



Control Number: 45919



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DOCKET NO. 45919

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APPLICATION OF CITY OF §
PRINCETON TO AMEND A SEWER §
CERTIFICATE OF CONVENIENCE §
AND NECESSITY IN COLLIN §
COUNTY §

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PUBLIC UTILITY COMMISSION
OF TEXAS
PUBLIC UTILITY COMMISSION
CLERK

CITY OF PRINCETON’S RESPONSE TO COMMISSION STAFF’S FIRST REQUEST FOR INFORMATION 1-1

The City of Princeton (“City” or “Princeton”) and files this Response to the First Set of Requests for Information (“RFI”) of the Commission Staff (“Staff”) served on September 14, 2016. This response is timely filed.

Respectfully submitted,

Russell & Rodriguez, L.L.P.
1633 Williams Drive, Building 2, Suite 200
Georgetown, Texas 78628
(512) 930-1317
(866) 929-1641 (Fax)

/s/ Arturo D. Rodriguez, Jr.
ARTURO D. RODRIGUEZ, JR.
State Bar No. 00791551

ATTORNEY FOR THE CITY OF PRINCETON

10

DOCKET NO. 45919

**APPLICATION OF CITY OF
PRINCETON TO AMEND A SEWER
CERTIFICATE OF CONVENIENCE
AND NECESSITY IN COLLIN
COUNTY**

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

**CITY OF PRINCETON'S RESPONSE TO COMMISSION STAFF'S FIRST REQUEST
FOR INFORMATION 1-1**

Request for Information No. 1-1: Please provide an official copy of the City of Princeton's current, active TCEQ permit to discharge waste.

RESPONSE: The City of Princeton does not have an active TPDES permit. Wastewater treatment is provided by North Texas Municipal Water District. Said contract is attached hereto.

Prepared/sponsored by: To be supplemented

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of September, 2016, a true and correct copy of the foregoing document has been sent via facsimile, first class mail, or hand-delivered to the following counsel of record:

Mr. Ralph J. Daigneault
Public Utility Commission of Texas
1701 N. Congress Avenue
Austin, Texas
(512) 936-7261
(512) 936-7268 Fax

/s/ Arturo D. Rodriguez, Jr.

ARTURO D. RODRIGUEZ, JR.

NORTH TEXAS MUNICIPAL WATER DISTRICT - UPPER EAST FORK
WASTEWATER INTERCEPTOR SYSTEM SUPPLEMENTAL CONTRACT
(CITY OF PRINCETON, TEXAS)

THE STATE OF TEXAS :

NORTH TEXAS MUNICIPAL WATER DISTRICT :

THIS NORTH TEXAS MUNICIPAL WATER DISTRICT - UPPER EAST FORK
WASTEWATER INTERCEPTOR SYSTEM SUPPLEMENTAL CONTRACT (CITY OF
PRINCETON, TEXAS) (the "Contract") made and entered into as of the 26TH day of NOVEMBER
1996, by and between NORTH TEXAS MUNICIPAL WATER DISTRICT (the "District"), an
agency and political subdivision of the State of Texas, being a conservation and reclamation district
created and functioning under Article 16, Section 59, of the Texas Constitution, pursuant to Chapter
62, Acts of the 52nd Legislature of the State of Texas, Regular Session, 1951, as amended (the
"District Act"), and the City of Princeton, in Collin County, Texas ("Princeton").

WITNESSETH:

WHEREAS, Princeton is a duly created city and political subdivision of the State of Texas
operating under the Constitution and laws of the State of Texas and its Home Rule Charter; and

WHEREAS, the District and Princeton are authorized to enter into this Contract pursuant to
the District Act, Chapter 30, Texas Water Code, and other applicable laws; and

WHEREAS, the District has acquired and constructed and is operating a regional
Wastewater treatment system to serve various Member Cities within the watershed or drainage area
of the East Fork of the Trinity River, in Dallas, Collin, and Denton Counties, Texas (the "Treatment
System"); and

WHEREAS the Treatment System heretofore acquired and constructed is described in various
engineering reports, and includes the facilities and capacities required to serve the Cities of Mesquite,
Plano, Richardson, Allen, McKinney, Forney, Frisco, and Princeton (the "Member Cities"); and

WHEREAS, the contracts between the District and the Member Cities require that each of the Member Cities must arrange or provide for the transportation of its Wastewater to its Point or Points of entry into the District's Treatment System; and

WHEREAS, in order to comply with such requirement the Cities of Allen, McKinney, Plano, and Richardson, Texas (the "Initial Contracting Parties") and the District entered into the "Upper East Fork Wastewater Interceptor System Contract", dated as of July 26, 1984 (the "Initial Contract"), which provided for the separate financing, construction, operation, and maintenance by the District of an interceptor system (the "Interceptor System"), to transport the Wastewater of the Initial Contracting Parties and any Additional Contracting Parties into the District's Treatment System, and with such Interceptor System not to constitute any part of the Treatment System; and

WHEREAS, pursuant to the Initial Contract the District has issued and delivered, and there are now outstanding, the following:

the unpaid and unrefunded North Texas Municipal Water District Upper East Fork Wastewater Interceptor System Contract Revenue Bonds, Series 1985, dated February 1, 1985, authorized by resolution of the Board of Directors of the District on February 28, 1985;

the unpaid and unrefunded North Texas Municipal Water District Upper East Fork Wastewater Interceptor System Contract Revenue Refunding Bonds, Series 1988, dated August 1, 1988, authorized by resolution of the Board of Directors of the District on August 5, 1988;

the unpaid and unrefunded North Texas Municipal Water District Upper East Fork Wastewater Interceptor System Contract Revenue Bonds, Series 1992, dated November 1, 1992, authorized by resolution of the Board of Directors of the District on October 29, 1992; and

the unpaid and unrefunded North Texas Municipal Water District Upper East Fork Wastewater Interceptor System Contract Revenue Refunding Bonds, Series 1994, dated February 15, 1994, authorized by resolution of the Board of Directors of the District on February 24, 1994; and

WHEREAS, the Initial Contract makes provision for Additional Contracting Parties to become Contracting Parties with substantially the same rights and obligations as each of the Initial Contracting Parties, upon the execution of a contract similar to the Initial Contract; and

WHEREAS, upon the execution of this Contract, Princeton will become such an Additional Contracting Party, and thus a Contracting Party, in accordance with the requirements of the Initial Contract, with all conditions prerequisite to such execution having been met; and

WHEREAS, this Contract substantially restates the essential provisions of the Initial Contract and is structured similar thereto to the fullest extent applicable and practicable, including the requirements with respect to "minimums", but with such additions and changes that are necessary to meet the actual circumstances, with the effect that Princeton, being the an Additional Contracting Party, hereby adopts the provisions of the Initial Contract, as supplemented and necessarily changed by this Contract; and

WHEREAS, the "minimums" set for Princeton in Section 13(c) of this Contract are equitable and have been fixed by the District as required in the Initial Contract.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the District agrees to provide Wastewater transportation services of the Interceptor System to Princeton under this Contract, and to issue its Bonds from time to time, upon and subject to the terms and conditions hereinafter set forth, to-wit:

Section 1. DEFINITION OF TERMS. The following terms and expressions as used in this Contract, unless the context clearly shows otherwise, shall have the following meanings:

(a) "Additional Contracting Party" means any party with which, in accordance with the Initial Contract and this Contract, the District makes a contract similar to this Contract for providing services of the Interceptor System, provided that after execution of any such contract such party shall

become one of the Contracting Parties for all purposes of this Contract, unless otherwise specifically provided herein.

(b) "Adjusted Annual Payment" means the Annual Payment, as adjusted during or after each Annual Payment Period, as provided by this Contract.

(c) "Annual Payment" means the amount of money to be paid to the District by each of the Contracting Parties during each Annual Payment Period as its proportionate share of the Annual Requirement.

(d) "Annual Payment Period" means the District's Fiscal Year, which currently begins on October 1 of each calendar year and ends on the last day of September of the next calendar year.

(e) "Annual Requirement" means the total amount of money required for the District to pay all Operation and Maintenance Expenses of the Interceptor System, to pay the debt service on its Bonds, to pay or restore any amounts required to be deposited in any special, contingency, or reserve funds required to be established and/or maintained by the provisions of the Bond Resolutions, all as further described in this Contract.

(f) "Bond Resolution" means any resolution of the District which authorizes any Bonds.

(g) "Bonds" means all bonds heretofore and hereafter issued by the District, including specifically the outstanding bonds described in the preamble to this Contract, whether in one or more series or issues, and the interest thereon, to acquire and construct the Interceptor System, and/or subsequently to improve and/or extend the Interceptor System, and any bonds issued to refund any Bonds or to refund any such refunding bonds.

(h) "Contracting Parties" means the Cities of Allen, McKinney, Plano, Richardson, Frisco and Princeton, together with any other party or parties which hereafter becomes one of the Contracting Parties by becoming an Additional Contracting Party.

- (i) "Contracting Party" means any one of the Contracting Parties.
- (j) "Engineering Report" means the report of Shimek, Jacobs & Finklea, Consulting Engineers, Dallas, Texas, dated November, 1983, describing the original facilities of the Interceptor System, together with all changes therein and supplements and additions thereto by said Consulting Engineers or other engineers.
- (k) "Interceptor System" means collectively the Wastewater transportation facilities described in the Engineering Report, and all improvements and additions to and extensions, enlargements, and replacements of such facilities which are acquired and constructed by the District in order to receive and transport Wastewater of the Contracting Parties to their respective Points of Entry into the Treatment System. However, and notwithstanding the foregoing, said term includes only those facilities which are acquired or constructed with proceeds from the sale of Bonds issued, or payments made, pursuant to the Initial Contract and this Contract, and any similar contracts with Additional Contracting Parties. Said term does not include any part of the Treatment System or any facilities acquired or constructed by the District with the proceeds from the issuance of "Special Facilities Bonds", which are hereby defined as being revenue obligations of the District which are not secured by or payable from Annual Payments made under the Initial Contract, this Contract, and similar contracts with Additional Contracting Parties, and which are payable solely from other sources.
- (l) "Operation and Maintenance Expenses" means all costs and expenses of operation and maintenance of the Interceptor System, including (for greater certainty but without limiting the generality of the foregoing) repairs and replacements for which no special fund is created in the Bond Resolutions, operating personnel, the cost of utilities, the costs of supervision, engineering, accounting, auditing, legal services, supplies, services, administration of the Interceptor System,

including the District's general overhead expenses attributable to the Interceptor System, insurance premiums, equipment necessary for proper operation and maintenance of the Interceptor System, and payments made by the District in satisfaction of judgments resulting from claims not covered by the District's insurance arising in connection with the operation and maintenance of the Interceptor System. The term also includes the charges of the bank or banks and other entities acting as paying agents and/or registrars for any Bonds. The term does not include depreciation.

(m) "Treatment Contracts" means the contracts, and all amendments thereto or replacements thereof, heretofore or hereafter entered into between or among the Contracting Parties and the District with respect to the Treatment System, with such existing contracts being described as follows:

Trinity East Fork Regional Wastewater System Contract, dated as of October 1, 1975 among the Cities of Mesquite and Plano and the District.

City of Richardson-Trinity East Fork Regional Wastewater System Contract dated as of January 9, 1978, between the City of Richardson and the District.

City of Allen-Trinity East Fork Regional Wastewater System Contract, dated as of August 24, 1978, between the City of Allen and the District.

City of McKinney-Trinity East Fork Regional Wastewater System Contract, dated as of August 29, 1979, between the City of McKinney and the District, and

City of Frisco-Trinity East Fork Regional Wastewater System Contract, dated as of _____, 1996, between the City of Frisco and the District.

City of Princeton-East Fork Regional Wastewater System Contract, dated as of the date of this Contract, between the City of Princeton and the District.

(n) "Treatment System" means the District's "Treatment System" as generally described in the preamble to this Contract, and includes all facilities acquired, constructed, or operated by the District pursuant to the Treatment Contracts.

(o) "Wastewater" means Sewage, Industrial Waste, Municipal Waste, Recreational Waste, and Agricultural Waste, together with Properly Shredded Garbage and such Infiltration Water that may be present, all as defined in the Texas Water Code.

Section 2. CONSULTING ENGINEERS; CONSTRUCTION OF INTERCEPTOR SYSTEM. Shimek, Jacobs & Finklea have been the Consulting Engineers for Interceptor System, provided that the Consulting Engineers may be changed at the option of the District. The District has used its best efforts to acquire and construct the Interceptor System, and the Interceptor System has been acquired and constructed in general accordance with the Engineering Report. Such acquisition and construction has been financed by the District through the issuance of its Bonds payable from and secured by Annual Payments made under the Initial Contract, and the District agrees to use its best efforts to issue its Bonds in the future as required and in accordance with each of the contracts with the Contracting Parties. The proceeds from the sale and delivery of such future Bonds also will be used for the payment of the District's expenses and costs in connection with the Interceptor 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 Interceptor System.

Section 3. QUANTITY AND POINTS OF ENTRY. (a) In consideration of the payments to be made by each Contracting Party, during each Annual Payment Period during which the Interceptor System is in operation, each Contracting Party shall or may discharge into the Interceptor System, at its Point or Points of Entry hereinafter described, all of the Wastewater which is required, or permitted to be, discharged into the District's Treatment System by such Contracting Party under the Treatment Contracts, subject to the restrictions hereinafter stated; and provided that each such Contracting Party must transport such Wastewater to its Point or Points of Entry into the Interceptor System.

(b) The maximum rate at which Wastewater is discharged by each Contracting Party at its Point or Points of Entry into the Interceptor System shall not exceed for a period of sixty minutes a rate which, if continued for a period of twenty-four hours would equal 3.50 times such Contracting Party's estimated average daily contributing flow of Wastewater into the Treatment System for the then current Annual Payment Period. The total quantity of Wastewater discharged into the Interceptor System shall never exceed the amount which the Interceptor System and the Treatment System are capable of receiving, treating, and disposing, unless approved by the District, subject to terms and conditions to be established by the District. Notwithstanding the foregoing, no Contracting Party shall ever make any discharge into the Interceptor System or the Treatment System which would cause them to be overloaded or be in violation of its permits from the State of Texas and/or the United States of America.

(c) Wastewater meeting the quality requirements of Section 4 of this Contract will be received into the Interceptor System at the Points of Entry, respectively, to be established pursuant to mutual agreement between the District and the affected Contracting Party. Additional Points of Entry may be established by mutual agreement between the District and a Contracting Party in the future if such additional Points of Entry are determined by the District to be beneficial to the Interceptor System.

(d) It is the intention of the Contracting Parties that the Interceptor System shall be acquired, constructed, extended, and improved so that at all reasonable times it will be capable of receiving and transporting all eligible Wastewater of each Contracting Party which such Contracting Party is required or permitted to discharge into the District's Treatment System pursuant to the Treatment Contracts, and that the District will from time to time issue its Bonds in such amounts as are, within its judgment and discretion, sufficient to achieve such results. It is further the intention

of the Contracting Parties that the District shall issue or use its best efforts to issue its Bonds for such purpose, and to provide improvements, enlargements, and extensions to the Interceptor System as needed for the Contracting Parties.

Section 4. QUALITY. Each Contracting Party shall discharge into the Interceptor System only such Wastewater as it is required or permitted to discharge into the District's Treatment System, and will not discharge into the Interceptor System any wastes prohibited by the Treatment Contracts.

Section 5. METERING OF WASTEWATER. The District will furnish, install, operate, and maintain at its expense the necessary equipment and devices of standard type required for measuring properly all Wastewater discharged into the District's Treatment System by each Contracting Party, respectively, under the Treatment Contracts. Such meters and other equipment shall remain the property of the District. Each Contracting Party shall have access to such 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 in the presence of a representative of the affected Contracting Party or Parties if requested by such Contracting Party or Parties. All readings of meters will be entered upon proper books of record maintained by the District. Upon written request any Contracting Party may have access to said record books during reasonable business hours. Not more than three times in each year of operation, the District shall calibrate its meters, if requested in writing by the affected Contracting Party or Parties to do so, in the presence of a representative of such Contracting Party or Parties, and such parties shall jointly observe any adjustments which are made to the meters in case any adjustment is found to be necessary. If, for any reason, any meters are 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%) per cent, registration thereof shall be corrected for a period of time extending back to the time when such inaccuracy began, if such time

is ascertainable, and if not ascertainable, then for a period extending back one-half (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. Any Contracting Party may, at its option and its own expense, install and operate a check meter to check each meter installed by the District, but the measurement for the purpose of this agreement 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 and shall be subject at all reasonable times to inspection and examination by any employee or agent of the District, but the reading, calibration, and adjustment thereof shall be made only by the Contracting Party or Parties, 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 Treatment System, in which case the reading, calibration, and adjustment thereof shall be made by the District with like effect as if such check meter or meters had been furnished or installed by the District.

Section 6. UNIT OF MEASUREMENT. The unit of measurement for Wastewater discharged into the Interceptor System and the Treatment System shall be 1,000 gallons, U. S. Standard Liquid Measure.

Section 7. LIABILITY FOR DAMAGES AND RESPONSIBILITY FOR WASTEWATER. Liability for damages arising from the transportation, delivery, reception, treatment, and/or disposal of all Wastewater discharged into the Interceptor System hereunder shall remain in each Contracting Party to its Point or Points of Entry, respectively, into the Interceptor System, and title to such Wastewater shall be in such Contracting Party to such Point or Points, and upon passing through Points of Entry liability for such damages shall pass to the District. As between the District and each Contracting Party, each party agrees, to the full extent permitted by law, to indemnify 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 Contracting Party. The District has the responsibility as between the parties for the proper reception, transportation, treatment, and disposal of all Wastewater discharged into the Interceptor System, but not for prohibited discharges discharged by any party at any Point of Entry.

Section 8. **OTHER CONTRACTS.** (a) The District reserves the right to enter into contracts to provide the Wastewater transportation services of the Interceptor System to Additional Contracting Parties under contracts similar to this Contract, subject to the requirements concerning "minimums" and other matters as hereinafter provided; provided, however, that prior to or concurrently with becoming an Additional Contracting Party under this Contract such party must enter into a Treatment Contract with the District in connection with the Treatment System. Each contract with any Additional Contracting Party 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 Additional Contracting Party 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 Interceptor System from any future Additional Contracting Party if, in the judgment and discretion of the District, such obligation would jeopardize the District's ability to meet its obligation to receive and transport Wastewater discharged into the Interceptor System by prior Contracting Parties.

(b) Notwithstanding the foregoing a party may become an Additional Contracting Party only in the following manner and under the following conditions:

(i) A formal request must be submitted to the District by the proposed Additional Contracting Party furnishing information on the area to be served, a description of existing facilities, and the latest annual audit of such proposed Additional Contracting Party's waterworks and/or sewer systems, if any.

(ii) Such proposed Additional Contracting Party must provide funds for any necessary engineering studies if funds are not available therefor from the appropriate Federal or State agencies. The preliminary studies must determine or estimate, for the ensuing five year period, the size and type of any proposed improvements, enlargements, or extensions to the Interceptor System to serve such Additional Contracting Party, their estimated cost, and estimated flows of Wastewater, so as to enable the District to ascertain or estimate the requirements of the proposed Additional Contracting Party for the ensuing five year period.

(iii) After all preliminary data is developed, the Board of Directors of the District shall call for a hearing on the matter and notify all Contracting Parties to review the request of the proposed Additional Contracting Party. The Board of Directors of the District then shall determine if the proposed Additional Contracting Party should become an Additional Contracting Party. If so determined, the Board of Directors then may authorize the District to enter into the required contract with such Additional Contracting Party as provided in this Contract, and may authorize any Bonds required in connection with such Additional Contracting Party.

(iv) Each such contract with an Additional Contracting Party must provide for minimum payments under its contract, on the basis of estimated annual minimum flows into the District's Treatment System, that would provide amounts annually at

least sufficient, as determined by the District, to pay that portion of the annual Operation and Maintenance Component of the Annual Requirement which is attributable to that part of the Interceptor System provided by the District to serve such Additional Contracting Party, and to pay that portion of the Bond Service Component of each Annual Requirement attributable to Bonds issued within five years from the date of such contract to acquire or improve any new and additional facilities for the Interceptor System to serve in whole or in part such Additional Member City, plus a percentage of the Bond Service Component of each future Annual Requirement for all then outstanding Bonds equal to the then estimated percentage of use by such proposed Additional Contracting Party of any portion of the then existing Interceptor System.

(c) It is further recognized and agreed that in the future the District may provide services of the Interceptor System to parties which are not Additional Contracting Parties, provided that all such services of the Interceptor System to parties which are not Additional Contracting Parties shall in all respects be subordinate to the prior rights of the Contracting Parties, and all contracts or other arrangements relating to such services shall recognize, and be made subordinate to, such prior rights.

Section 9. FISCAL PROVISIONS. (a) Subject to the terms and provisions of this Contract, the District will provide and pay for the cost of the acquisition and construction of all Interceptor System facilities, by using its best efforts to issue its Bonds in amounts which will be sufficient to accomplish such purposes, and the District will own and operate the Interceptor System. It is acknowledged and agreed that payments to be made under contracts with the Contracting Parties will be the basic source available to the District to provide the Annual

Requirement, and that, in compliance with the District's duty to fix and from time to time revise the rates of compensation or charges for services of the Interceptor System rendered and made available by the District, the Annual Requirement will change from time to time, and that each such Annual Requirement shall be allocated among the Contracting Parties as hereinafter provided, and that 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:

- (A) An "Operation and Maintenance Component" equal to the amount paid or payable for all Operation and Maintenance Expenses of the Interceptor System; and
- (B) A "Bond Service Component" equal to:
 - (1) the principal of, redemption premium, if any, and interest on, its 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; and
 - (2) the proportionate amount of any special, contingency, or reserve funds required to be accumulated and maintained by the provisions of any Bond Resolution; and

- (3) any 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.

Section 10. ANNUAL BUDGET. Each Annual Budget for the Interceptor System shall always provide for amounts sufficient to pay the Annual Requirement. On or before July 1 of each fiscal year during the term of this Contract the District shall furnish to each Contracting Party a preliminary estimate of the Annual Payment required from each Contracting Party for the next following Annual Payment Period. Not less than forty days before the commencement of each such Annual Payment Period under this Contract the District shall cause to be prepared as herein provided its preliminary budget for the Interceptor System for the next ensuing Annual Payment Period, which budget shall specifically include the Operation and Maintenance Component and the Bond Service Component. A copy of such preliminary budget shall be filed with each Contracting Party together with an estimated schedule of monthly payments to be made by each Contracting Party. The preliminary budget shall be subject to examination, at reasonable times during business hours, at the office of the City Secretary of each Contracting Party. If no protest or request for a hearing on such preliminary budget is presented to the District within thirty days after such filing of the preliminary budget by one or more Contracting Parties or by the owners of a minimum of 25% in principal amount of the Bonds then outstanding, the preliminary budget for the Interceptor System shall be considered for all purposes as the "Annual Budget" for the next ensuing Annual Payment Period. But if protest or request for a hearing is duly filed, it shall be the duty of the District to fix the date and time for a hearing on the preliminary budget, and to give not less than ten days notice thereof to the Contracting Parties. An appropriate Committee of the District shall consider the testimony and showings made in such hearing and shall report its findings to the

Board of Directors of the District. The Board of Directors may adopt the preliminary budget or make such amendments thereof as to it may seem proper. The budget thus approved by the Board of Directors of the District shall be the Annual Budget for the next ensuing Annual Payment Period. The Annual Budget may be amended by the District at any time to transfer from one division thereof to another funds which will not be needed by such division. The amount for any division, or the amount for any purpose, in the Annual Budget may be increased through formal action by the Board of Directors of the District 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 of Directors. Certified copies of the amended Annual Budget and resolution shall be filed immediately by the District with each Contracting Party.

Section 11. PAYMENTS BY CONTRACTING PARTIES. (a) For the Wastewater transportation services to be provided to the Contracting Parties under this Contract, each of the Contracting Parties agrees to pay, at the time and in the manner hereinafter provided, its proportionate share of the Annual Requirement, which shall be determined as herein described and shall constitute a Contracting Party's Annual Payment. Each of the Contracting Parties shall pay its part of the Annual Requirement for each Annual Payment Period directly to the District, in monthly installments, on or before the 10th day of each month, commencing the month following the month in which the District first makes Wastewater transportation services available to Princeton from the Interceptor System, in accordance with the schedule of payments furnished by the District, as hereinafter provided.

(b) For each Annual Payment Period each Contracting Party's proportionate share of the Annual Requirement shall be a percentage obtained by dividing the number of gallons of

contributing flow of Wastewater estimated to be discharged into the District's Treatment System by such Contracting Party pursuant to the Treatment Contracts during such Annual Payment Period, as determined by the District after consultation with such Contracting Party, by the aggregate total number of gallons of contributing flow of Wastewater estimated to be discharged into the District's Treatment System by all Contracting Parties pursuant to the Treatment Contracts during such period, as determined by the District after consultation with all of the Contracting Parties. 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 each of the Contracting Parties by the District. At the close of each Annual Payment Period the District shall determine the actual metered number of gallons of contributing flow of Wastewater discharged into the District's Treatment System by each Contracting Party pursuant to the Treatment Contracts during said period and determine each Contracting Party's actual percentage of the Annual Requirement by dividing such Contracting Party's actual metered contributing flow into the Treatment System by the actual metered contributing flow of all Contracting Parties into the Treatment System. Each Contracting Party's Adjusted Annual Payment shall be calculated by multiplying each such Contracting Party's redetermined percentage times the actual Annual Requirement. The difference between the amounts which actually have been paid by each Contracting Party and the amounts actually due from such Contracting Party hereunder shall be applied as a credit or a debit to such Contracting Party's account with the District and shall be credited or debited to such Contracting Party's next monthly payment or payments, or as otherwise agreed between the District and the affected Contracting Party, provided that all such credits and debits shall be made in a timely manner not later than the end of the next following Annual Payment Period.

(c) Notwithstanding the provisions of (b), above, and as an exception thereto, it is agreed that if, during any Annual Payment Period, the estimated and/or actual metered contributing flow of Wastewater into the District's Treatment System of any Contracting Party pursuant to the Treatment Contracts is, for any reason whatsoever, less than the minimum amount hereinafter prescribed and provided for it, such Contracting Party shall pay its share of each Annual Requirement as if its estimated and/or actual metered contributing flow of Wastewater into the District's Treatment System pursuant to the Treatment Contracts were such minimum amount. However, if such Contracting Party's estimated and/or actual metered contributing flow of Wastewater into the District's Treatment System is equal to or in excess of such minimum amount, its share of all of each Annual Requirement shall be calculated on the basis of estimated and actual contributing flow as provided in (b), above. All contracts with Additional Contracting Parties shall provide for equitable minimums similar to those provided for below. Such minimums shall be fixed in amounts as required by Section 8(b) hereof, as determined by the District, and also shall be at least sufficient, as determined by the District, to assure an initial annual payment by such Additional Contracting Party for not less than the amount of its estimated contributing flow of Wastewater into the District's Treatment System during the first year of service under such contract. For the purpose of calculating the minimum percentage of each Annual Requirement for which each Contracting Party is unconditionally liable, without offset or counterclaim (also see Section 14 hereof), the contributing flow of Wastewater into the District's Treatment System of each Contracting Party pursuant to the Treatment Contracts, during each Annual Payment Period, shall be deemed to be not less than the minimum amount (regardless of whether or not such amount was actually discharged into the District's Treatment System pursuant to the Treatment Contracts) specified for such Contracting Party as follows:

City of Allen:	1,810,000 gallons per day
City of McKinney:	2,000,000 gallons per day
City of Plano:	11,570,000 gallons per day
City of Richardson:	2,000,000 gallons per day
City of Frisco: (as an additional Contracting Party)	600,000 gallons per day
City of Princeton: (as an additional Contracting Party)	500,000 gallons per day

(d) Notwithstanding the foregoing, the Annual Requirement, and each Contracting Party's share thereof shall be redetermined, after consultation with each of the Contracting Parties, 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 Interceptor System to an Additional Contracting Party or Parties;
- (ii) Unusual, extraordinary, or unexpected expenditures for Operation and Maintenance Expenses are required which are not provided for in the District's Annual Budget for the Interceptor System or in any Bond Resolution;
- (iii) Operation and Maintenance Expenses are substantially less than estimated;
- (iv) The District issues Bonds which require an increase in the Bond Service Component of the Annual Payment; or
- (v) The District receives either significantly more or significantly less revenues or other amounts than those anticipated.

(e) During each Annual Payment Period all revenues received by the District from providing services of the Interceptor System to parties which are not Contracting Parties, shall (i) first be credited to the Operation and Maintenance Component of the Annual Requirement, and (ii) then any remainder credited to the Bond Service Component of the Annual Requirement, with the result that such credits under (i) and (ii), respectively, shall reduce, to the extent of such credits, the amounts of such Components, respectively, which otherwise would be payable by the Contracting Parties pursuant to the method prescribed in (b) and (c), above. The District may estimate all such credits which it expects to make during each Annual Payment Period in calculating each Annual Payment.

(f) Each Contracting Party hereby agrees that it will make payments to the District required by this Section on or before the 10th day of each month of each Annual Payment Period. If any Contracting Party at any time disputes the amount to be paid by it to the District, such complaining party shall nevertheless promptly make such payment or payments, but if it is subsequently determined by agreement or court decision that such disputed payments made by such complaining party should have been less, or more, the District shall promptly revise and reallocate the charges among all Contracting Parties in such manner that such complaining party will recover its overpayment or the District will recover the amount due it. All amounts due and owing to the District by each Contracting Party or due and owing to any Contracting Party 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. The District shall, to the extent permitted by law, discontinue the services of the Interceptor System to any Contracting Party which remains delinquent in any payments due hereunder for a period of sixty days, and shall not resume such services while such Contracting Party is so delinquent. It is further provided and agreed that if any Contracting Party

should remain delinquent in any payments due hereunder for a period of one hundred twenty days, and if such delinquency continues during any period thereafter, such Contracting Party's minimum amount of gallons of Wastewater specified and described in (c), above, shall be deemed to have been zero gallons during all periods of such delinquency, for the purpose of calculating and redetermining the percentage of each Annual Payment to be paid by the non-delinquent Contracting Parties, and the District shall redetermine such percentage on that basis in such event so that the non-delinquent Contracting Parties collectively shall be required to pay all of the Annual Requirement. However, the District shall pursue all legal remedies against any such delinquent Contracting Party to enforce and protect the rights of the District, the other Contracting Parties, and the owners of the Bonds, and such delinquent Contracting Party shall not be relieved of the liability to the District for the payment of all amounts which would have been due hereunder, in the absence of the next preceding sentence. It is understood that the foregoing provisions are for the benefit of the owners of the Bonds so as to insure that all of the Annual Requirement will be paid by the non-delinquent Contracting Parties during each Annual Payment Period regardless of the delinquency of a Contracting Party. If any amount due and owing by any Contracting Party to the District is placed with an attorney for collection, such Contracting Party shall pay to the District all attorneys fees, in addition to all other payments provided for herein, including interest.

(g) If, during any Annual Payment Period, any Contracting Party's Annual Payment is redetermined in any manner as provided or required in this Section, the District will promptly furnish such Contracting Party with an updated schedule of monthly payments reflecting such redetermination.

Section 12. SPECIAL PROVISIONS. (a) The District will continuously operate and maintain the Interceptor System in an efficient manner and in accordance with good business and engineering practices, and at reasonable cost and expense.

(b) The District agrees to carry fire, casualty, public liability, and other insurance on the Interceptor System for purposes and in amounts which ordinarily would be carried by a privately owned utility company owning and operating such facilities, except that the District shall not be required to carry 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 Interceptor System.

(c) It is estimated that the Interceptor System will be placed in operation as soon as practicable. It is expressly understood and agreed, however, that any obligations on the part of the District to acquire, construct, complete, and/or improve the Interceptor System and to provide the services of the Interceptor System to the Contracting Parties shall be (i) conditioned upon the District's ability to obtain all necessary permits, material, labor, and equipment, and upon the ability of the District to finance the cost of the Interceptor System through the actual sale of the District's Bonds and (ii) 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.

(d) The District shall never have the right to demand payment by any Contracting Party 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, and the obligations under this Contract shall never be construed

to be a debt of such kind as to require any of the Contracting Parties to levy and collect a tax to discharge such obligation.

(e) Each of the Contracting Parties, respectively, has represented and covenanted or hereby represents and covenants that all payments, including indemnity payments, to be made by it under this Contract shall constitute reasonable and necessary "operating expenses" of its combined waterworks and sewer system, as defined in Vernon's Ann. Tex. Civ. St. Article 1113, and that all such payments will be made from the revenues of its combined waterworks and sewer system. Each of the Contracting Parties, respectively, has represented or determined or hereby represents and has determined that the services to be provided by the Interceptor System are absolutely necessary and essential to the present and future operation of its combined water and sewer system, and that the Interceptor System constitutes the reasonable and necessary method for transporting its Wastewater into the District's Treatment System, and, accordingly, all payments required by this Contract to be made by each Contracting Party shall constitute reasonable and necessary operating expenses of its combined water and sewer system as described above, with the effect that the obligation to make such payments from revenues of such combined water and sewer system shall have priority over any obligation to make any payments from such revenues of principal, interest, or otherwise, with respect to all bonds or other obligations heretofore or hereafter issued by such Contracting Party.

(f) Each of the Contracting Parties has agreed or hereby agrees throughout the term of this Contract to continuously operate and maintain its combined waterworks and sewer system and to fix and collect such rates and charges for water and sewer services and/or sewer services to be supplied by its combined waterworks and sewer system as aforesaid as will produce revenues in an amount equal to at least (i) all of the expenses of operation and maintenance expenses of

such system, including specifically its payments under this Contract, and (ii) all other amounts as required by law and the provisions of the ordinances 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.

Section 13. 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 each Contracting Party to make the payments required under Section 11 of 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 14. UNCONDITIONAL OBLIGATION TO MAKE PAYMENTS. Recognizing the fact that the Contracting Parties urgently require the facilities and services of the Interceptor 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 the

Contracting Parties to pay and secure its Bonds, it is hereby agreed that each of the Contracting Parties shall be unconditionally obligated to pay, without offset or counterclaim, its proportionate share of the Annual Requirement, as provided and determined by this Contract (including the obligations for paying for "minimums" as described in Section 11 hereof), regardless of whether or not the District actually acquires, constructs, or completes the Interceptor System or is actually operating or providing services of the Interceptor System to any Contracting Party hereunder, or whether or not any Contracting Party actually uses the services of the Interceptor 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 the Contracting Parties shall be for the benefit of and enforceable by the holders of the Bonds and/or the District.

Section 15. **TERM OF CONTRACT; MODIFICATION; NOTICES; STATE OR FEDERAL LAWS, RULES, ORDERS, OR REGULATIONS.** (a) This Contract shall be effective on and from the Contract Date, and this Contract shall continue in force and effect until the principal of and interest on all Bonds shall have been paid, and thereafter shall continue in force and effect during the entire useful life of the Interceptor System.

(b) 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 moneys required to be paid by each Contracting Party under the terms of this 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.

(c) 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 hereinabove described 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:

North Texas Municipal Water District
P. O. Box 2408
Wylie, Texas 75098

If to the Contracting Parties, as follows:

City of Allen
One Butler Circle
Allen, Texas 75013

City of McKinney
222 North Tennessee Street
McKinney, Texas 75069

City of Plano
1520 Avenue K
Plano, Texas 75074

City of Richardson
411 W. Arapaho Road
Richardson, Texas 75080

City of Frisco
6891 Main Street
Frisco, Texas 75034

City of Princeton
306 N. Front St.
Princeton, Texas 75407-0970

The District and the Contracting Parties 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.

(d) 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 16. 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 of Texas 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 17. 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. Recognizing however, that the District's undertaking to provide and maintain the services of the Interceptor 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 each Contracting Party 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 any Contracting Party's obligations hereunder could not be adequately compensated in money damages alone, each Contracting Party 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 circumstances.

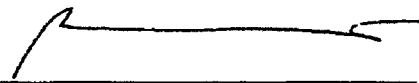
Section 18. VENUE. All amounts due under this Contract, including, but not limited to, payments due under this Contract or damages for the breach of this Contract, shall be paid and be due in Collin County, Texas, which is the County in which the principal administrative offices of the District are located. It is specifically agreed among the parties to this Contract that Collin 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 Collin County, Texas.

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 date of this Contract.

NORTH TEXAS MUNICIPAL WATER
DISTRICT

BY 
President, Board of Directors

ATTEST:


Secretary, Board of Directors

(DISTRICT SEAL)

CITY OF PRINCETON, TEXAS

BY *Brian Caudwell*
Mayor

ATTEST:

Annmarie Poise
City Secretary

(CITY SEAL)