TCEQ, FWSD may continue to discharge into the Riverbend Plant according to the provisions outlined in this Contract; more specifically, according to the provisions of this Exhibit D.





REGIONAL WATER DISTRICT

P.O. Drawer 305 • Lewisville, TX 75067

(972) 219-1228 • Fax: (972) 221-9896

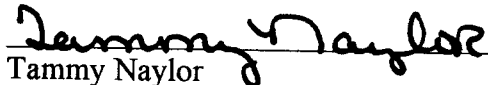
State of Texas

County of Denton

I, Tammy Naylor, Senior Executive Secretary of the Upper Trinity Regional Water District, as authorized by the District's Executive Director, hereby certify that the:

**Amended and Restated Participating Customer Contract  
With Denton County Fresh Water Supply District No. 10  
Dated May 1, 2003**

is a true and correct copy of a public record of the Upper Trinity Regional Water District, filed, recorded, compiled and maintained in the regular and official course of business of the Upper Trinity Regional Water District. Given under my hand and seal this 14<sup>th</sup> day of April, 2004.

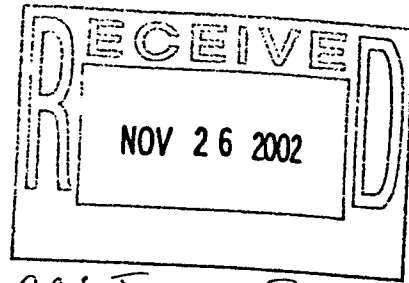


Tammy Naylor  
Senior Executive Secretary

# **OVERSIZED MAP(S)**

TO VIEW OVERSIZED MAP(S)  
PLEASE GO TO  
**CENTRAL RECORDS**

FOR ANY QUESTIONS  
PLEASE CALL **CR** MAIN LINE  
**(512) 936-7180**



CC: Jason Pierce

November 25, 2002

Mr. Tom Taylor  
Executive Director  
Upper Trinity Regional Water District  
PO Drawer 305  
Lewisville, Texas 75067

RE: RESOLUTION FOR PLANNING

Dear Tom:

On November 12, 2002, Celina City Council approved Resolution No. 02 -62 endorsing and adopting for planning purposes a proposed concept for implementation of regional wastewater treatment services.

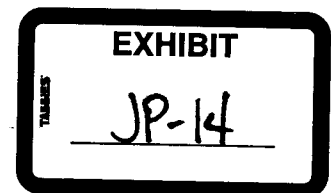
Upper Trinity Regional Water District should work closely with the City Engineer (Birkhoff, Hendricks and Conway) and City staff in its planning efforts for Celina's corporate limits and planning boundaries (approx. 99 sq. miles)

The City of Celina expresses its appreciation to Upper Trinity Regional Water District for its assistance in helping identify and plan for future service needs of the City.

Attached for your files is a copy of the resolution. If you have any questions, feel free to call my office at (972) 382-2682.

Respectfully,

Scott L. Albert  
City Administrator





**CITY OF CELINA**

**RESOLUTION NO. 02-62**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CELINA, TEXAS, ENDORSING AND ADOPTING FOR PLANNING PURPOSES A PROPOSED CONCEPT FOR IMPLEMENTATION OF REGIONAL WASTEWATER TREATMENT SERVICES; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Celina, Texas (the "City") is a Type A General Law municipality located in Collin County, Texas, created in accordance with the provisions of the Texas Local Government Code and operating pursuant to enabling legislation of the State of Texas; and

**WHEREAS**, the City of Celina is a member of Upper Trinity Regional Water District ("UTRWD"), a governmental entity whose mission is to plan, develop and operate regional water and wastewater systems to serve members and customers; and

**WHEREAS**, the City upon becoming a member of UTRWD, expressed its interest in the District assisting the City in planning for future growth needs of the City for wastewater collection and treatment; and

**WHEREAS**, UTRWD has commenced the construction of the Riverbend Wastewater Treatment Plant and is in the permitting stage for the proposed Doe Branch Wastewater Treatment Plant; and

**WHEREAS**, the City and UTRWD are currently considering utilization by the City of either of these plants; and

**WHEREAS**, wastewater collection and treatment can provide for protection of the environment while enabling the City to address the needs of citizens for both economic development and high quality of life.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CELINA, TEXAS, THAT:**

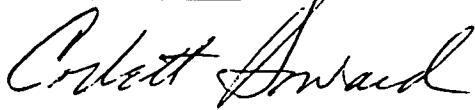
- Section 1.** The City Council does hereby express its appreciation to Upper Trinity Regional Water District for its assistance in helping identify and plan for future needs of the City, concerning control of wastewater.
- Section 2.** The City Council does hereby request UTRWD to continue its planning efforts for the City and the areas around the City that may be affected by future growth, to encourage and assist all interested parties in the development of a regional wastewater collection and treatment system on a timely basis.

**Section 3.** The City Council does hereby endorse and adopt for planning purposes the concept of a future regional wastewater system for the City and its nearby areas, and to express its intent to participate in implementation of such system when needed and justified by future development.

**Section 4.** The City Council does hereby express its intent to use such concept as a guide in future planning activities for the City and in setting forth the City's requirements for future developers who, in the public interest, would need to participate in implementation of such a concept.

**Section 5.** This resolution shall take effect from and after its final date of passage, and it is accordingly so ordered.

**PASSED AND APPROVED** by the City Council of the City of Celina, Texas, this the 12 day of November 2002.



CORBETT HOWARD, MAYOR  
CITY OF CELINA, TEXAS

  
CITY SECRETARY

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY