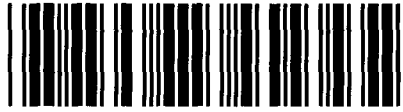




Control Number: 47265



Item Number: 1

Addendum StartPage: 0



Ms. Dickenson's Direct Line: (512) 322-5804  
Email: cdickenson@lglawfirm.com

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PUBLIC UTILITY COMMISSION  
FILING CLERK

June 6, 2017

**47265**

816 Congress Avenue, Suite 1900  
Austin, Texas 78701  
Telephone: (512) 322-5800  
Facsimile: (512) 472-0532  
www.lglawfirm.com

Public Utility Commission of Texas  
Central Records Division  
1701 N. Congress Avenue, Room 8-100  
Austin, Texas 78711-3326

**VIA HAND DELIVERY**

Re: Transfer of a portion of the City of Midlothian's Water Certificate of Convenience and Necessity ("CCN") No. 11706 to be included in the City of Grand Prairie's CCN No. 10105 pursuant to Texas Water Code §13.248 and 16 Texas Administrative Code §24.117

To the Public Utility Commission of Texas:

My firm's client, the City of Grand Prairie (the "Grand Prairie"), files this application under Texas Water Code §13.248 and 16 Texas Administrative Code ("TAC") §24.117, to transfer a portion of the City of Midlothian's ("Midlothian") water CCN No. 11706 to Grand Prairie's CCN No. 10105.

To assist you with your review of this Application, please find, as indicated below, the requisite documents that address the Commission's requirements:

- Exhibit A – Agreement for the Sale and Delivery of Treated Water to the City of Grand Prairie by the City of Midlothian documenting the agreement to transfer a portion of Midlothian's water CCN to Grand Prairie
- Exhibit B – A map of the area to be transferred with a CD Rom of the shapefiles
- Exhibit C – The agenda and minutes from Grand Prairie's March 4, 2014 City Council Meeting in which the Contract was approved by Grand Prairie

It is our understanding that there are currently no retail water customers of Midlothian being served in the area to be transferred. As a result, we believe no additional notice of the transfer is required under 16 TAC §24.117(c). Likewise, no facilities will be transferred.

Grand Prairie has consulted with representatives of Midlothian on the maps showing the transfer area. Areas already served by other retail water service providers have been excluded from the transfer area. Midlothian is also being provided a copy of this correspondence with the Exhibits. If you have any questions concerning this matter, please do not hesitate to contact me at (512) 322-5804 or David Klein at (512) 322-5818.

June 6, 2017

Page 2

Sincerely,

A handwritten signature in black ink, appearing to read "Christie L. Dickenson". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Christie L. Dickenson

CLD/dsr  
Enclosures

cc: Mr. Ron McCuller, Public Works Director, City of Grand Prairie (w/ attachments)  
Mr. Mike Adams, Executive Director of Engineering & Utilities, City of Midlothian (w/  
attachments)  
Mr. David Klein, of the Firm (w/o attachments)

**EXHIBIT A**

**Agreement for the Sale and Delivery of Treated Water to the City of Grand Prairie by  
the City of Midlothian**

**Agreement for the Sale and Delivery of Treated Water to  
the City of Grand Prairie by  
the City of Midlothian**

STATE OF TEXAS       §  
                                  §  
COUNTY OF ELLIS    §

THIS AGREEMENT (the "Agreement") entered into this 25<sup>th</sup> day of March, 2014 (the "Effective Date") by and between the City of Midlothian, a home rule municipality operating under and governed by the laws and Constitution of the State of Texas ("Midlothian"), and the City of Grand Prairie, a home rule municipality operating under and governed by the laws and Constitution of the State of Texas ("Grand Prairie") hereinafter collectively referred to as the ("Parties"), evidences a binding agreement between the Parties regarding the sale and delivery of treated water and the construction of water transmission lines. For good and valuable consideration and in consideration of the agreements contained in this Agreement, the adequacy, receipt, and sufficiency of which are acknowledged, the Parties hereby agree as follows:

**Recitals**

**WHEREAS**, Midlothian is a home rule municipality operating under and governed by the laws and Constitution of the State of Texas, with its corporate limits and ETJ (defined herein) in Ellis County, Texas; and

**WHEREAS**, Grand Prairie is a home rule municipality operating under and governed by the laws and Constitution of the State of Texas, with its corporate limits and ETJ extending in portions of Dallas, Ellis, Johnson, and Tarrant Counties, Texas; and

**WHEREAS**, Midlothian owns, operates, and maintains facilities for storing, treating and transmitting Treated Water (defined herein); and

**WHEREAS**, Midlothian is agreeable to providing Treated Water to Grand Prairie, provided that rights to Raw Water (defined herein) to be treated on behalf of Grand Prairie shall be secured by Grand Prairie at their sole expense and all existing water rights that Midlothian has in Joe Pool Reservoir and other sources are specifically excluded from this Agreement; and

**WHEREAS**, Midlothian and Grand Prairie have two (2) existing treated water contracts, entitled, "Midlothian-Grand Prairie Interlocal Cooperative Treated Water Agreement to Supply Ellis County Freshwater District No. 1 and Johnson County Freshwater District No. 2" ("City/District Contract") and "Midlothian-Grand Prairie Interlocal Cooperative Treated Water Agreement" ("Midlothian/GP Contract") both of which are dated September 30, 2005 (collectively, the "Existing Contracts"); and

**WHEREAS**, the Existing Contracts do not meet the present needs of all Parties due to changed conditions; and

**WHEREAS**, the City/District Contract provides that Midlothian shall provide Grand Prairie with up to 2,000,000 gallons of treated water per day (annual average), and 4,000,000 gallons of treated water per day (maximum quantity), for delivery to a delivery point at the westernmost corporate limits of Midlothian on U.S. 287 (hereinafter known as "Delivery Point A"); and

**WHEREAS**, the Midlothian/GP Contract does not specifically define quantities of treated water to be delivered to Grand Prairie; and

**WHEREAS**, Grand Prairie and Midlothian desire to replace the Midlothian/GP Contract to meet current needs and conditions; and

**WHEREAS**, it is deemed to be in the best interest of both Midlothian and Grand Prairie that said Parties do enter into a new mutually satisfactory agreement by means of which Grand Prairie may obtain Treated Water from Midlothian, replacing the Midlothian/GP Contract; and

**WHEREAS**, Grand Prairie recognizes that Midlothian has a water CCN (defined herein) that is partly within the corporate limits and ETJ of Grand Prairie as the result of past annexations by Grand Prairie; and

**WHEREAS**, the Parties agree that Midlothian shall transfer the portion of its water CCN located within the corporate limits and ETJ of Grand Prairie as of the Effective Date of this Agreement to Grand Prairie; and

**WHEREAS**, Grand Prairie desires to purchase wholesale from Midlothian Treated Water in sufficient quantities to supply customers located within Grand Prairie's corporate limits and ETJ; and

**WHEREAS**, Grand Prairie desires to resell on a wholesale or retail basis, Treated Water purchased from Midlothian under this Agreement to customers in the Grand Prairie corporate limits, the Grand Prairie ETJ, and the Grand Prairie Water CCN boundaries; and

**WHEREAS**, there is an existing 24" diameter pipeline owned by Grand Prairie, paralleling U.S. 287 and extending from a 12" line owned by Midlothian to Delivery Point A ("Line I"); and

**WHEREAS**, Grand Prairie desires to construct at its sole cost a 16" diameter pipeline ("Line II") to deliver Treated Water from the Midlothian Tayman Plant ("Delivery Point B") to Grand Prairie's existing water distribution system; and

**WHEREAS**, the Parties desire to share costs and cooperate in the construction of an additional water transmission pipeline to be generally located along the western corporate limits of Midlothian and the eastern corporate limits and/or ETJ of Grand Prairie ("West Side Supply Line") to provide Treated Water to Grand Prairie's water distribution system at delivery point(s) to be determined in accordance with this Agreement as well as provide local water service and the transmission of Treated Water for Midlothian; and

WHEREAS, Midlothian and Grand Prairie concur that the terms, conditions and considerations stated herein are fair, just and reasonable and will mutually benefit the Parties and serve the public interest.

NOW, THEREFORE, pursuant to *Chapter 791, Texas Government Code*, and as otherwise authorized and permitted by the laws of the State of Texas for and in consideration of the covenants, conditions and undertakings hereinafter described, and subject to each and every term and condition of this Agreement, the Parties contract, covenant and agree as follows:

**ARTICLE 1**  
**Findings and Purpose**

- 1.1 **Recitals.** The recitals hereinabove set forth are incorporated herein for all purposes and are found to be true and correct.
- 1.2 **No Grant of Equity or Ownership.** Unless otherwise stated, no provision of this Agreement shall be construed to create any type of joint or equity ownership of any property or any partnership or joint venture. Unless otherwise stated, neither this Agreement, nor any acts of the Parties hereunder, nor Grand Prairie's payments, shall be construed as granting to or otherwise vesting in Grand Prairie any right, title, interest, or equity in the Midlothian Raw Water System (defined herein) nor in the Midlothian Treated Water System (defined herein) or any element thereof.
- 1.3 **Purpose.** This Agreement provides the terms and conditions whereby Treated Water may be purchased by Grand Prairie from Midlothian. Further, this Agreement provides for the cost sharing of the West Side Supply Line to provide Treated Water to Grand Prairie's water distribution system as well as provide local water service and the transmission of treated water for Midlothian.

**ARTICLE 2**  
**Definitions and Interpretation**

- 2.1 **Definitions.** The following terms and expressions used in this Agreement, unless the context indicates otherwise, shall mean:

*Agreement* means this "Agreement for the Sale and Delivery of Treated Water" and any subsequent amendments agreed to in writing by the Parties.

*Annual Daily Average* means the measured annual usage as determined through Meter readings divided by the total number of days in the year.

*AWWA* means the American Water Works Association.

*Business Day* means any Day other than Saturdays, Sundays and legal holidays that are observed by both Grand Prairie and Midlothian.

*City/District Contract* – shall have the meaning provided in the Recitals of this Agreement.

*CCN* means certificate of convenience and necessity.

*Cost of Service Study* means that study performed pursuant to Article 6.2(b) of this Agreement.

*Cost of the System* means all costs of acquiring, constructing, developing, permitting, implementing, expanding, improving, enlarging, bettering, extending, replacing, repairing, maintaining and operating the Midlothian Raw Water System and the Midlothian Treated Water System. The costs of property, interests in property, water and water rights, capitalized interest, land, easements and rights-of-way, damages to land and property, leases, treatment and other facilities, equipment, telemetry, machinery, pumps, pipes, tanks, lines, meters, taps, valves, fittings, mechanical devices, office equipment, assets, contract rights, wages and salaries, employee benefits, chemicals, storage, materials, supplies, power, supervision, engineering, testing, auditing, franchises, charges, assessments, claims, insurance, financing, consultants, administrative expenses, auditing expenses, legal expenses, amounts for an operation and maintenance reserve fund, amounts for a debt service reserve fund, amounts for principal and interest on bonds issued by Midlothian to pay for the Costs of the System, amounts required for bond coverage reflective of Midlothian's policies and obligations to pay for Costs of the System, bond issuance expenses, amounts for working capital, appropriate general and administrative costs of Midlothian and other similar or dissimilar expenses and costs related to providing wholesale water service required for the Midlothian Raw Water System and the Midlothian Treated Water System.

*Day* means a 24-hour period beginning at 12:00 a.m.

*Demand Charge* means the annualized payment amount to be paid in monthly installments for each applicable Rate Year, calculated based on the Demand Rate applied to the Maximum Day Demand.

*Demand Rate* means the dollar amount per million gallons per day (MGD) applied to Grand Prairie's Maximum Day Demand to calculate the Demand Charge.

*Delivery Point(s)* means the point(s) at which Midlothian agrees to deliver, and Grand Prairie agrees to receive, Treated Water under this Agreement.

*Delivery Point A* shall have the meaning provided in the Recitals of this Agreement, as shown on Exhibit A, attached hereto and incorporated herein for all purposes.

*Delivery Point B* shall have the meaning provided in the Recitals of this Agreement, as shown on Exhibit B, attached hereto and incorporated herein for all purposes.

*Effective Date* means the date that this Agreement has been signed by both Parties acting under authority provided by the governing bodies of the respective Parties.

*Emergency* means a bona-fide emergency condition created by unforeseeable mechanical failure, by unprecedented high rate of Treated Water usage, such as a major fire or a major water main break, or by circumstances beyond the Parties' control.



*ETJ* means extraterritorial jurisdiction.

*Existing Contracts* shall have the meaning provided in the Recitals of this Agreement.

*Expiration Date* means the last effective date of this Agreement as specified in Article 9.1, absent the renewal of this Agreement.

*Fiscal Year* is the fiscal year of Midlothian from October 1 through September 30.

*Initial Maximum Day Demand* means the estimated daily maximum usage specified in Article 6.2(a) of this Agreement.

*Initial Rates* means the rates set under Article 6.2(a) of this Agreement until the recalculated rates, from the first Cost of Service Study that is completed after the Effective Date of this Agreement, become effective.

*Maximum Allowed Daily Demand* means a Maximum Day Usage, which shall be two times the Annual Daily Average amount as established during the preceding Rate Year, unless a mutually agreed upon change is made by the Parties in writing.

*Maximum Allowed Hourly Demand* means Maximum Allowed Daily Demand divided by twenty-four (24) hours.

*Maximum Day Demand* means for each applicable Rate Year, the greater of the (i) Maximum Day Usage in the current Water Year; or (ii) the Maximum Day Usage during the five (5) Water Years preceding the current Water Year, except as provided in Article 3.1(c).

*Maximum Day Usage* means the highest amount of Treated Water delivered to Grand Prairie at the Delivery Point(s) during any Day, as determined through Meter readings.

*Meter(s)* means the metering facility or devices installed or to be installed at each Delivery Point to measure the amount of Treated Water delivered to Grand Prairie by Midlothian as provided in this Agreement.

*Midlothian/GP Contract* – shall have the meaning provided in the Recitals of this Agreement.

*Midlothian Raw Water System* means all facilities, structures, improvements, property, rights, certificates of adjudication, permits, licenses, contracts and other property of any nature whatsoever, now or hereafter owned by Midlothian, in connection with the storage, diversion, transportation, and delivery of Raw Water. All existing water rights that Midlothian has in Joe Pool Reservoir and other sources are specifically excluded from this Agreement.

*Midlothian Supply Line 1 or Line 1* means an existing 24” diameter pipeline owned by Grand Prairie, paralleling U.S. 287 and extending from a 12” line owned by Midlothian to Delivery Point A, as is more particularly described by Exhibit A, attached hereto and incorporated herein for all purposes.

*Midlothian Supply Line II or Line II* means the water transmission line that transports Treated Water from Delivery Point B at Midlothian's Tayman Water Treatment Plant to a location within Grand Prairie's city limits, as is more specifically depicted in Exhibit B, attached hereto and incorporated herein for all purposes.

*Midlothian Treated Water System* means all facilities, structures, improvements, property, rights, permits, licenses, and other property of any nature whatsoever, now or hereafter owned by Midlothian, in connection with the diversion, storage, transportation, treatment, and delivery of Treated Water.

*Municipal Customer* means any entity receiving wholesale water service from Midlothian including wholesale customers of either entity.

*Party* means either Midlothian or Grand Prairie, and "Parties" means Midlothian and Grand Prairie, collectively.

*Rate of Flow* means usage on a per minute basis (i.e., gallons per minute (gpm)).

*Rate Year* means each twelve-month period beginning October 1 and ending September 30 of the next calendar year.

*Raw Water* means water that is purchased by Midlothian from TRWD through the TRA and Grand Prairie's raw water rights in Joe Pool Reservoir, in its natural state prior to treatment.

*Raw Water Charge* means the charge calculated by applying the Raw Water Rate to the number of gallons of Treated Water provided to Grand Prairie by Midlothian, as measured by each Meter and billed on a monthly basis, plus an amount equal to five percent (5%) of the number of gallons of Treated Water provided to Grand Prairie by Midlothian which the Parties agree is a reasonable estimated amount of Raw Water loss during the treatment and delivery process.

*Raw Water Rate* means the raw water rate charged to Midlothian for Raw Water by TRWD through the TRA.

*Regulatory Requirements* means all applicable requirements and provisions of federal, state, and county constitutions, laws, statutes, rules, regulations and ordinances enacted or issued from time to time, including, without limitation, all applicable sections of the Texas Water Code and the rules and regulations of the Texas Commission on Environmental Quality, and the Texas Administrative Code, and all judicial and administrative orders, judgments, and decrees of any governmental authority having jurisdiction concerning the matters contained herein issued from time to time.

*Requested Maximum Day Demand* means the maximum daily water use requested by Grand Prairie for a given Rate Year; provided, however, any obligation by Midlothian to supply Grand Prairie water in excess of the maximum daily water use during the Rate Year then in effect shall be subject to approval by Midlothian with such approval not being unreasonably withheld or delayed if Midlothian has the capacity to satisfy Grand Prairie's request for additional water and the demand

projected by Midlothian of its other customers. In no case shall the Requested Maximum Day Demand be less than the Initial Maximum Day Demand or historical Maximum Day Usage during the immediate past five (5) Rate Years. Such request shall be submitted in writing by Grand Prairie to Midlothian within one hundred twenty (120) days of the ensuing Rate Year. Midlothian will provide a written response to Grand Prairie within thirty (30) days of receipt of such request. Beginning with the Rate Year that follows the fifth (5<sup>th</sup>) anniversary of the Effective Date of this Agreement, the Requested Maximum Day Demand shall equal 4.0 MGD.

*TCEQ* means the Texas Commission on Environmental Quality or its successor agency(ies).

*TRA* means Trinity River Authority of Texas.

*Treated Water* means Raw Water treated by Midlothian so that it is potable water meeting the minimum water quality requirements for human consumption as prescribed by the TCEQ or other appropriate regulatory agency.

*TRWD* means Tarrant Regional Water District.

*TRWD Buy-In* means charges by the TRWD through the TRA for reserving a quantity of Raw Water for use by the payer.

*Volume Charge* means the charge calculated by applying the Volume Rate to the number of gallons of Treated Water provided to Grand Prairie by Midlothian as measured by each Meter (or as estimated in accordance with Section 5.3 of this Agreement) and billed on a monthly basis.

*Volume Rate* means the dollar amount per 1,000 gallons applied to Grand Prairie's usage of Treated Water in order to calculate the Volume Charge. The Volume Rate excludes Midlothian's Raw Water costs, which are captured within the Raw Water Rate.

*Water* means either Raw Water or Treated Water, or both Raw Water and Treated Water, as indicated by the context in which the word appears.

*Water Conservation* means those practices, techniques, and technologies that will reduce the consumption of water, reduce the loss or waste of water, improve efficiency in the use of water, and/or increase the recycling and reuse of water.

*West Side Supply Line* means the water transmission line that is proposed to be financed and constructed by the Parties pursuant to the West Side Supply Line Agreement and is to be installed in the general location of the western city limits of Midlothian and along the eastern city limits and/or ETJ line of Grand Prairie as shown in Exhibit C, attached hereto and incorporated herein for all purposes.

*West Side Supply Line Agreement* means the certain "Agreement between the City of Midlothian and the City of Grand Prairie for the Funding and Construction of the West Side Supply Line," to be agreed upon and constructed at a later date.

*Wholesale Customer* means the class of customers, including, but not limited to, Grand Prairie, to whom, under the terms of a specific agreement, Midlothian sells and provides Treated Water for re-sale.

**2.2 Interpretations:** The following principles shall control the interpretation of this Agreement:

- (a) Unless otherwise stated, reference to any document, other than a license, certificate of adjudication or permit, means the document as amended or supplemented from time to time.
- (b) Reference to any Party (including the Parties) or governmental regulatory agency means that entity and its successors and assigns.
- (c) Misspelling of one or more words in this Agreement shall not void the Agreement. Such misspelled words shall be read so as to have the meaning apparently intended by the Parties.
- (d) Words of any gender used in this Agreement shall be held and construed to include any other gender.
- (e) Words in the singular number shall be held to include the plural, unless the context otherwise requires.
- (f) Articles and headings contained herein are for convenience and reference and are not intended to define or limit the scope of any provision of this contract.

**ARTICLE 3**

**Water Provided Under Agreement**

**3.1 Treated Water.**

**(a) Delivery and Acceptance.**

- (1)** After (i) Grand Prairie has substantially completed the Midlothian Supply Line II or the West Side Supply Line is substantially completed or five years from the Effective Date, whichever first occurs, and (ii) Grand Prairie has paid to Midlothian the TRWD buy-in as specified by Subsection 3.1(a)(2) herein, but subject to the limitations described in Subsection 3.1(b) herein, then except as limited in this Agreement, Midlothian agrees to furnish and sell to Grand Prairie up to 4.5 MGD (annual average) of Treated Water, as requested by Grand Prairie in accordance with this Subsection, but subject to the Requested Maximum Daily Demand then in effect. Midlothian shall deliver any and all portions of such 4.5 MGD supply of Treated Water at Delivery Points A, B, and other future Delivery Point(s) that are mutually agreed upon, in the quantities and at the times requested by Grand Prairie so long as the Rate of Flow at each Delivery Point does not exceed the amounts set forth or otherwise determined in accordance with Section 3.11 of this Agreement or as determined in accordance with Section 5.2, or such lesser amount as Midlothian may be able to supply in the event of an Emergency. Midlothian's obligation to deliver

the requested portion of the 4.5 MGD of Treated Water contemplated under this Subsection, which may be increased from time to time, is triggered upon Grand Prairie providing Midlothian with one hundred twenty (120) days written notice prior to the start of the next Rate Year of the increased amount of Treated Water to be delivered; provided, however, that increase(s) shall be in increments of no less than 0.5 MGD and no more than 1.0 MGD unless agreed to by Midlothian.

- (2) By executing this Agreement, Grand Prairie agrees to accept delivery of the Treated Water furnished by Midlothian to meet the conditions of Subsection 3.1(a)(1) of this Agreement and to pay for such Water in accordance with the terms herein, including the TRWD buy-in for all quantities of Raw Water. Raw Water that Grand Prairie furnishes Midlothian from Joe Pool Reservoir for treatment under terms of this Agreement, if any, is not subject to the TRWD buy-in cost or Raw Water Charge.
- (b) **Source of Supply and Capacity.** Midlothian's agreement to make Treated Water available is limited to the extent that Raw Water, as that term is defined in this Agreement, is available and the extent to which capacity is available in the Midlothian Treated Water System.
- (c) **Additional Water.** To the extent Treated Water is available in amounts greater than the Maximum Allowed Daily Demand, Midlothian may, at its sole discretion, provide Grand Prairie with additional Treated Water, subject to the charges described in Article 6; save and except any TRWD buy-in fees or take-or-pay fees. Should Midlothian elect to provide Grand Prairie with Treated Water in excess of the Maximum Allowed Daily Demand, Midlothian may terminate or reduce providing Treated Water at the excess amount by providing Grand Prairie with twenty-four (24) hours prior written notice of such termination or reduction. In cases where Midlothian terminates or reduces the provision of Treated Water at the amounts in excess of the Maximum Allowed Daily Demand, the Maximum Day Demand, for purposes of determining the Demand Charge, shall be correspondingly adjusted to reflect the reduction of the excess Treated Water. Grand Prairie agrees that Midlothian shall never be obligated during the term of this Agreement to make Treated Water available to Grand Prairie in excess of the Maximum Allowed Daily Demand. The purchase of any additional supplies of Treated Water over the Maximum Allowed Daily Demand does not guarantee that Midlothian shall make Treated Water available on that basis at any time other than the timeframe Midlothian elects to provide additional supplies of Treated Water to Grand Prairie.
- (d) **Water Pressure.** Midlothian agrees to furnish and sell to Grand Prairie Treated Water delivered under the operating pressure prevailing in the Midlothian Treated Water System at each Delivery Point that is mutually agreed upon, for a period of five (5) years after the Effective Date of this Agreement. Upon this Agreement becoming effective, Grand Prairie shall commence construction of the necessary facilities required to transport, at such

minimum pressure, Treated Water purchased from Midlothian to Grand Prairie's distribution system as may be required or allowed by applicable law or state or federal regulation and complete the required construction prior to the end of this five (5) year period. Notwithstanding anything in this Agreement or in the requirements of any regulatory agency to the contrary, Midlothian does not represent or guarantee to Grand Prairie that Treated Water provided to Grand Prairie under this Agreement shall be provided at any specific minimum pressure at each Delivery Point, and Midlothian is under no obligation with respect thereto. Grand Prairie understands and acknowledges that maintaining a certain water pressure in Grand Prairie's delivery system shall require the use of storage or pumps on Grand Prairie's system.

- (e) **Interruption of Service for Maintenance.** Notwithstanding anything in this Agreement or in the requirements of any regulatory agency to the contrary, Midlothian shall be entitled at any and all times to install, repair, maintain, and replace such equipment or devices or to take any other action under an Emergency (including reduction or cessation of water service to Grand Prairie) as necessary or appropriate to allow Midlothian at all times to maintain a minimum pressure as required by law at all retail service locations directly served by the Midlothian Treated Water System. Midlothian shall use all reasonable efforts to install, repair, maintain, and replace such equipment and devices in a manner that minimizes, to the extent practical under the circumstances, any reduction in the amount of Treated Water furnished by Midlothian to Grand Prairie under this Agreement. Midlothian may install at each Delivery Point appropriate devices to monitor and enforce all or any of these limitations or any other limitations on the volume or pressure of Treated Water delivered by Midlothian to Grand Prairie pursuant to this Agreement. In the event of such service interruptions, Midlothian shall make all reasonable efforts to expedite the restoration of service in a timely manner. Midlothian shall provide Grand Prairie with twenty-four (24) hours prior written notice of all known repairs that are expected to interrupt service.

**3.2 Regulatory Requirements.** Grand Prairie acknowledges and agrees that this Agreement defines the extent of Midlothian's obligations to supply Treated Water to Grand Prairie and that, except as expressly provided by this Agreement, Midlothian is under no obligation to provide Grand Prairie with a sufficient amount of Treated Water for Grand Prairie to meet its minimum production, storage, service pump, or pressure maintenance requirements, or any other requirements imposed on Midlothian by virtue of 30 Texas Administrative Code, Chapters 290 or 291, or any other Regulatory Requirements.

**3.3 Delivery Points.** Subject to the conditions set forth herein, Midlothian agrees to divert, transport, treat, and deliver Treated Water to Grand Prairie at each Delivery Point. The location of Delivery Points shall be mutually agreed upon by and between Grand Prairie and Midlothian. Delivery Points shall not be moved or relocated except by mutual consent of the Parties in writing.

**3.4 Relocated Delivery Point.** Any request to relocate a Delivery Point shall be submitted in writing by the requesting Party. If the relocated Delivery Point is mutually agreed upon, then the requesting Party shall be responsible for funding all costs related to constructing the improvements for such relocated Delivery Point, unless the Parties agree on a division of costs based on mutual benefit; provided, however, that if Grand Prairie submits a request to relocate a Delivery Point, then the following shall also apply:

- (1) If Midlothian is to construct all necessary improvements, Grand Prairie shall be responsible for reimbursing Midlothian, as agreed upon in writing, including the acquisition of any easements or right-of-way. Prior to beginning construction, the Parties shall enter into a written agreement to specify the manner and timeframe for such reimbursement to Midlothian and the time for construction.
- (2) If Grand Prairie is to construct the necessary improvements for a relocated Delivery Point, Grand Prairie shall submit documents to acquire rights-of-way and will submit plans for the construction of the improvements to Midlothian for approval prior to construction commencing; provided, however, that such approval shall not be unreasonably withheld or delayed if the plans comply with Midlothian's technical standards and incorporate Midlothian's requirements. If Midlothian approves the documents and plans submitted, Midlothian will give Grand Prairie notice of said approval in writing within a commercially reasonable time. During the construction, Midlothian may, but is not obligated to, inspect improvements under construction at its sole cost. All costs for the construction of the improvements, including the costs for any easements and/or rights-of-way, shall be borne as agreed upon in writing. Midlothian may, but is not obligated to, make a final inspection at its sole cost, after construction of the improvements are completed and before the improvements are approved by Midlothian for use.

**3.5 Additional Delivery Points and Delivery Line.** It is anticipated that Grand Prairie may request one or more additional Delivery Point(s) and/or delivery line(s). Such request(s) shall be made in writing by Grand Prairie and Midlothian shall provide a written response within a commercially reasonable amount of time upon receipt of such request. If additional Delivery Point(s) and/or line(s) are mutually agreed upon, then Grand Prairie shall submit documents to acquire rights-of-way and/or easements and shall submit plans for the construction of the improvements to Midlothian for approval prior to construction commencing; provided, however, such approval shall not be unreasonably withheld or delayed if the plans comply with Midlothian's technical standards and incorporate Midlothian's requirements. If Midlothian approves the documents and plans submitted, Midlothian shall give Grand Prairie notice of said approval in writing. During the construction of such improvements, Midlothian may, but is not obligated to, inspect improvements under construction at its sole cost. All costs for the construction of the improvements, including the costs

- for any easements and/or rights-of-way, shall be borne by Grand Prairie. Midlothian may, but is not obligated to, make a final inspection at its sole cost, after construction of the improvements are completed and before the improvements are approved by Midlothian for use.
- 3.6 Improvements to Existing Delivery Points.** If Grand Prairie requests that improvements be made to an existing Delivery Point, then Grand Prairie shall submit the request in writing to Midlothian. If Midlothian approves the request, then the Parties shall then decide whether Midlothian or Grand Prairie will be responsible for constructing the improvements and shall follow the procedures set forth in Article 3.4.
- 3.7 Responsibilities for Water Line that Connects to the Delivery Points.** Grand Prairie shall be responsible for the design, construction and associated construction costs of the Midlothian Supply Line II, as depicted in Exhibit B. Grand Prairie shall maintain ownership of said water lines for so long as this Agreement and any renewal thereof is in effect, and Grand Prairie shall be responsible for the maintenance and repair of said water lines. Costs for the West Side Supply Line shall be pursuant to the West Side Supply Line Agreement.
- 3.8 Valves at Delivery Point.** All valves releasing water from the Midlothian Treated Water System to Grand Prairie shall be solely operated and maintained by Midlothian. Grand Prairie shall not obstruct or block access to those valves.
- 3.9 Property of Parties.** Acquired easements, rights-of-way, and water supply assets shall be owned by the acquiring Party. The acquiring Party shall not charge rental or other fees to the other Party for the use of such rights-of-way or easements. Easements, rights-of-way and water supply assets jointly purchased by the Parties shall be owned by the Party in which the easements, rights-of-way and water supply assets lay.
- 3.10 Title to and Responsibility for Water.** Title to, possession, and control of the Treated Water shall remain with Midlothian to each Delivery Point, whereupon title to, possession and control of the Treated Water shall pass to Grand Prairie.
- 3.11 Maximum Delivery Rate.** The Parties agree that Midlothian's obligation under this Agreement to deliver Treated Water to Grand Prairie is subject to the maximum Rate of Flow as set forth below:
- Delivery Point A: 1,390 GPM (2.0 MGD)
- Delivery Point B: 2,085 GPM (3.0 MGD)
- The maximum Rate of Flow at each additional Delivery Point, which is mutually agreed to under this Agreement, shall be agreed upon by the Parties in accordance with Section 5.2 at the time the Parties agree upon each additional Delivery Point.
- 3.12 Additional Treatment.** To the extent any additional, or alternative treatment or processing is required to make the water delivered by Midlothian to Grand Prairie at each Delivery Point, suitable, compatible, or of a quality for introduction into the Grand Prairie distribution system with the water then within Grand Prairie's distribution system, Grand Prairie is responsible, at its sole cost, for installing any



additional facilities or processes within Grand Prairie's Water System for any additional treatment, conditioning or processing.

#### **ARTICLE 4 Certificates of Convenience and Necessity**

The Parties recognize that Midlothian, by virtue of its water CCN No. 11706 granted by the State, currently has exclusive rights to the retail sale of water to territory located within the CCN, including territory located within the corporate limits and ETJ, of Grand Prairie. Subject to approval by the TCEQ, Midlothian shall transfer to Grand Prairie and Grand Prairie agrees to accept the transfer of that portion of water CCN No. 11706 located within the corporate limits and ETJ of Grand Prairie as of the Effective Date of this Agreement. Grand Prairie shall be responsible for completing and filing the forms required to obtain the TCEQ's consent to the transfer and Midlothian agrees to cooperate with the completion and filing of the forms. In the event Grand Prairie does not obtain TCEQ consent to the transfer within six (6) months after the Effective Date of this Agreement, Midlothian may complete and file whatever additional documents that may be required to obtain TCEQ consent of the transfer.

#### **ARTICLE 5 Metering and Rate of Flow Control**

- 5.1 Treated Water Measurement and Control.** Grand Prairie shall install at its sole cost, any Meters and appropriate valves, back flow prevention, flow controllers, or other appropriate equipment, including Supervisory Control and Data Acquisition (SCADA) at each Delivery Point and the necessary SCADA improvements at Midlothian's water treatment plant to measure and control the amount of Treated Water delivered to Grand Prairie under the terms of this Agreement. Each Meter shall be specified by Midlothian and meet appropriate AWWA standards. Each Meter shall be installed and tested prior to actual delivery of Treated Water. Each Meter and related equipment shall be solely owned, operated, and maintained by Midlothian at Midlothian's cost, but such cost, or projected cost, shall be included within the cost of service study.
- 5.2 Rate-of-Flow Controllers.** The rate at which Treated Water is withdrawn by Grand Prairie from the Midlothian System shall be regulated by rate-of-flow controllers. The rate of withdrawal shall be controlled so that the maximum rate shall not exceed the Maximum Allowed Rate of Flow without a specific written request by Grand Prairie and approval from Midlothian. Notwithstanding anything in this Agreement to the contrary, approval of a request to increase the rate of flow and the length of time the request will be met, shall be at Midlothian's sole discretion. Midlothian shall respond to the request within seventy-two (72) hours of receiving the request. If Midlothian approves the request, Midlothian shall make the adjustments within forty-

eight (48) hours of responding to the request. Rate of Flow setting shall be solely operated and maintained by Midlothian.

### 5.3 Calibration of Meters.

- (a) **Annual Testing.** For Meters that require calibration, Midlothian shall routinely test for accuracy at its sole cost. Meters shall be serviced and tested per manufacture's recommendations, or as necessary. Copies of the results of such tests and all related information shall be provided to Grand Prairie within thirty (30) days of such calibration. Grand Prairie shall have access to the Meter(s) at all reasonable times; provided, however, that any reading, calibration or adjustment to such Meter(s) shall be done by employees or agents of Midlothian, or other mutually approved third Party calibration agent, in the presence of representatives of Grand Prairie and Midlothian, if so requested by Grand Prairie. Midlothian shall provide Grand Prairie with seventy-two (72) hours prior notice of such reading, calibration or adjustment. Midlothian shall retain the right to test the Meter(s) more frequently than once each twelve (12) month period; provided, such additional tests are at Midlothian's sole cost.
- (b) **Inaccuracy.** After any calibration, if it is determined that the accuracy envelope of such Meter(s) is found to be lower than ninety-five percent (95%) or higher than one hundred five percent (105%) expressed as a percentage of the full scale of the Meter(s), or Meter(s) fail to perform to AWWA water metering standards (whichever is more restrictive), then the registration of the flow as determined by such defective Meter(s) shall be corrected for a period extending back to the time such inaccuracy began, if such time is ascertainable; or, if such time is 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. In the event it is determined that there are inaccuracies with any Meter, Midlothian shall charge or credit Grand Prairie's next invoice in an equal amount per month for the time period that the inaccuracies were determined to have occurred as appropriate, to reflect Grand Prairie's prior underpayments or overpayments. Midlothian shall charge or credit Grand Prairie's account in an amount equal to the difference between the amount actually paid by Grand Prairie and the amount that should have been paid by Grand Prairie, as determined by the corrected registration of the flow of the inaccurate Meter during the period of inaccuracy as determined in this subsection. Each Meter shall be properly sealed, and the seals shall not be broken unless representatives of both Grand Prairie and Midlothian have been notified and given a reasonable opportunity to be present.
- (c) **Meter out of Service - No Readings.** If a Meter used to determine the flow of Treated Water to Grand Prairie is out of service or out of repair so that the amount of Treated Water metered cannot be ascertained or computed from the reading thereof, the Treated Water delivered during the period such Meter is out of service or out of repair shall be estimated and agreed upon by Grand Prairie and Midlothian upon the basis of the best data available. The basis for

estimating such flow includes, but is not limited to, extrapolation of past patterns of flow for said Meter under similar conditions. In the event that Grand Prairie and Midlothian cannot agree on the extrapolated estimate of Treated Water volume delivered before the payment due date, Grand Prairie shall make payment to Midlothian based on the same month in the previous year on or before the payment due date. After making such payment, Grand Prairie may request that the matter be submitted to non-binding mediation as provided herein. Midlothian may also request that the matter be submitted to non-binding mediation, as herein provided.

#### **5.4 Meter Reading.**

- (a) Midlothian shall read each Meter provided for herein at monthly intervals, and Grand Prairie and Midlothian shall have free access to read any Meter daily, if either Party so desires. It shall be the duty of both Grand Prairie and Midlothian to give immediate notice, each to the other, should any Meter be found to not be functioning properly, and, upon such notice, repairs to such Meter shall be made promptly.
- (b) Grand Prairie shall have access to records on the Meter(s) readings during reasonable business hours and shall be furnished a copy of readings upon request.

**5.5 Additional Meter Testing.** Grand Prairie shall have the right to request Midlothian to test any Meter, but no more frequently than once per month. Upon any such request, Midlothian agrees to perform its testing and calibration of the Meter with notice to Grand Prairie, and the Parties shall be entitled to jointly observe any testing, calibration, and adjustments that are made to the Meter, in the event such modifications shall be necessary. For such additional testing requests, Midlothian shall give Grand Prairie notice forty-eight (48) hours in advance of the time when any such testing shall occur. Grand Prairie shall pay the cost of any such additional testing request for any Meter if the test shows that such Meter is accurate (within five percent (5%) registration), but Midlothian shall pay the costs of such additional test if the results indicate that such Meter is not accurate (in excess of five percent (5%) registration).

### **ARTICLE 6**

#### **Fees, Billing, and Payment**

##### **6.1 Charges for Water.**

- (a) **Untreated Water.** In accordance with Subsection 3.1(a)(2), herein, Grand Prairie, with Midlothian's cooperation, shall secure and pay or cause others to pay (i) Midlothian the TRWD Buy-In cost for all quantities of Raw Water, and (ii) the portion of the "take-or-pay" rates attributable to Grand Prairie, if any, that is charged to Midlothian by TRWD through the TRA. Unless Grand Prairie furnishes Raw Water from Joe Pool Reservoir to Midlothian for treatment under the terms of this Agreement, if any, all Raw Water treated by Midlothian shall be considered TRWD Raw Water, regardless of the source and/or treatment facility providing the treatment, and shall be subject to the TRWD through the TRA Raw Water Rate.

- (b) **Treated Water.** Except as otherwise provided in this Agreement, Grand Prairie shall pay to Midlothian the following fees and charges for the Treated Water delivered by Midlothian to Grand Prairie at each Point of Delivery: Demand Charge; Volume Charge; and Raw Water Charge. Such fees and charges may include Late Fees.
- (c) **Adjustments to Demand Charge.** Except as provided in Section 8.3, Grand Prairie agrees for each Water Year to pay Annual Demand Charges based on the greater of (i) the Maximum Day Demand for the current Water Year or (ii) the highest Maximum Day Demand established during the five (5) Water Years preceding the current Water Year or (iii) the Requested Maximum Day Demand then in effect.

## 6.2 Water Rates.

- (a) **Initial Rates.** Upon the Effective Date and until the recalculated rates from the first Cost of Service Study that is completed after the Effective Date become effective, the Volume Rate and the Demand Rate shall be:

Volume Rate - \$ 2.40 per 1,000 gallons

Demand Rate - \$ 156.49 per MGD

The Initial Minimum Day Demand (Annual Average Day) is 0.75 MGD.

The Initial Maximum Day Demand is 1.5 MGD.

Upon the Effective Date of this Agreement and until TRWD through the TRA adjusts its raw water rate charged to Midlothian, the Raw Water Rate shall be:

Raw Water Rate - \$ 0.97659 per 1,000 gallons.

- (b) **Cost of Service Study and Subsequent Rates.** Grand Prairie shall be charged a two-part rate, consisting of a Volume Rate and a Demand Rate, based on Grand Prairie's Treated Water consumption and the higher of either the Maximum Day Demand or the Requested Maximum Day Demand then in effect. The Volume Rate and the Demand Rate may be annually reviewed in a Cost of Service Study; provided however, that an independent cost of service study shall be performed no less than once every five (5) years. The recalculated Volume Rate and Demand Rate shall become effective on October 1 following the completion of the Cost of Service Study and action by the Midlothian City Council. In addition, Grand Prairie shall be charged a Raw Water Charge as defined herein. The Raw Water Rate shall be adjusted as TRWD through the TRA adjusts its raw water rate charged to Midlothian and shall be passed through to Grand Prairie.
- (c) **Rate Methodology.** The rates subsequent to the Initial Rates, excluding the Raw Water Rate, which Grand Prairie pays to Midlothian for Treated Water shall be calculated in a Cost of Services Study in accordance with the methodology described in Exhibit D. The rate methodology set forth in Exhibit D is hereby specifically agreed to between Midlothian and Grand Prairie.

### 6.3 Billing and Payment.

- (a) **Volume Charge.** Each month during the term of this Agreement, Midlothian shall read each Meter measuring the amount of Treated Water provided to Grand Prairie. The number of gallons of Treated Water measured by each Meter shall be multiplied by the Volume Rate to determine the Volume Charge. Midlothian shall prepare and deliver to Grand Prairie a statement showing the Volume Charge for all Treated Water delivered to Grand Prairie, in addition to the monthly Demand Charge. Payment shall be made no later than the 30th day after receipt of the statement.
- (b) **Raw Water Charge.** Each month during the term of this Agreement, Midlothian shall read each Meter measuring the amount of Treated Water provided to Grand Prairie. The numbers of gallons of Treated Water measured by each Meter plus an amount equal to five percent (5%) of the total number of gallons treated shall be multiplied by the Raw Water Rate as charged to Midlothian by TRWD to calculate the Raw Water Charge. The billing and payment for the Raw Water Charge shall be made in accordance with the billing and payment for the Volume Charge in Article 6.3(a). The Raw Water Charge invoiced by Midlothian to Grand Prairie each month shall not include the amount of Treated Water provided to Grand Prairie that was initially Raw Water supplied by Grand Prairie from their Joe Pool Reservoir water rights, if any, except for the 5% as defined in Section 2.1.
- (c) **Demand Charge.** The Demand Charge shall be paid in monthly installments with the payment for the Volume Charge and Raw Water Charge. The Maximum Day Demand shall be multiplied times the Demand Rate to determine the Demand Charge, plus applicable meter, meter reading, and billing costs.
- (d) **Late Fees.** If Grand Prairie is late in the payment of any charge or fee due and payable to Midlothian under this Agreement, late payments shall bear per annum interest at a rate equal to the lesser of two percentage points (2%) above the Prime Interest Rate as published in the Wall Street Journal on the day said statement becomes delinquent, or the maximum allowed by law to be charged to Grand Prairie. If any charges remain unpaid at the expiration of thirty (30) days after receipt of the statement, Grand Prairie shall be in default under this Agreement, and Midlothian may invoke the remedies specified herein or otherwise available by law.

### 6.4 Billing Questions and Disputes.

- (a) **Statement Dispute; Protest.** If Grand Prairie has a protest or dispute concerning a statement, Grand Prairie shall notify Midlothian in writing within thirty (30) days of receipt of said statement. Grand Prairie shall pay the portion of the statement that is not being disputed or protested. Upon written notification, the portion of the statement under dispute or protest (provided the dispute or protest is made in good faith and is not unreasonable) shall be set aside until resolved and shall not be subject to the penalties (such as Late Fees and Excess Demand Charge) stated herein. If Midlothian is not notified in

writing, with such notice being postmarked within thirty (30) days of Grand Prairie's receipt of said statement, said protest or dispute shall be considered waived.

The Parties agree to negotiate in good faith to resolve the dispute. The Parties shall agree to submit the dispute to non-binding mediation as provided in Article 14.1 of this Agreement.

- (b) **Inspection and Audit.** Complete records and accounts required to be maintained by each Party shall be kept for a period of five (5) years. Each Party shall at all times, upon notice, have the right at reasonable times to examine and inspect said records and accounts during normal business hours. If required by any law, rule or regulation, a Party shall make said records and accounts available to auditors acting for or on behalf of the federal government or the State of Texas.

#### ARTICLE 7

##### Treated Water Transmission Lines

- 7.1 **West Side Supply Line Construction.** The Parties contemplate at a future date to enter into a Treated Water Transmission Line Agreement, which shall address the responsibilities of the Parties related to the design, construction, and maintenance of the West Side Supply Line. This agreement will be complementary to, and not replace, any existing water line agreements unless specifically cancelling or modifying such previous agreements. Cost sharing arrangements and operational responsibilities for future treated water transmission lines shall be established through either written agreement separate from this Agreement or as an amendment to this Agreement. Either Midlothian or Grand Prairie may trigger the need to enter into the West Side Supply Line Agreement by providing written notice to the other Party at least one hundred and twenty (120) days before the design of the West Side Supply Line must commence in order to meet projected demand in the area to be served by the West Side Supply Line. In the event an agreement relating to the West Side Supply Line is not mutually agreed to by the Parties by the time one Party projects the need for the West Side Supply Line, that Party may proceed with the design and construction of the West Side Supply Line with capacity required for only that Party.

#### ARTICLE 8

##### Restrictions and Conditions

- 8.1 **Resale of Treated Water.** Grand Prairie and Midlothian agree that the Treated Water supplied to Grand Prairie by Midlothian shall be used solely by Grand Prairie to meet the reasonable water supply needs of Grand Prairie's potable retail and wholesale water customers located within Grand Prairie's boundaries, ETJ, or service area as defined by Grand Prairie's water CCN, as currently authorized or as may be amended in the future, whichever is more expansive. Grand Prairie shall not sell Treated Water to customers of Midlothian.

**8.2 Amendments to Certificates of Convenience and Necessity.** The Parties agree that during the term of this Agreement, except as provided herein, neither Party shall seek to amend its water CCN to increase its service area within the corporate limits or ETJ of the other Party without the prior written consent of such Party.

**8.3 Water Conservation and Demand Management.**

(a) **Water Conservation.** Grand Prairie shall cooperate with and assist Midlothian and TRWD through the TRA in their efforts to promote water conservation, so long as the water conservation measures placed on Grand Prairie by Midlothian or TRWD through the TRA are not more restrictive than the measures Midlothian or TRWD through the TRA places on its other Municipal Customers. This may include the development of any conservation or rationing plans by either Midlothian, TRWD through the TRA, or Grand Prairie that may be necessary or appropriate to address operational constraints, whether or not the same are required by any state or federal regulatory agency. Additionally, upon the development and distribution of model drought contingency or water conservation plans by TRWD through the TRA, Grand Prairie agrees to implement any such drought contingency or water conservation plan, or substitute plan approved by TRWD through the TRA, within a reasonable amount of time from receipt of the model plan. Grand Prairie agrees to notify TRWD through the TRA in writing of any deviation from the model plan and obtain TRWD's consent to such proposed deviation. Furthermore, Grand Prairie agrees to include the foregoing provision in all future contracts for resale of Treated Water on a wholesale basis. Grand Prairie shall provide a copy of any drought contingency or water conservation plan adopted by Grand Prairie to Midlothian and TRWD through the TRA within thirty (30) days from the Effective Date.

(b) **Demand Management.** When Midlothian or TRWD through the TRA shall manage water demand through rationing the use of water to its Municipal Customers, then a proportional rationing of Treated Water supplied to Grand Prairie by Midlothian shall be instituted, at Midlothian's option; provided, however, the rationing measures placed on Grand Prairie shall not be more restrictive than the measures placed on the other Municipal Customers of Midlothian or TRWD through the TRA. Rationing does not relieve Grand Prairie from its obligation to pay the monthly Demand Charge, its take-or-pay obligations, and the Raw Water Charge unless such rationing extends for a continuous period exceeding ninety (90) days. At such time rationing exceeds a continuous ninety (90) day period, Grand Prairie's monthly Demand Charge, take-or-pay obligations, and the Raw Water Charge will be proportionally adjusted to reflect its reduced demand instituted through rationing measures. Upon Midlothian's removal of such rationing measures, the monthly Demand Charge, take-or-pay obligations, and the Raw Water Charge will be adjusted to reflect the removal of the rationing measures.

(c) **Temporary Rationing.** Where an Emergency may dictate temporary conservation or rationing requirements for either Midlothian or Grand Prairie, either Party may implement any measures considered appropriate by it to

alleviate the Emergency. If either Party implements measures to alleviate an Emergency, such Party shall notify the other Party in writing within five (5) days of implementing such measures. Action taken under this subsection does not relieve Grand Prairie from its obligation to pay the monthly Demand Charge.

- 8.4 Federal and State Laws.** This Agreement is subject to all applicable federal and state laws and any applicable permits, amendments, orders, or regulations of any 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, order, rule or regulation in any forum having jurisdiction. Grand Prairie agrees to abide by any changes in this Agreement made necessary by any new, amended, or revised state or federal regulation.
- 8.5 Support of Midlothian on Permits and Governmental Agency Approvals.** Grand Prairie shall use all reasonable efforts to support and assist Midlothian in obtaining permits and approvals from governmental agencies in order to protect, repair, maintain, replace, add to, supplement and/or enlarge the Midlothian Raw Water System and/or the Midlothian Treated Water System. Such support and assistance shall include, but is not limited to: providing information to Midlothian when requested by Midlothian in order to facilitate any permit or approval; providing written and oral statements of support and assistance or testimony, information, and evidence if appropriate and if requested by Midlothian in order to obtain any permit or approval; and taking all such other action as may be appropriate to support and assist Midlothian in obtaining any permit or approval.

## ARTICLE 9

### Term of Agreement and Extension

- 9.1. Term of Agreement.** Unless terminated as provided in this Agreement, this Agreement shall commence upon the Effective Date and shall remain in effect for a term of thirty (30) years.
- 9.2. Renewal of Agreement.** At the end of the term of this Agreement, this Agreement shall automatically renew for an additional thirty (30) year term, unless either party notifies the other in writing that it does not want to renew this Agreement. Such written notification shall be delivered to the parties at least five (5) years prior to the Expiration Date. Grand Prairie expressly acknowledges that it has no right or entitlement to Raw Water or Treated Water from Midlothian after the expiration of this Agreement except to the extent that this Agreement is renewed as provided herein.
- 9.3. Alternatè Water Supply:** Grand Prairie agrees to take the steps to acquire water supply from another source of supply upon the Expiration Date in the event that Grand Prairie notifies Midlothian that it does not elect to renew this Agreement, in accordance with Section 9.2, above; and Grand Prairie shall provide Midlothian evidence that Grand Prairie is taking steps to secure such alternative and sufficient water supply. This requirement is expressly enforceable by Midlothian. If at least two (2) years prior to the Expiration Date of this Agreement Grand Prairie and Midlothian have not agreed to the quantity of water or the rate for the water, then, Grand Prairie



shall provide Midlothian evidence that Grand Prairie has secured an alternative and sufficient water supply. This requirement is expressly enforceable by Midlothian.

- 9.4 **Payments After Non-Renewal.** If this Agreement is not renewed, after expiration of this Agreement, Grand Prairie shall nonetheless pay Midlothian for all Raw Water Charges and Volume Charges for Treated Water delivered prior to the expiration of this Agreement, along with all applicable Demand Charges, as well as penalties such as Late Fees, under the terms of this Agreement.
- 9.5 **Midlothian/GP Contract.** The Parties agree that the Midlothian/GP Contract shall terminate on the Effective Date.

#### **ARTICLE 10 Termination and Default**

- 10.1 **Termination by Mutual Consent.** This Agreement may be terminated in whole or in part by the mutual written consent of Grand Prairie and Midlothian. In the event of termination of this Agreement by such mutual consent, all rights, powers, and privileges of the Parties hereunder shall cease and terminate without necessity of further action. Neither Party shall make any claim of any kind whatsoever against the other Party, its agents or representatives, by reason of such termination or any act incident thereto. If the Parties agree to terminate this Agreement, Grand Prairie shall nonetheless pay Midlothian for all Raw Water Charges and Volume Charges for Treated Water delivered prior to the termination of this Agreement, along with all applicable Demand Charges as well as penalties such as Late Fees under the terms of this Agreement. The provisions of this section survive termination of this Agreement.
- 10.2 **Default by Grand Prairie.** In the event Grand Prairie is in default under the terms of this Agreement, other than default by failing to timely pay the amount due Midlothian, Midlothian shall give Grand Prairie written notice of such default. If Grand Prairie's default is not cured after the expiration of thirty (30) days after the receipt of such written notification, then Midlothian may temporarily suspend the delivery of Treated Water to Grand Prairie.
- 10.3 **Default by Midlothian.** In the event Midlothian is in default under the terms of this Agreement, Grand Prairie shall give Midlothian written notice of such default. If Midlothian's default is not cured after the expiration of thirty (30) days after such written notification is given to Midlothian, Grand Prairie may seek remedies, other than termination, in accordance with this Agreement.
- 10.4 **Damages.** In no event shall either Party be liable to the other Party for any special, indirect, incidental, consequential, or punitive damages for any dispute arising under this Agreement. In the event either Party is awarded damages in a final, non-appealable judgment, then such damages shall be offset against all sums due or to become due to the other Party hereunder until the awarded Party's damages are fully compensated.
- 10.5 **Other Charges.** In the event any sales or use taxes, or taxes, assessments, production fees or charges of any similar nature are imposed by a federal, state, or local authority (other than a Party to this Agreement) on production, storing, delivering, gathering, impounding, taking, selling, using, or consuming the water received by a Party to this

Agreement, the amount of tax, assessment, or charge shall be borne by that Party, in addition to all other charges, and whenever a Party shall be required to pay, collect, or remit any tax, assessment, or charge on water received by such Party, then the other Party shall promptly pay or reimburse such Party for the tax, assessment, or charge in the manner directed by such Party.

**10.6 Default in Payments.** All amounts due and owing to a Party to this Agreement by the other Party to this Agreement shall, if not paid when due, bear interest at the Texas post-judgment interest rate under Texas law from the date when due until paid, provided that such rate shall never be usurious or exceed the maximum rate as permitted by law as set forth in Chapter 1204, as amended, Texas Government Code. If any amount due and owing by one Party to the other Party is placed with an attorney for collection, the Party owing the amount shall pay to the other Party, in addition to all other payments provided by this Agreement, including interest, the other Party's collection expenses, including court costs and attorneys' fees as may be the order of the court or tribunal. The Party who is owed the money may, to the extent permitted by law, suspend delivery of water to the other Party if the other Party remains delinquent in any payments due hereunder for a period of sixty (60) days, and is not required to resume delivery of water while the Party is so delinquent. Either Party may pursue all legal remedies against the other Party to enforce and protect the rights of the Party under this Agreement.

**10.7 Pledge of Gross Revenue.** Each Party to this Agreement represents and covenants to the other Party that all payments to be made by it under this Agreement shall constitute reasonable and necessary "operating expenses" of its utility system; and that all such payments will be made from the gross revenues of its utility system. Each Party represents and has determined that the water supply to be obtained from the other Party is absolutely necessary and essential to the present and future operation of its utility system; and, accordingly, all payments required by this Agreement to be made by the Party shall constitute reasonable and necessary operating expenses of the Party's utility system as described above with the effect that the obligation to make such payments from gross revenues of such utility system or systems shall have priority over any obligation to make any payments from such revenues, whether of principal, interest, or otherwise, with respect to all bonds heretofore or hereafter issued by the Party. Each Party agrees throughout the term of this Agreement to continuously operate and maintain its utility system and to fix and collect such rates and charges for water services to be supplied by its utility system as will produce gross revenues in an amount equal to at least all of its payments under this Agreement.

**10.8 A PARTY TO THIS AGREEMENT SHALL NEVER HAVE THE RIGHT TO DEMAND PAYMENT BY ANOTHER PARTY OF ANY OBLIGATIONS ASSUMED BY OR IMPOSED UPON THAT PARTY UNDER OR BY VIRTUE OF THIS AGREEMENT FROM ANY FUNDS RAISED OR TO BE RAISED BY TAXATION AND A PARTY'S OBLIGATION UNDER THIS AGREEMENT SHALL NEVER BE CONSTRUED TO BE A DEBT OF THE PARTY OF SUCH**

**KIND AS TO REQUIRE IT UNDER THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS TO LEVY AND COLLECT A TAX TO DISCHARGE SUCH OBLIGATION.**

- 10.9 Payment under Protest.** If a Party at any time disputes the amount to be paid by it to the other Party, the Party shall nevertheless promptly make the disputed payment or payments, but if it is subsequently determined by agreement or court decision that the disputed amount paid by the Party should have been less, or more, the other Party shall promptly revise the monthly payment in a manner that the Party, will recover the amount due within six (6) months.
- 10.10 Stipulations.** By signing this Agreement, each Party stipulates and agrees that the other Party will be prejudiced if a Party avoids the obligation to furnish water while accepting the benefits of payments, or avoids the obligation to pay the rates for water specified in this Agreement while accepting the benefits of obtaining water, from the other Party. Nothing in this Agreement shall be construed as constituting an undertaking by a Party to furnish water to the other Party except pursuant to the terms of this Agreement.
- 10.11 Remedies.** Recognizing that failure in the performance of any Party's obligations hereunder could not be adequately compensated in money damages alone, each Party agrees in the event of any default on its part that each Party shall have available to it the equitable remedy of mandamus and/or specific performance, but not termination. It is the intent of the Parties that any default shall be subject to the remedy of specific performance and/or mandamus to the extent that specific performance and/or mandamus is possible under the existing circumstances. The remedy of specific performance and/or mandamus shall be first requested by either Party in the event of default by the other Party. However, if, despite a Party's request for specific performance or mandamus, a court determines that the other Party has breached this Agreement, but the court declines to order specific performance as a remedy, the Party shall then be entitled to seek damages. In either event, the prevailing Party may recover court costs, attorneys' fees, and witness fees.

**ARTICLE 11  
Joe Pool Water**

- 11.1 Availability and Usage.** Subject to availability as determined by Grand Prairie, Midlothian may be allowed to utilize unused Grand Prairie raw water reserve rights in Joe Pool Reservoir to meet Midlothian's water source requirements under this Agreement. However, Midlothian is not obligated to treat any of Grand Prairie's raw water from Joe Pool Reservoir and will only do so if Midlothian has the capacity available to treat such raw water, which will be at Midlothian's discretion. If Grand Prairie authorizes Midlothian in writing to use a portion of its Joe Pool Reservoir raw water, and Midlothian agrees to treat said water, then Midlothian shall not include the Raw Water from Joe Pool Reservoir in the cost billed to Grand Prairie, except for the 5% as defined in Section 2.1.

- 11.2. **Volume Determination.** The volume of Grand Prairie's Raw Water that Midlothian uses from the Joe Pool Reservoir shall be based upon written agreement between the Parties for the volume to be treated.
- 11.3. **Reporting.** Midlothian shall report its withdrawals of Grand Prairie's Raw Water from Joe Pool Reservoir, if any, to Grand Prairie on a monthly basis.
- 11.4. **Authorization.** The Parties agree that if Grand Prairie authorizes Midlothian to use any of Grand Prairie's Raw Water in the Joe Pool Reservoir and Midlothian agrees to treat said water, Midlothian shall be authorized to use such water only for the amount of time agreed to in writing between the Parties. Nothing in this Agreement may be construed as permanently transferring any right that Grand Prairie has to Raw Water in the Joe Pool Reservoir to Midlothian.

## ARTICLE 12

### Force Majeure

- 12.1. **Definition.** The term *Force Majeure* as used herein shall mean a cause or causes beyond the reasonable control of the Party claiming *Force Majeure*, and shall include but not be limited to natural disasters, strikes, lockouts or other industrial disturbances, acts of public enemy, orders of any kind of the United States of America or the State of Texas or any civil or military authority, insurrections, riots, epidemics, lightning, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions and breakage or accidents to machinery, pipelines, or facilities; however, lockouts shall be entirely within the discretion of the Party having the difficulty, and the above requirement that any *Force Majeure* shall be remedied with all dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing Party or Parties when such settlement is unfavorable in the judgment of the Party having the difficulty.
- 12.2. **Notice; Suspension of Obligations.** By reason of *Force Majeure*, if any Party hereto shall be rendered partially or wholly unable to carry out its obligations under this Agreement, then such Party shall give notice in writing of such *Force Majeure* to the other Party within a reasonable time after occurrence of the event or cause relied on, so far as it is affected by such *Force Majeure*. Monthly Demand Charges for services actually received from Midlothian hereunder, shall be suspended during the continuance of the inability then claimed, and such Party shall endeavor to remove or overcome such inability with all commercially reasonable dispatch; and until such inability has been removed, no Party shall be deemed to be in default of this Agreement. If Midlothian is forced to curtail the amount of Treated Water delivered to Grand Prairie, then Midlothian agrees that such curtailment shall not be more severe than the curtailment Midlothian places on any other Municipal Customer receiving service from Midlothian using the same source of supply and treatment and transmission facilities.

## ARTICLE 13

### Ownership, Liability, Indemnification, and Insurance

- 13.1 Responsibility for Damages for Water.** Midlothian shall be the owner of and responsible for the Treated Water only to each Delivery Point. After the Treated Water has passed through each Delivery Point, it becomes the property and responsibility of Grand Prairie. Unless otherwise provided in this Agreement, responsibility for damages arising from the improper treatment, transportation, and delivery of all Treated Water provided under this Agreement shall remain with Midlothian to each Delivery Point. Upon passing through each Delivery Point, liability for all damages arising from improper transportation and delivery of the Treated Water after it leaves the Midlothian system shall pass to Grand Prairie. Midlothian's sole responsibility is to provide to Grand Prairie at each Delivery Point potable water meeting the minimum quality requirements for human consumption as prescribed by the TCEQ or appropriate governing agency.
- 13.2 Immunities under State Law.** Nothing in this Agreement shall be construed as waiving sovereign immunity or any other immunity that Midlothian or Grand Prairie may be entitled to under state or federal law.
- 13.3 Direct or Consequential Damages.** Neither Midlothian nor Grand Prairie shall be liable to the other for loss, either direct or consequential, arising out of damage to or destruction of the rights-of-way or either Party's facilities thereon, when such loss is caused by an act of God or any of the perils that are included within or insured against by a form of property insurance. All such claims for any and all loss, however caused, hereby are waived. Said absence of liability shall exist whether or not the damage or destruction is caused by the negligence of either Party or by any of their respective agents, servants, or employees.
- 13.4 Indirect or Consequential Damages.** Grand Prairie's or Midlothian's liability, if any, to the other Party in contract or in tort under this Agreement specifically excludes any and all indirect or consequential damages that may arise from providing Treated Water to Grand Prairie or that may arise from the operation, maintenance, and management of the Midlothian Raw Water System and the Midlothian Treated Water System.
- 13.5 Waiver or Subrogation.** It is the intention and agreement of both Parties that any insurance carriers involved shall not be entitled to subrogation under any circumstances against any Party to this Agreement. Neither Party shall have any interest or claim in the other's insurance policy or policies, or in the proceeds thereof, unless specifically covered therein as an additional insured.

#### **ARTICLE 14 Dispute Resolution**

- 14.1 Non-binding mediation.** Each Party agrees that prior to filing a lawsuit or an administrative complaint with a regulatory agency on an issue related to the terms of this Agreement, the Party shall submit the dispute to non-binding mediation. This provision survives termination of this Agreement.

#### **ARTICLE 15 Notice**

**15.1 Manner of Giving Notice.** Unless otherwise provided in this Agreement, any notice, communication, request, reply, advice, approval or consent herein provided or permitted to be given, made, or accepted by either Party to the other, must be in writing and may be given by personal delivery, electronic delivery, 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 the Mayor/City Manager or Chief Executive Office, or by prepaid telegram, when appropriate, addressed to the Party to be notified. Any such matter deposited in the mail in the manner hereinabove described shall become exclusively deemed to be effective, unless otherwise stated in this Agreement, from and after the earlier of actual receipt of notice or the expiration of four (4) days after it is so deposited. Any such notice given in any other manner shall be effective only if and when received by the Party to be notified.

**Notice to Midlothian.**

City Manager  
City of Midlothian  
104 W. Ave E  
Midlothian, Texas 76065

**Notice to Grand Prairie.**

City Manager  
City of Grand Prairie  
P.O. Box 534045  
Grand Prairie, Texas 75053-4045

The 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 five (5) days written notice to the other Party.

**ARTICLE 16**

**Miscellaneous Provisions**

- 16.1 Governing Law.** This Agreement shall be governed by the applicable law of the State of Texas and due performance by each Party, or any action arising under this Agreement shall lie in Ellis County, Texas. Jurisdiction and venue shall be in Ellis County, Texas, and each of the Parties submits to personal jurisdiction in the state district courts in such county.
- 16.2 No Waiver.** Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to any of the Parties nor to create any legal rights or claim on behalf of any third Party. No Party waives, modifies, or alters to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas or the United States.
- 16.3 Entire Agreement.** This Agreement and any Exhibits hereto embody the entire agreement and understanding of the Parties hereto and supersede any and all prior agreements, arrangements and understandings relating to the matters provided for herein. No amendment, waiver of compliance with any provision or condition hereof

or consent pursuant to this Agreement shall be effective unless evidenced by an instrument in writing signed by the Party against whom enforcement of any amendment, waiver or consent is sought. This Agreement may not be amended or modified except in writing executed by all Parties and authorized by their respective governing bodies.

- 16.4 Partial Invalidity.** If any provision of this Agreement is held to be invalid, illegal, or unenforceable in any judicial action, the remaining provisions shall be unaffected. In the event any provision of this Agreement is held to be invalid, illegal, or unenforceable in any judicial action, the Parties shall, upon the request of a Party, promptly renegotiate in good faith a new provision to eliminate the invalidity and to restore this Agreement, as nearly as possible, to its original intent and effect.
- 16.5 Duty to Review and Revise.** The Parties shall review and revise this Agreement to ensure compliance with the federal and state laws and rules and regulations as necessary.
- 16.6 Survival.** Any provision that by its terms survives the termination of this Agreement shall bind the Parties' legal representatives, heirs, and assigns as set forth herein.
- 16.7 Assignment.** This Agreement shall not be assignable by either Party without the prior written consent of the other Party nor in contravention of any other provisions contained herein.
- 16.8 Benefits.** This Agreement shall bind and the benefits thereof shall inure to the respective Parties hereto, their heirs, legal representatives, executors, administrators, successors, and assigns. This Agreement shall not be construed as creating any rights in any third Party or any duty to any third Party.
- 16.9 Multiple Copies.** This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall be considered fully executed as of the date when all Parties have executed an identical counterpart, notwithstanding that all signatures may not appear on the same counterpart.
- 16.10 Deadlines.** To the extent that the date for any payment or notice due hereunder by either Party shall fall on a Day that is not a Business Day, such deadline for payment or notice, as the case may be, shall be automatically extended to the next following Business Day.
- 16.11 Third Party Beneficiaries.** Except as otherwise expressly provided herein, nothing in this Agreement, express or implied, is intended to confer upon any person, other than the Parties hereto and their heirs, personal representatives, successors and assigns, any benefits, rights or remedies under or by reason of this Agreement.

IN WITNESS WHEREOF, the Parties have executed and attested this Agreement by their officers thereunto duly authorized as of the date signed.

Executed this 25<sup>th</sup> day of March 2014

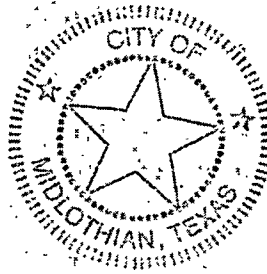
City of Midlothian

[Signature]  
Don Hastings, City Manager

Date 03/26/14

ATTEST

By [Signature]  
Sammy Warner  
City Secretary, City of Midlothian



City of Grand Prairie

[Signature]  
Tom Hart, City Manager  
TOM COX, DEPUTY CITY MGR.

Date 03/14/14

ATTEST

By [Signature]  
Catherine E. DiMaggio  
City Secretary, City of Grand Prairie

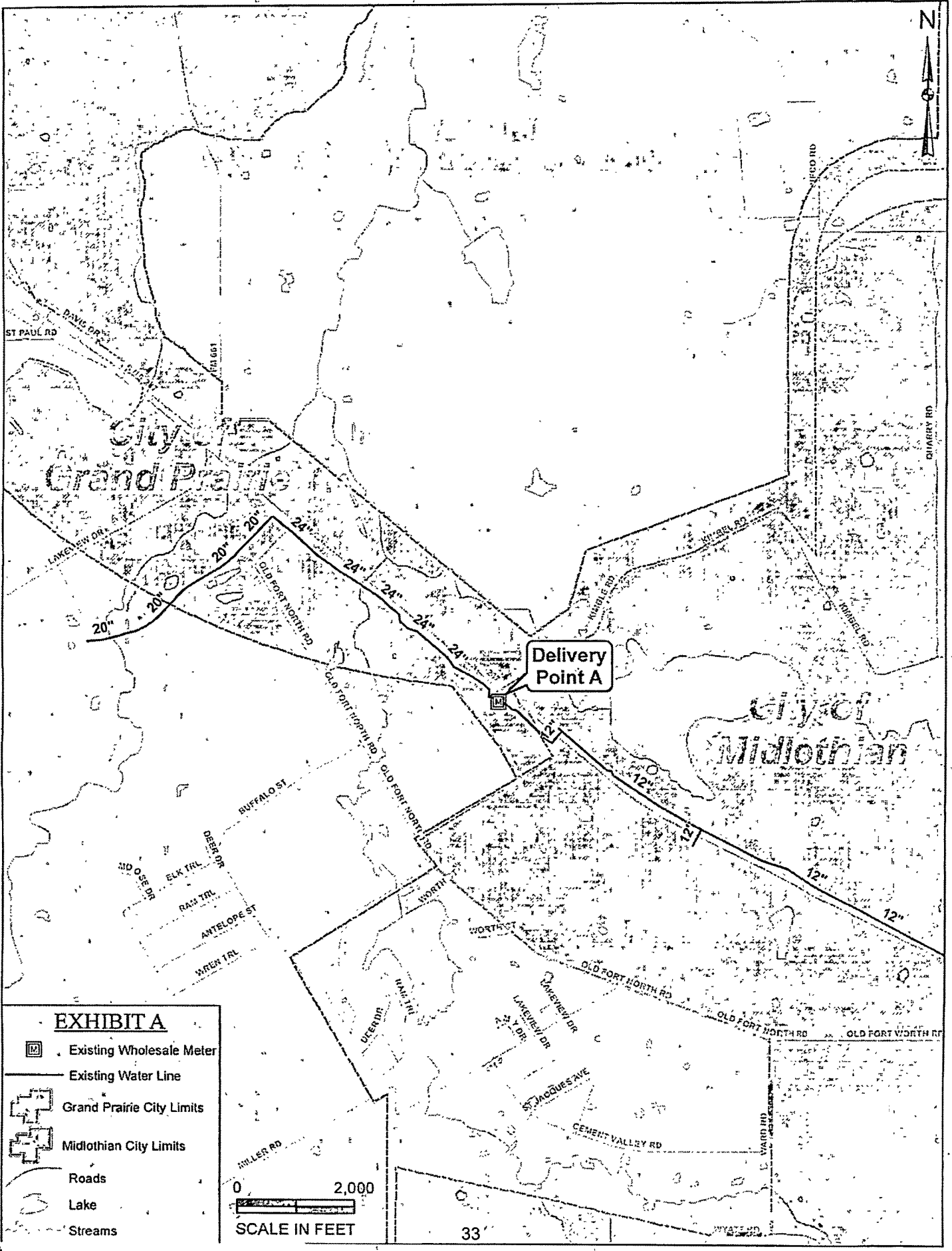
APPROVED AS TO FORM:

By [Signature]  
City Attorney, Midlothian

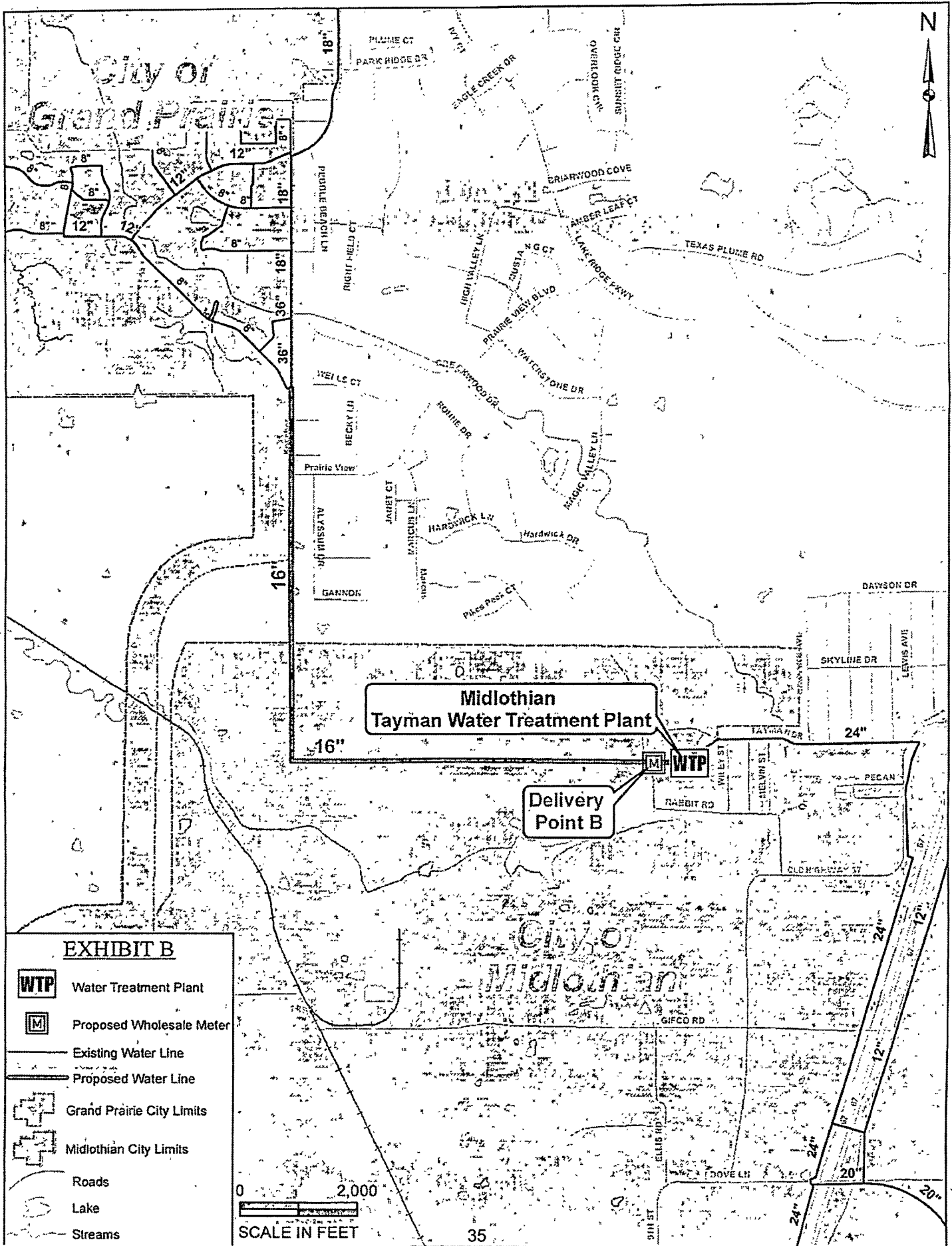
By [Signature]  
City Attorney, Grand Prairie



Exhibit A  
Delivery Point A and Midlothian Water Supply Line I



**Exhibit B**  
**Delivery Point B and Midlothian Water Supply Line II**

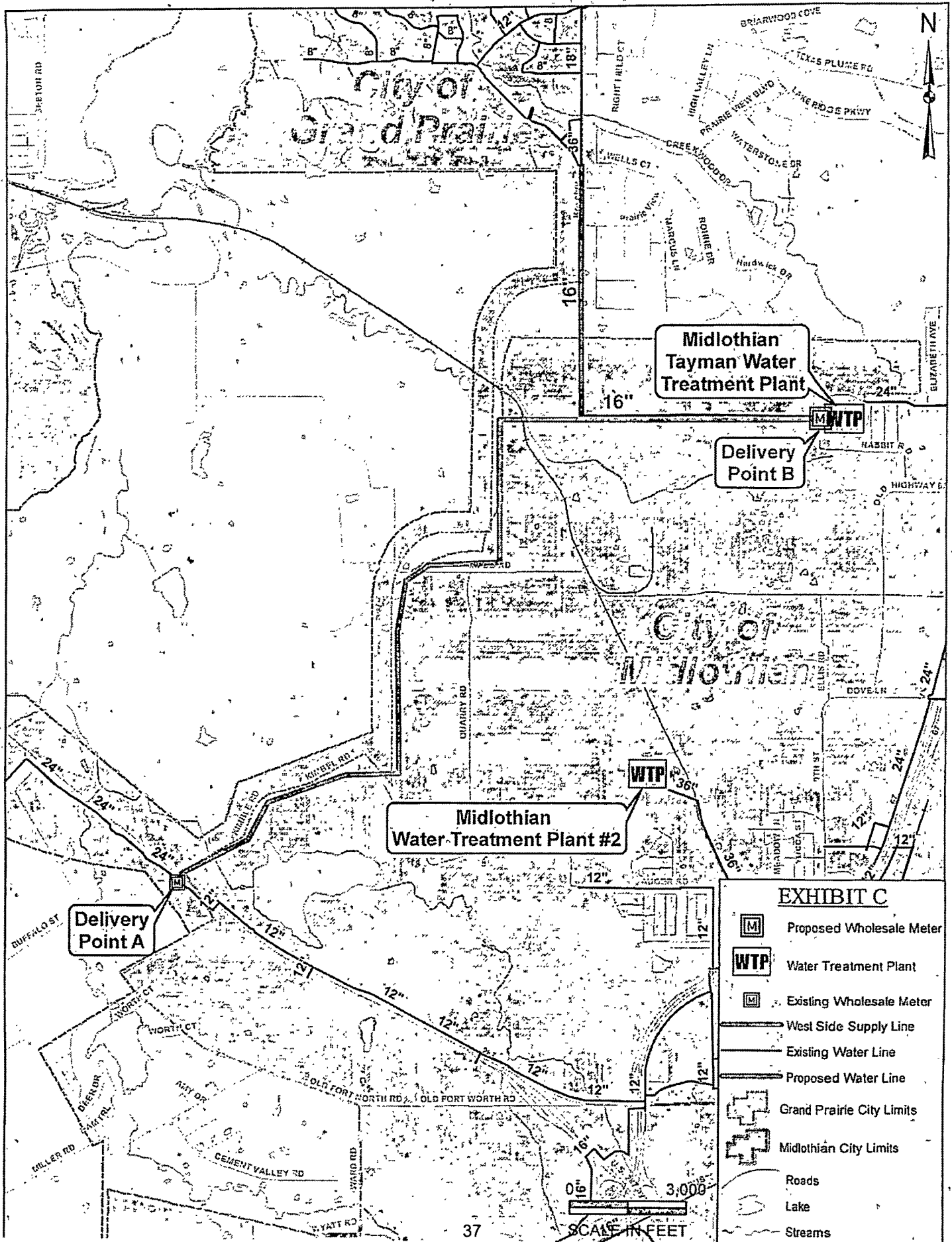


**EXHIBIT B**

- WTP** Water Treatment Plant
- M** Proposed Wholesale Meter
- Existing Water Line
- Proposed Water Line
- Grand Prairie City Limits
- Midlothian City Limits
- Roads
- Lake
- Streams

0 2,000  
SCALE IN FEET

Exhibit C  
West Side Supply Line



City of  
Grand Prairie












Midlothian  
Tayman Water  
Treatment Plant

Delivery  
Point B

Midlothian  
Water Treatment Plant #2

Delivery  
Point A

**EXHIBIT C**

-  Proposed Wholesale Meter
-  Water Treatment Plant
-  Existing Wholesale Meter
-  West Side Supply Line
-  Existing Water Line
-  Proposed Water Line
-  Grand Prairie City Limits
-  Midlothian City Limits
-  Roads
-  Lake
-  Streams

0 16" 3,000  
SCALE IN FEET

## Exhibit D

### Rate Methodology Policy

Preamble: This Policy regarding the wholesale treated water rate setting methodology will serve to govern the rate setting methodology for the Agreement for the Sale and Delivery of Treated Water to the City of Grand Prairie by the City of Midlothian (the “Agreement”) for the term of the Agreement.

1. Purpose: The purpose of this Policy is to establish the rate setting methodology and formalize the mutual expectations of the Parties with respect to rate setting methodology. This rate setting methodology will provide the basis for determining wholesale treated water rates after its effective date.
2. Applicability: This Policy is subject to all applicable orders, laws and regulations of the State of Texas and the United States.
3. Water System Policy: Midlothian operates a water system to provide a regulatory compliant safe and reliable water supply adequate for the current water use and future growth of the Parties and to avoid subsidization of any class of customers.
4. Definitions: A glossary which defines applicable cost of service terms is located in Appendix A of this Policy. Cost of service terms may be added or the definition of an existing term amended from time to time without the necessity of amending this Policy. Additions and amendments will be reflected in the appendices attached to the annual cost of service studies.
5. Responsibilities:
  - a. Midlothian is responsible for planning, financing, constructing, operating and maintaining the water supply system to the extent permitted by available water revenues for developing cost of service information to support wholesale rate changes and for informing Grand Prairie of wholesale rate changes and other pertinent utility information.
  - b. Grand Prairie is responsible for keeping Midlothian informed concerning their projected water supply needs and operating requirements for planning, managing and maintaining their retail systems to promote water conservation and efficient system operation and for paying adequate rates to Midlothian to cover the costs incurred by Midlothian in providing service to them.
6. Rate-Setting Methodology for Wholesale Treated Water:
  - a. The “Utility” methodology as defined by the American Water Works Association (AWWA) Manual M1 shall be used for rate setting.
  - b. The “Base – Extra Capacity” cost allocation methodology, as sanctioned by the AWWA.
  - c. The Cost of Service Study shall be based on Midlothian’s current year water and wastewater utility budget adjusted for known and measureable changes to establish a rate study test year, excluding raw water costs charged to Midlothian by TRWD through the

TRA that are recovered through the Raw Water Rate and Grand Prairie's raw water from Joe Pool Reservoir.

- d. The allocation for the Demand Rate will be based on the Maximum Day Demand. The allocation for the Volume Rate shall be based on historical water consumption for each Delivery Point, adjusted for known and measurable changes. Revenue requirements are to be determined on a utility basis at original cost including construction work in progress.
- e. Operation and Maintenance Expense shall be based on the test year expenditures with adjustments for "known and measurable changes." The "known and measurable changes" are adjustments to the test year expenditures and includes adjustments for changes in salaries and benefits, chemical purchase contracts, power costs, purchase of treated water, metered postage, worker's compensation, general fund cost reimbursement and professional services.
- f. Depreciation Expense is the actual annual depreciation amount calculated for those assets used to provide the wholesale service.
- g. Rate Base is the value of the assets used to provide the contracted service less the accumulated depreciation on the related assets. The Rate Base includes:
  - i. The Original Cost of System Investment less contributed assets and accumulated depreciation, plus construction work in progress (CWIP) and working capital allowance.
  - ii. The Original Cost of Plant Investment is the purchase amount of all assets allocated to the wholesale service provided. The contributed assets are those assets given (or contributed) to Midlothian from other municipalities, grants, and other agencies. The Accumulated Depreciation is the total depreciation amount that has been expensed over the useful life to the allocated assets.
  - iii. Construction Work in Process is the total of the expenditures for capital projects that are under construction and not yet capitalized at the end of the fiscal year.
  - iv. Working Capital is an estimate of the cost of carrying the cash demands of operations. For example, if a utility pays all of invoices received within thirty (30) days and receives remittances from its customers for all account receivables in forty-five (45) days, then the utility has to carry the cash difference for fifteen (15) days throughout the fiscal year. The Working Capital amount also includes a return for carrying the utility's inventory in stock that is not included in the rate base or operation and maintenance expense components.
  - v. The Working Capital factor for Midlothian is estimated to be one-eighth or 12.5% of the annual operation and maintenance expense allocated to the wholesale service provided. Midlothian's Working Capital factor is based on the wholesale contract terms and is consistent with the Working Capital



component of other utilities. The Working Capital factor of 12.5% shall be used until Midlothian has performed an independent lead-lag study to document the Working Capital factor.

- h. Rate of Return on Rate Base is the amount of return to which Midlothian is entitled for providing the assets needed to provide the contracted service. For Midlothian, the rate of return on rate base is set by contract to be the average cost of Midlothian's outstanding debt (also referred to as the "imbedded interest cost") plus 1.5%.
  - i. Return on Rate Base is calculated by multiplying the Rate of Return on Rate Base and the Rate Base allocated to the wholesale service provided.
  - j. All existing water supplies and associated facilities are to be included in a common water rate base. Grand Prairie and future wholesale treated water customers as a customer class shall pay their proportionate share of costs for water supply including that portion held for future use. Allocation of costs including but not limited to operations and maintenance costs shall be based on current use.
  - k. There will be a two part wholesale treated water rate volume and demand with allocation of costs in rate design so as to encourage conservation and efficient operation of the water systems of the Parties.
  - l. At the end of ten (10) years from the Effective Date of this Agreement and each ten (10) years thereafter either Party to this agreement may request a review of the above rate setting methodology and if so the methodology shall be subject to renegotiation.
7. Wholesale Treated Water Rates: After the effective date of this Agreement, Midlothian will prepare a cost of service study to support wholesale treated water rates and allocations and will submit it to Grand Prairie to review prior to submission to the Midlothian City Council. Except as noted herein the cost of service rate setting principles will adhere to the cost of service study including changes that have been identified and implemented since that date.
8. Effective Date: This Policy is effective as of the Effective Date of the Agreement.
9. Approved changes: Changes in the rate setting methodology or other conditions may be made by mutual agreement between the Parties at any time.

**APPENDIX A**  
**Glossary of Terms**

**Accumulated Depreciation** - The accumulated amount of the loss in service value of property

**Allocation** - The apportioning of the common to all costs of service to wholesale treated water service

**Common To All** - Facilities and their associated cost that are dedicated to providing treated water service to both Midlothian and Wholesale Treated Water Customers

**Construction Work in Progress (CWIP)** - The utility investment in facilities under construction but not yet dedicated to service

**Demand Costs** - Costs associated with providing facilities to meet peak rates of use or demand placed on the system by the customers

**Depreciation** - The wearing out or loss in service value of property used in utility operations

**Depreciation Rate** - The rate of loss in service value based on the expected service life of property

**Embedded Interest Rate** - Annual interest expense expressed as a percentage of weighted average debt of the Midlothian Water System

**Interest Expense** - Payments made for the use of borrowed funds

**Inventory** - Material and supply assets kept in Midlothian's inventory which are required to meet current obligations and service responsibilities of the utility

**Maximum Day Demand** - The maximum demand placed on the system over a twenty-four (24) hour period

**Maximum Hour Demand** - The maximum demand placed on the system over a sixty (60) minute period on the system maximum day

**MGD** - Million gallons per day flow rate

**Operating Expenses** - Operation and maintenance charges incurred in operating the utility system

**Original Cost** - The amount of investment in facilities when first put into service

**Rate Base** - Total investment dedicated to providing utility service

**Rate of Return** - The percentage of return authorized to be earned on an investment; e.g., rate base

**Raw Water Costs** - Costs incurred in acquiring untreated water supplies

**Retail Customers** - The group of treated water service customers in the Midlothian City CCN, which is comprised of residential, commercial and industrial customers served by Midlothian

**APPENDIX A - CONTINUED  
GLOSSARY OF TERMS**

**Rate of flow controller (ROFC)** - A device limiting instantaneous flow rate to a specific amount. Instantaneous flow rate for rate setting purposes is a per day setting

**Test Year (or Test Period)** - Selected to be representative of the period of time over which the new rates are expected to be in effect

**Treated Water** - Raw water that has passed the purification process

**Unaccounted for Water** - Water produced but not billed to customers that result from metering inaccuracies, system leakage and miscellaneous unmetered uses

**Volume Costs** - Costs that tend to vary directly with the amount of water produced and sold

**Water Supplies and Associated Facilities** - Midlothian water supply system including but not limited to all water sources and all system infrastructure

**Wholesale Cost of Service** - The sum total of: (1) operating expense, (2) depreciation expense and (3) return on investment. Depreciation expense and rate of return are on the original cost of investment less accumulated depreciation, capitalized interest and contributed capital

**Wholesale Treated Water Customers** - The group of water customers of Midlothian which currently have wholesale treated water contracts with Midlothian







**Working Capital** - Assets and funds which are required to meet current obligations and service responsibilities of the utility

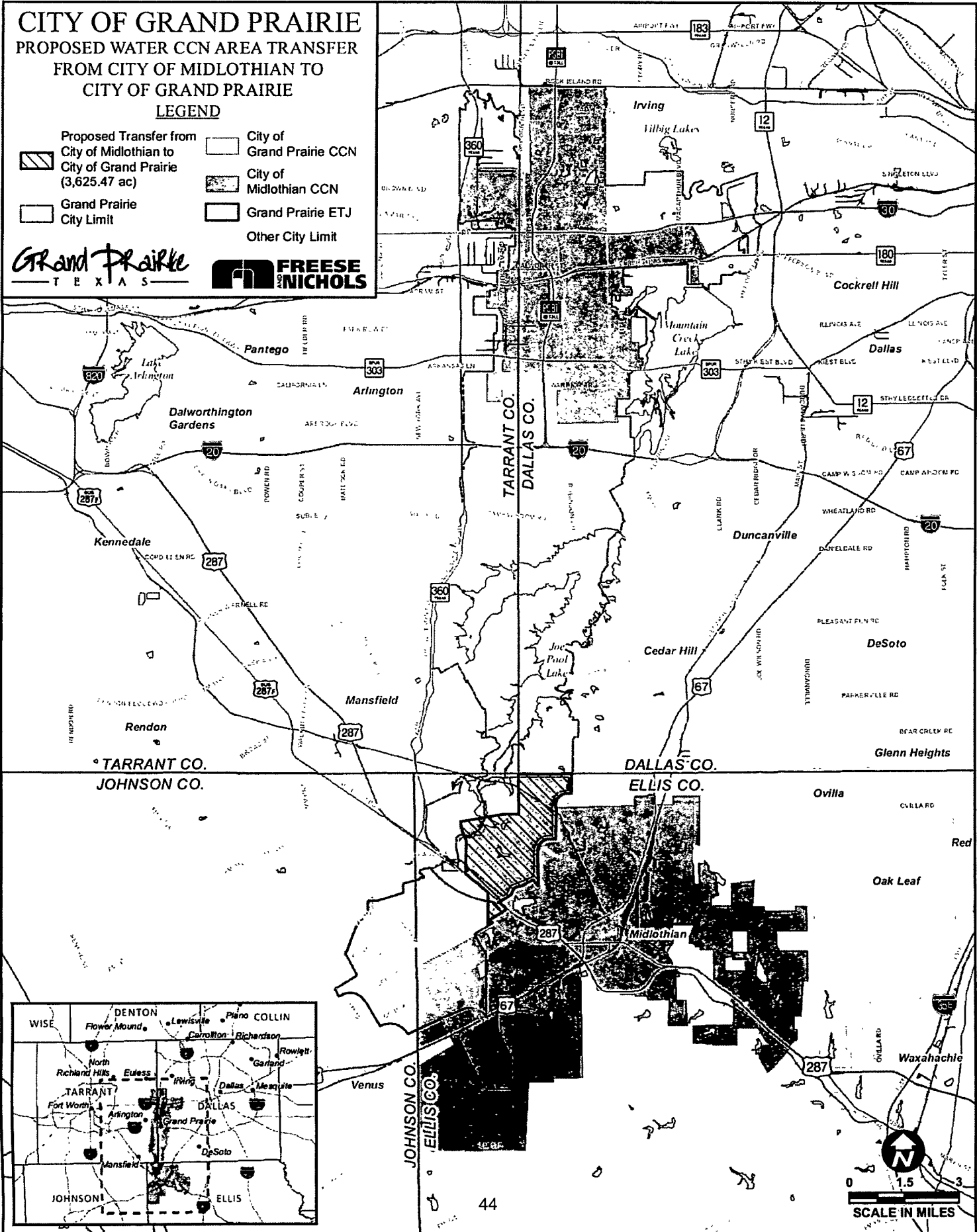
**EXHIBIT B**

**Map of Area to be Transferred and Shapefiles**

# CITY OF GRAND PRAIRIE PROPOSED WATER CCN AREA TRANSFER FROM CITY OF MIDLOTHIAN TO CITY OF GRAND PRAIRIE

## LEGEND




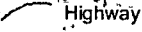
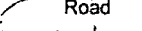
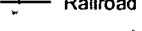
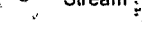
-  Proposed Transfer from City of Midlothian to City of Grand Prairie (3,625.47 ac)
-  Grand Prairie City Limit
-  City of Grand Prairie CCN
-  City of Midlothian CCN
-  Grand Prairie ETJ
-  Other City Limit

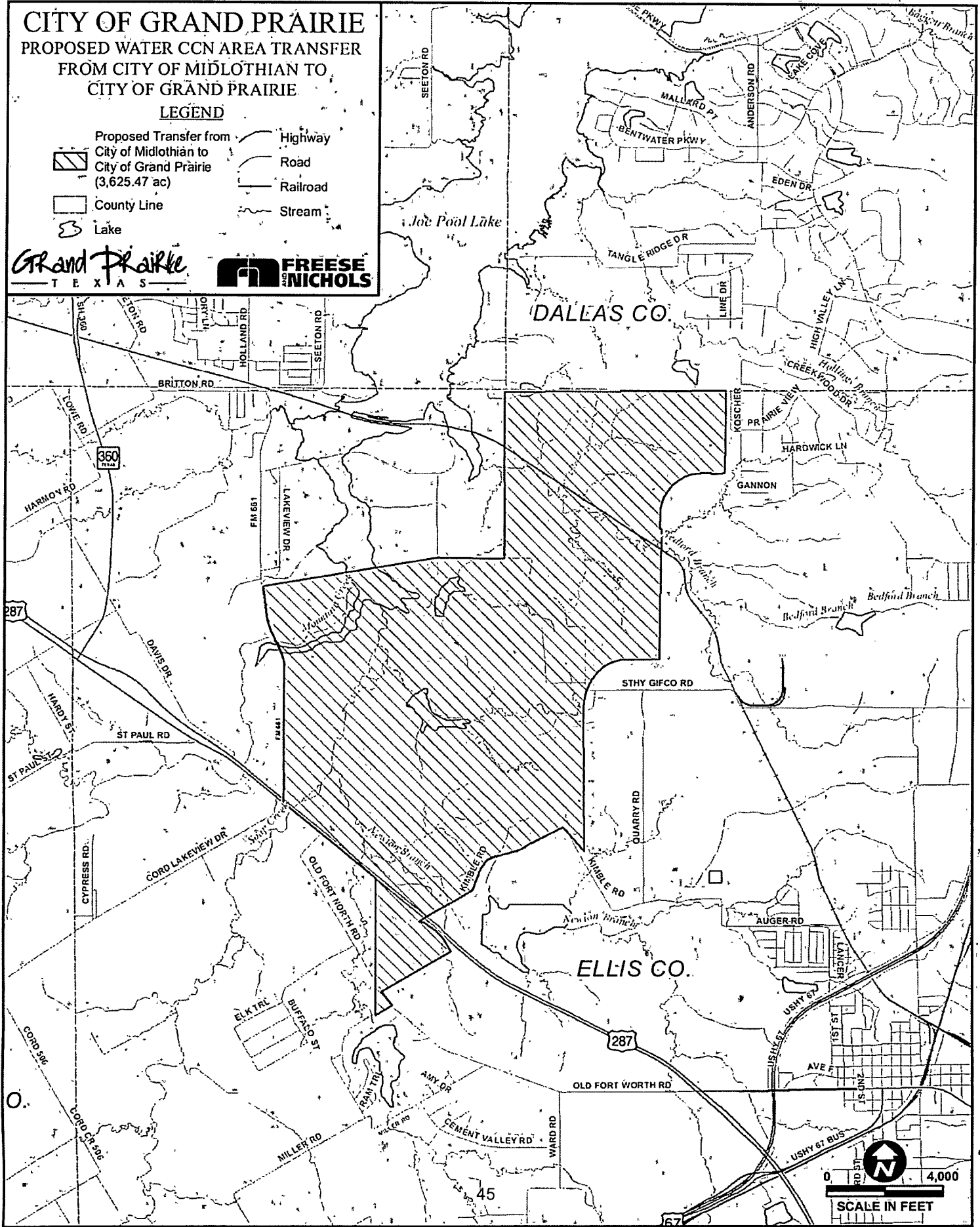


# CITY OF GRAND PRAIRIE

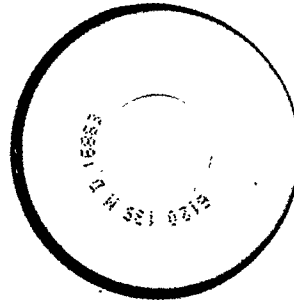
## PROPOSED WATER CCN AREA TRANSFER FROM CITY OF MIDLOTHIAN TO CITY OF GRAND PRAIRIE

### LEGEND

-  Proposed Transfer from City of Midlothian to City of Grand Prairie (3,625.47 ac)
-  County Line
-  Lake
-  Highway
-  Road
-  Railroad
-  Stream



**Transfer of a portion of  
City of Midlothian CCN No.11706  
to City of Grand Prairie CCN No.10105**



**EXHIBIT C**  
**City Council Meeting Agenda and Minutes**





# City of Grand Prairie

City Hall  
317 College Street  
Grand Prairie, Texas

## Meeting Agenda

### City Council

Tuesday, March 4, 2014

4:30 PM

City Hall - Briefing Room  
317 College Street

#### Call to Order

#### Staff Presentations

- 1                   Baylor Medical Center at Irving Accomplishments and Commitments to the Community - Presented by Cindy Shamp, President
  
- 2                   National Endowment for the Arts Tile Art Project - Presented by Tammy Chan, Special Projects Manager
  
- 3                   Interlocal agreement with Fort Worth to discharge Fort Worth wastewater into the Grand Prairie wastewater system - Presented by Ron McCuller, Public Works Director

#### Agenda Review

#### Executive Session

*The City Council may conduct a closed session pursuant to Chapter 551, Subchapter D of the Government Code, V.T.C.A., to discuss any of the following:*

- (1) Section 551.071 "Consultation with Attorney" Tommy Winn and Leland Gjetley v. City of Grand Prairie; Sheila Moore v. City of Grand Prairie et al*
- (2) Section 551.072 "Deliberation Regarding Real Property"*
- (3) Section 551.074 "Personnel Matters"*
- (4) Section 551.087 "Deliberations Regarding Economic Development Negotiations"*

#### Recess Meeting

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**6:30 PM Council Chambers**

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Invocation: Pastor Carl Allen, Fairview Baptist Church

Pledge of Allegiance to US Flag and to the Texas Flag led by Council Member Jeff Wooldridge

#### Presentations

- 4 Kawasaki Disease Awareness Proclamation - Presented to Christina Morales
- 5 Employee of the Month for March 2014 - Steve Martinez, HVAC Mechanic - Presented by Diana Ortiz, CFO
- 6 United States Navy Day Proclamation - Presented to United States Navy Band Sea Chanters

#### Consent Agenda

*The full agenda has been posted on the city's website, [www.gptx.org](http://www.gptx.org), for those who may want to view this agenda in more detail.*

- 7 Minutes of the February 18, 2014 Council Meeting
- 8 Price agreement with McCain, Inc. for Traffic Signal Heads & Parts, at an estimated annual cost of \$85,978; and secondary with Paradigm Traffic \$95,860 for one year with the option to renew for four additional one year periods totaling \$429,890 if all extensions are exercised; and authorize the City Manager to execute the renewal options with aggregate price fluctuations of the lesser of up to \$50,000 or 25% of the original maximum price so long as sufficient funding is appropriated by the City Council to satisfy the City's obligation during the renewal terms
- 9 Price agreement for Water Sampling Stations with HD Supply dba USA Blue Book, at an estimated annual cost of \$26,817 for one year with the option to renew for four additional one year periods totaling \$134,085, if all extensions are exercised, and authorize the City Manager to execute the renewal options with aggregate price fluctuations of the lesser of up to \$50,000 or 25% of the original maximum price so long as sufficient funding is appropriated by the City Council to satisfy the City's obligation during the renewal terms
- 10 Price agreement for grounds maintenance for channels, levees, and well sites from Landworks (\$8,474 channels), SLM Landscaping (\$14,549 levees) and Terry Rutland (\$15,814 well sites) for a combined total of \$38,837 annually for one year with the option to renew for four additional one year periods totaling \$194,185, if all extensions are exercised; and authorize the City Manager to execute the renewal options with aggregate price fluctuations of the lesser of up to \$50,000 or 25% of the original maximum price so long as sufficient funding is appropriated by the City Council to satisfy the City's obligation during the renewal terms

- 11 Price agreement for live and archived streaming of GPTV video from SWAGIT (onetime cost of \$13,950 and \$12,300 annually) for one year with the option to renew for ---four additional one year periods totaling \$75,450 if all extensions are exercised, and authorize the City Manager to execute the renewal options with aggregate price fluctuations of the lesser of up to \$50,000 or 25% of the original maximum price so long as sufficient funding is appropriated by the City Council to satisfy the City's obligation during the renewal terms
- 12 Contract Renewal #2 for Air Traffic Control Services with Robinson Aviation through the Federal Aviation Administration (FAA), at a current estimated annual cost of \$20,340, and authorize the City Manager to execute any additional renewal options with aggregate price fluctuations of up to \$50,000 so long as sufficient funding is appropriated by the City Council to satisfy the City's obligation during the renewal term(s)
- 13 Midlothian Treated Water Purchase Contract
- 14 Revised Interlocal Agreement with Irving to provide water and/or wastewater services
- 15 Change Order/Amendment with Clear Channel Outdoor for modifications to the Kiosk Sign Program
- 16 Contract with Dallas County, Texas for Assessment and Collection of Ad Valorem Taxes
- 17 Accept the City's Comprehensive Annual Financial Report for Fiscal Year Ending September 30, 2013
- 18 Purchase and turnkey installment of six generators using Holt Caterpillar Power Systems at the Main Library, Fire Stations 2 and 8, Service Center, Tony Shotwell Life Center and Charley Taylor Recreation Center for a total of \$553,968
- 19 Remodel of the Main Library north side (carpet, ceiling, lighting) to match the south side not to exceed \$262,450 via a contract with MART, INC; remodel of staff offices through contract with Symone Construction; and purchase of staff office furniture on state contract through Wilson Furniture not to exceed \$220,000; contract with Komatsu to update the Master Plan for Phase V and VI improvements in 2015 not to exceed \$35,000; and authorize the City Manager to enter into contracts for each
- 20 Contract with Falkenberg Construction Co., Inc. in the amount of \$71,125 for shade structure repairs at McFalls East and Charley Taylor Parks through the TXMAS price agreement
- 21 Change Order/Amendment No. 2 with SYB Corporation for the College Street and NW 6th Street Water & Wastewater Replacements in the negative amount of -\$5,188.50

- 22 Construction contract with Texas Standard Construction for Fargo Outfall Rehab Project in the total amount of \$704,507.90; material testing with Reed Engineering Group in the amount of \$6,155; professional services contract with Espey Consultants, Inc. dba RPS Espey for construction management in the amount of \$40,765; in-house engineering in the amount of \$35,225; and 5% construction contract contingency in the amount of \$35,225.39; for a total project cost of \$821,878.29
- 23 Construction contract with S. J. Louis Construction for Midlothian Water Supply - Phase I Project in the total amount of \$1,982,435.65; material testing with Alliance Geotechnical Group in the amount of \$16,740; in-house engineering in the amount of \$99,121; and 5% construction contract contingency in the amount of \$99,121; for a total project cost of \$2,197,417.65
- 24 Contract renewal with Focused Advocacy, LLC for legislative services in the amount of \$6,500 per month
- 25 Ordinance amending the FY 2013/2014 Capital Improvement Projects Budget and authorization to purchase two (2) new Frazer Type I 2014 Dodge Ram 4500, ambulance from Frazer Ltd, via Dallas Dodge Chrysler Jeep in Dallas, TX utilizing the HGAC price agreement at a cost of \$316,800 including two (2) trade-in discounts plus \$72,200 for tools, equipment and supplies for a total cost of \$389,000
- 26 Ordinance amending the FY 2013/2014 Solid Waste Equipment Acquisition Fund for the purchase of a Holt Caterpillar Tier 4 landfill compactor with 5-year/5,000 hour maintenance agreement in the amount of \$728,968
- 27 Resolution to authorize a Solid Waste "Stop Illegal Dumping" grant application in the amount of \$88,725 from the North Central Texas Council of Governments
- 28 Resolution authorizing the filing of a project application with the North Central Texas Council of Governments for a Regional Solid Waste Program Local Implementation Project; authorizing Tom Hart, City Manager or his designee to act on behalf of the city in all other matters that are related to this project application, pledging that if funding for this project is received, the City of Grand Prairie will comply with all project requirements of the North Central Texas Council of Governments, the Texas Commission on Environmental Quality and the State of Texas
- 29 Resolution authorizing additional payments to Hanson Aggregates, LLC, and all its entities, additional amounts to acquire street right-of-way and easement parcels, located on MacArthur Blvd. from I.H. 30 to West Fork of the Trinity River
- 30 Resolution authorizing the City Manager to execute a master inter-local purchasing agreement between the City of Grand Prairie and the National Purchasing Partners (NPP)

- 31 Resolution authorizing the City Manager to execute a master inter-local purchasing agreement between the City of Grand Prairie and the City of Bedford, Texas
- 32 Resolution authorizing a Separated Sales Tax Contract with WR Logistics Crossing, LLC
- 33 Resolution authorizing the implementation of a separated sales tax contract with RiverPoint Industrial Investors, LLC

### **Public Hearing on Zoning Applications**

- 34 Z140201 - Zoning Change - Grand Prairie Apartments (City Council District 4). Approval of a Zone Change from Planned Development 37 (PD-37) to Planned Development District for multi-family uses. The property, zoned PD-37 and within the S.H. 360 Overlay District, is located north of Outlet Parkway and east of State Highway 360. The applicant is David West, Ventures Development Group and the owner is George Watson, Twenty Three Sixty, LTD. (On February 3, 2014, the Planning and Zoning Commission recommended approval of this request by a vote of 5-3.)

### **Citizen Comments**

*Citizens may speak for up to five minutes on any item not on the agenda by completing and submitting a speaker card.*

### **Adjournment**

### *Certification*

*In accordance with Chapter 551, Subchapter C of the Government Code, V.T.C.A, the City Council agenda was prepared and posted February 28, 2014.*

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*Catherine E. DiMaggio, City Secretary*

*The Grand Prairie City Hall is accessible to people with disabilities. If you need assistance in participating in this meeting due to a disability as defined under the ADA, please call 972-237-8018 or email Gloria Colvin (gcolvin@gpx.org) at least three (3) business days prior to the scheduled meeting to request an accommodation.*



# City of Grand Prairie

City Hall  
317 College Street  
Grand Prairie, Texas

## Minutes - Final City Council

Tuesday, March 4, 2014

4:30 PM

City Hall - Briefing Room  
317 College Street

### Call to Order

Mayor Jensen called the meeting to order at 4:30 p.m.

Present 9 - Mayor Ron Jensen  
Mayor Pro Tem Greg Giessner  
Deputy Mayor Pro Tem Richard Fregoe  
Council Member Jorja Clemson  
Council Member Jeff Copeland  
Council Member Tony Shotwell  
Council Member Jim Swafford  
Council Member Lila Thorn  
Council Member Jeff Wooldridge

### Staff Presentations

1 Baylor Medical Center at Irving Accomplishments and Commitments to the Community - Presented by Cindy Schamp, President

*Cindy Schamp, President of Baylor Medical Center of Irving, addressed Council regarding the relationship of the hospital to the City of Grand Prairie. Ms. Schamp stated that the hospital has received the Magnet Designation from the American Nurses Credentialing Center and Baylor is the only hospital in Grand Prairie and Irving to earn this honor. She stated that the hospital sponsors many city events including the Main Street Festival; Flight of the Monarchs; Summit Triathlon; Summit 50+ Expo; Get Fit Grand Prairie. They are also very involved in Grand Prairie ISD by providing scholarships and internships; back to school vendor fair sponsor, and health education for the students and teachers. Ms. Schamp said the hospital also does community health education and screenings; bone density screenings for Grand Prairie employees; and skin cancer and stroke awareness for members at the Summit. She said that Baylor Irving emergency room is one of the busiest community hospitals in Dallas County. The average wait is 17-20 minutes to see a physician or physician's assistant. She said the new expanded emergency department is slated to be complete in early 2015.*

Presented

2 National Endowment for the Arts Tile Art Project - Presented by Tammy Chan, Special Projects Manager

*Tammy Chan, Special Projects Manager, introduced Pam Summers, the artist who will be designing and overseeing a tile art project funded by the National Endowment for the Arts in the amount of \$120,000. Ms. Chan showed examples of what the tile project might look like on the wall at NE15th Street near the Park and Ride Facility on I-30. She said the Our Town Grant from the National Endowment for the Arts will be*

used to train workers in this type of tile application and those who have been trained will be eligible for certification in this application.

Council Member Copeland remarked that the proposed design that Ms. Chan had shown did not have red and gold since these were the colors of South Grand Prairie High School and it may not be received well in the north part of town. Mayor Jensen thanked Ms. Chan for all the effort she puts in to so many projects around the city.

**Presented**

3

Interlocal agreement with Fort Worth to discharge Fort Worth wastewater into the Grand Prairie wastewater system - Presented by Ron McCuller, Public Works Director

Ron McCuller, Public Works Director, in response to a question from Council, stated that Fort Worth may go to a 2-day a week watering restriction and it is inevitable that Grand Prairie will eventually go to a permanent 2-day a week watering restriction all year long.

Mr. McCuller said that the City entered into an interlocal agreement with Fort Worth to discharge wastewater for some property that is northwest of Roy Orr and Rock Island. At this time, Fort Worth wants to serve an additional property at this location and this gave staff a chance to renegotiate the agreement and this will result in \$89,000 in back charges being paid to Grand Prairie because of unreliable TRA meters not measuring discharge correctly. This agreement contains a clause that will provide for agreement between water usage and water discharge. The amended interlocal agreement will be on the next agenda for Council consideration. Council Member Wooldridge thanked Mr. McCuller and Jim Cummings, Environmental Services Director, for assisting him at the recent Mira Lagos HOA meeting.

**Presented**

### Agenda Review

Council Member Swafford stated that the Finance and Government Committee reviewed the following Council Agenda Items at today's meeting: Items 13, 17, 18, 20, 23, 26 and 29 and they were recommended for approval. With regard to Item 17, the Comprehensive Annual Financial Report, the city had not gotten the actual document but have received it in CD form. The Finance and Government Committee met with Weaver & Tidwell and they gave an unqualified opinion for FY 2012-2013 and the committee recommends approval. Mr. Swafford said that Item 24 needs correction. The amount paid to Focused Advocacy each month should be \$7,500, not \$6,500.

Council Member Shotwell referred to Items 32 and 33 (separated sales tax agreements) and suggested that the Finance and Government Committee and Bob O'Neal, Economic Development Director, work on a policy relating to these agreements.

Council Member Clemson referred to Item 18 (purchase of generators) and was pleased to see the Shotwell and Charlie Taylor Recreation Centers were included in facilities to receive these generators since they are both used as emergency shelters.

Council Member Shotwell commended the Fire Department regarding yesterday's fire on Main Street and added that they were able to contain the fire and no one was injured.

**Executive Session**

*Mayor Jensen convened a closed session at 5:07 p.m. pursuant to Chapter 551, Subchapter D of the Government Code, V.T.C.A., to discuss Section 551.071 "Consultation with Attorney" Tommy Winn and Leland Gjetley v. City of Grand Prairie; Sheila Moore v. City of Grand Prairie et al and Section 551.072 "Deliberation Regarding Real Property" and Section 551.087 Deliberations Regarding Economic Development Negotiations." The closed session was adjourned at 5:42 p.m.*

**Recess Meeting**

Mayor Jensen recessed the meeting at 5:42 p.m.

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**6:30 PM Council Chambers**

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Mayor Jensen reconvened the meeting at 6:30 p.m.

**Pastor Carl Allen, Fairview Baptist Church, gave the invocation. The Pledge of Allegiance to US Flag and to the Texas Flag was led by Council Member Jeff Wooldridge.**

**Presentations**

- 4**                      **Kawasaki Disease Awareness Proclamation - Presented to Christina Morales**
- Mayor read a proclamation regarding Kawasaki Disease awareness and presented it to Christina and Cezar Morales. Cezar stated that he has had Kawasaki disease since he was seven years old and is now 13. He said the disease usually occurs among children younger than 8 and is a disease that most doctors do not know anything about.*
- Presented**
- 5**                      **Employee of the Month for March 2014 - Steve Martinez, HVAC Mechanic - Presented by Diana Ortiz, CFO**
- Diana Ortiz, Chief Financial Officer, introduced Steve Martinez, HVAC Mechanic, as Employee of the Month for March. Anna Doll, Deputy City Manager, presented Mr. Martinez with a certificate and engraved clock and thanked him for his dedication to the city.*
- Presented**
- 6**                      **United States Navy Day Proclamation - Presented to United States Navy Band Sea Chanters**
- Council Member Swafford read a proclamation for US Navy Band Sea Chanters who*



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will be appearing soon at the GPISD auditorium.

**Presented**

## **Consent Agenda**

*Council Member Swafford, who serves as the Finance and Government Committee Chairperson, stated that the city had received an unqualified audit from Weaver & Tidwell on all city financial statements.*

**Mayor Pro Tem Giessner moved, seconded by Deputy Mayor Pro Tem Fregoe, to approve Items 7 through 23, remove Item 24 for individual consideration, and approve Items 25 through 33 on the Consent Agenda. The motion carried unanimously.**

**7** Minutes of the February 18, 2014 Council Meeting

**Approved on the Consent Agenda**

**8** Price agreement with McCain, Inc. for Traffic Signal Heads & Parts, at an estimated annual cost of \$85,978; and secondary with Paradigm Traffic \$95,860 for one year with the option to renew for four additional one year periods totaling \$429,890 if all extensions are exercised, and authorize the City Manager to execute the renewal options with aggregate price fluctuations of the lesser of up to \$50,000 or 25% of the original maximum price so long as sufficient funding is appropriated by the City Council to satisfy the City's obligation during the renewal terms

**Approved on the Consent Agenda**

**9** Price agreement for Water Sampling Stations with HD Supply dba USA Blue Book, at an estimated annual cost of \$26,817 for one year with the option to renew for four additional one year periods totaling \$134,085, if all extensions are exercised, and authorize the City Manager to execute the renewal options with aggregate price fluctuations of the lesser of up to \$50,000 or 25% of the original maximum price so long as sufficient funding is appropriated by the City Council to satisfy the City's obligation during the renewal terms

**Approved on the Consent Agenda**

**10** Price agreement for grounds maintenance for channels, levees, and well sites from Landworks (\$8,474 channels), SLM Landscaping (\$14,549 levees) and Terry Rutland (\$15,814 well sites) for a combined total of \$38,837 annually for one year with the option to renew for four additional one year periods totaling \$194,185, if all extensions are exercised; and authorize the City Manager to execute the renewal options with aggregate price fluctuations of the lesser of up to \$50,000 or 25% of the original maximum price so long as sufficient funding is appropriated by the City Council to satisfy the City's obligation during the renewal terms

**Approved on the Consent Agenda**

- 11 Price agreement for live and archived streaming of GPTV video from SWAGIT (onetime cost of \$13,950 and \$12,300 annually) for one year with the option to renew for ---four additional one year periods totaling \$75,450 if all extensions are exercised, and authorize the City Manager to execute the renewal options with aggregate price fluctuations of the lesser of up to \$50,000 or 25% of the original maximum price so long as sufficient funding is appropriated by the City Council to satisfy the City's obligation during the renewal terms
- Approved on the Consent Agenda
- 12 Contract Renewal #2 for Air Traffic Control Services with Robinson Aviation through the Federal Aviation Administration (FAA), at a current estimated annual cost of \$20,340, and authorize the City Manager to execute any additional renewal options with aggregate price fluctuations of up to \$50,000 so long as sufficient funding is appropriated by the City Council to satisfy the City's obligation during the renewal term(s)
- Approved on the Consent Agenda
- 13 Midlothian Treated Water Purchase Contract
- Approved on the Consent Agenda
- 14 Revised Interlocal Agreement with Irving to provide water and/or wastewater services
- Approved on the Consent Agenda
- 15 Change Order/Amendment with Clear Channel Outdoor for modifications to the Kiosk Sign Program
- Approved on the Consent Agenda
- 16 Contract with Dallas County, Texas for Assessment and Collection of Ad Valorem Taxes
- Approved on the Consent Agenda
- 17 Accept the City's Comprehensive Annual Financial Report for Fiscal Year Ending September 30, 2013
- Approved on the Consent Agenda
- 18 Purchase and turnkey installment of six generators using Holt Caterpillar Power Systems at the Main Library, Fire Stations 2 and 8, Service Center, Tony Shotwell Life Center and Charley Taylor Recreation Center for a total of \$553,968
- Approved on the Consent Agenda

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- Approved on the Consent Agenda**
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- Approved on the Consent Agenda**
- 23 Construction contract with S. J. Louis Construction for Midlothian Water Supply - Phase I Project in the total amount of \$1,982,435.65; material testing with Alliance Geotechnical Group in the amount of \$16,740; in-house engineering in the amount of \$99,121; and 5% construction contract contingency in the amount of \$99,121; for a total project cost of \$2,197,417.65
- Approved on the Consent Agenda**
- 24 Contract renewal with Focused Advocacy, LLC for legislative services in the amount of \$6,500 per month
- Council Member Swafford stated that since March 2010 Focused Advocacy has been employed by the city for legislative services and this item is to renew their contract in the amount of \$7500/month.*
- Council Member Swafford moved, seconded by Mayor Pro Tem Glessner, to approve the Focused Advocacy contract in the amount of \$7,500 per month. The motion carried unanimously.**

- 25 Ordinance amending the FY 2013/2014 Capital Improvement Projects Budget and authorization to purchase two (2) new Frazer Type I 2014 Dodge Ram 4500, ambulance from Frazer Ltd, via Dallas Dodge Chrysler Jeep in Dallas, TX utilizing the HGAC price agreement at a cost of \$316,800 including two (2) trade-in discounts plus \$72,200 for tools, equipment and supplies for a total cost of \$389,000.
- Adopted**
- Enactment No: ORD 9676-2014
- 26 Ordinance amending the FY 2013/2014 Solid Waste Equipment Acquisition Fund for the purchase of a Holt Caterpillar Tier 4 landfill compactor with 5-year/5,000 hour maintenance agreement in the amount of \$728,968
- Adopted**
- Enactment No: ORD 9677-2014
- 27 Resolution to authorize a Solid Waste "Stop Illegal Dumping" grant application in the amount of \$88,725 from the North Central Texas Council of Governments
- Adopted**
- Enactment No: RES 4678-2014
- 28 Resolution authorizing the filing of a project application with the North Central Texas Council of Governments for a Regional Solid Waste Program Local Implementation Project; authorizing Tom Hart, City Manager or his designee to act on behalf of the city in all other matters that are related to this project application, pledging that if funding for this project is received, the City of Grand Prairie will comply with all project requirements of the North Central Texas Council of Governments, the Texas Commission on Environmental Quality and the State of Texas
- Adopted**
- Enactment No: RES 4679-2014
- 29 Resolution authorizing additional payments to Hanson Aggregates, LLC, and all its entities, additional amounts to acquire street right-of-way and easement parcels, located on MacArthur Blvd. from I.H. 30 to West Fork of the Trinity River
- Adopted**
- Enactment No: RES 4680-2014
- 30 Resolution authorizing the City Manager to execute a master inter-local purchasing agreement between the City of Grand Prairie and the National Purchasing Partners (NPP)

**Adopted**

Enactment No: RES 4681-2014

- 31** Resolution authorizing the City Manager to execute a master inter-local purchasing agreement between the City of Grand Prairie and the City of Bedford, Texas

**Adopted**

Enactment No: RES 4682-2014

- 32** Resolution authorizing a Separated Sales Tax Contract with WR Logistics Crossing, LLC

**Adopted**

Enactment No: RES 4683-2014

- 33** Resolution authorizing the implementation of a separated sales tax contract with RiverPoint Industrial Investors, LLC

**Adopted**

Enactment No: RES 4684-2014

**Public Hearing on Zoning Applications**

- 34** Z140201 - Zoning Change - Grand Prairie Apartments (City Council District 4). Approval of a Zone Change from Planned Development 37 (PD-37) to Planned Development District for multi-family uses. The property, zoned PD-37 and within the S.H. 360 Overlay District, is located north of Outlet Parkway and east of State Highway 360. The applicant is David West, Ventures Development Group and the owner is George Watson, Twenty Three Sixty, LTD. (On February 3, 2014, the Planning and Zoning Commission recommended approval of this request by a vote of 5-3.)

*Jim Hinderaker, Chief City Planner, stated that this case would modify existing zoning on a 17-acre site. He said the current zoning did not have a specific density and the applicant requested MF2 standards. The site is located in the SH360 Overlay District but this does not apply to multi-family zoning. Mr. Hinderaker showed adjacent uses. He said the site is on the border between Grand Prairie and Arlington. The proposed Concept Plan is for 247 units (14.12 units per acre); 6.82 acre pad site; 280,000 sq. ft. 3-story wood framed/masonry clad structure; a 3-level, precast parking structure with 208 parking spaces; a 4,200 sq. ft. clubhouse and leasing office; open air courtyards, jogging trail, dog park, landscaping and perimeter fencing with security gates. Apartments will have an open floor plan with high end amenities including washers and dryers.*

*Mr. Hinderaker showed the proposed Concept Plan at the corner of Outlet Parkway and the SH360 access road. The primary access will be off of Outlet Parkway. The elevations meet the UDC requirements for masonry. With regard to MF2 standards, the applicant has asked for the following exceptions: UDC requires 690 sq. ft. and the*

applicant is proposing 136 one-bedroom units with square footage of 650 - 850; the applicant is proposing 55% of the units as one bedroom and the UDC maximum is 50%; the UDC requires 392 parking spaces and they have 415 parking spaces, but the applicant has requested 30% to be covered parking; the UDC requires a roof pitch of 6:12 to 10:12 and the applicant has requested 4:12. Mr. Hinderaker said the building looks good and fits in the area and he said he did not have a problem with this variance. The applicant has also requested a frontyard setback reduction from 100' to 25'; a 260' rear setback and a side yard setback from the required 108' to 86'. The UDC requires a 30' landscape buffer on Outlet Parkway and the applicant has requested a 25' buffer. Mr. Hinderaker said the UDC requires a Type 1 masonry fence and the applicant has requested a Type 2 fence (wrought iron with masonry columns). There is a significant distance between residential development and there a lot of vegetation. Mr. Hinderaker said the development is 700' from the building to the closest home in the Forum subdivision.

Mr. Hinderaker said the development will have great visibility from SH360 but not great access. He said staff had discussed the limitation for commercial access and thought the multi-family was a better use. The development meets the standards of the UDC excluding the six exceptions previously mentioned.

Deputy Mayor Pro Tem Fregoe clarified this case is a zoning change to MF-2 to address the issue of density as the site is already zoned for multi-family uses.

Council Member Swafford asked about ingress and egress. Jim Sparks, Transportation Director, said there is one on SH360 that is egress only and the one on Outlet Parkway is for both ingress and egress.

Council Member Shotwell asked if a traffic impact analysis (TIA) had been done. He said he was concerned that all ingress would be off Outlet Parkway and this is a very busy area. Mr. Sparks said this development would generate less than 1500 trips per day which would be much less than a gas station at this location. Council Member Shotwell asked Mr. Sparks about his professional opinion with regard to Sunday afternoon traffic. Mr. Sparks said his staff had conducted a TIA and looked at an average work day and that had minimal impact on this area. He said when it is Traders Village day these residents will be impacted. He said that residents could come in on the frontage road or come in off Great Southwest Parkway. Council Member Swafford asked how they would access this development coming south down SH360. Mr. Sparks said they would get off at Mayfield and circle around to Sara Jane. Or, they could go to I-20 to Great Southwest Parkway and come in that way. Council Member Shotwell asked if they were coming northbound on SH360, how would they access this development. Mr. Sparks said they would get off at Mayfield and come around. Deputy Mayor Pro Tem Fregoe said if they were coming south on SH360, they could exit Mayfield and stay on the service road and take the bridge to the frontage road.

Deputy Mayor Pro Tem Fregoe asked where the security gate would be located. Mr. Hinderaker said it would be inset off of Outlet Parkway. Council Member Copeland stated he was a resident of Forum Estates and he had a big concern as people come around that corner fast and with the Outlet traffic and the addition of this development, it is almost a blind curve. Mr. Sparks said when the applicant comes back in with the site plan, staff would be very particular about visibility at that exit. Mr. Copeland said he works at LBJ and Hillcrest and the scariest part of that drive is when you are southbound at SH360 and exit on Mayfield. He suggested that there should be some flashing yield signs at this point or additional yield signs. He said there was the same issue with the new service road on I-20 and Great Southwest Parkway. Mr. Sparks said he had talked to TXDOT about pushing the Mayfield exit

ramp back.

Sean Siebert, Ventures Development Group, 7934 Wrenwood Blvd., Suite A, Baton Rouge, LA, said his firm has been in the area for 6-7 years in the apartment business and they have developed and managed 4,000 units in that time. He said this proposed plan is for a unique 3-story wrapped development that will showcase something new to the area to move multi-family in a new direction. The parking structure will have 208 spaces and there will be 208,000 sq. ft. of living space. Fifty-five percent of the units would be one-bedroom; 42 percent 2-bedroom; and 3% would be 3-bedroom. He said the units would be rented at \$1.30/sq. ft. There will be gated access off Outlet Parkway and amenities will be designed to bring people together and establish the feeling of a neighborhood. The units will have high ceilings, granite countertops, premium fixtures, and wood floors.

George Watson, 4015 Bellline, Addison, TX, stated he has been in the development business for 40 years and owns this property. He said he had looked at various development concepts and none were feasible. In the last three years, he hired a retail broker who presented this property to over 34 top retail users, and 24 hotel and motel users and none were interested in the property for those uses. Mr. Watson said he decided the highest and best use was for multi-family. He said he interviewed many multi-family developers and Ventures Development Group was a quality group and they use Lincoln Property Managers to manage their properties.

Tommy Mann, 2728 N. Harwood, stated he was representing the owner. He recognized Council Member Copeland's concern and stated that the problem exists today and this property is not the source of this traffic problem. Mr. Mann said this use has minimal impact compared to a 7-Eleven. He said apartments are an allowed use on this property as it is currently zoned. Mr. Mann said this is a high quality development and it is 700' feet from the closest house. The site line does not allow any of this development to be seen in the adjacent residential neighborhood. He said staff and the Planning and Zoning Commission recommended approval and he asked Council to do the same.

Lacy Liarneaner, 6500 Greenville, Ave. #600, Dallas, TX, represented Lincoln Property Management Company. She said her company has managed apartments for 18 years and were the third largest management company in the nation and currently manage 30,000 units in the DFW area. Ms. Liarneaner said the plan for this complex is to have an affluent tenant base. The company will verify monthly income since the average rent is \$1100/month. No resident would be allowed who had committed sex crimes, drug crimes or bodily injury crimes and there would be a no tolerance policy.

Mr. Postell read into the record those not wishing to speak but in support of this case: Chris Colombe, 6629 Hyacinth Drive, Dallas, TX; Jerry and Georgia Burgess, 3519 Paladium Drive; and Brenda Smith, 1809 Palace Drive.

Tom Hoffman, 3622 Colosseum Way, stated this was a good looking project, but the access road could not take any more traffic, especially on weekends. He said the quality of life is terrible and there is no room to expand. He said this may be the best use that anyone has found so far, but the area cannot tolerate more traffic.

Carl Allen, 3511 Daisy Lane, said he had concerns as a resident because his house is closest to this development. He said there are trees behind him but this 3-story building still will be visible from his house. He said the resale value of his property will go down and traffic is a major issue. He said the traffic going to Traders Village and the Outlet Mall is significant especially on weekends. Mr. Allen said the traffic

from this development would cut through his neighborhood and crime will increase.

Jason and Alexandra Lynch, 3514 Daisy Lane, said they were concerned about flooding and asked where the extra water is going to go. Ms. Lynch said there are lots of other places to build so why put more people in such a small area. Mr. Lynch said he had concerns that people will pay that high rent in this area and they may eventually turn into cheap apartments.

Christa Clements, 2802 Spartacus Drive, said there is a big problem with access at Mayfield and SH360 and every day it is a very dangerous situation. The Outlet Mall has exacerbated this problem. The Great Southwest Parkway and Outlet Parkway have one lane to turn into the Outlet Mall. People are getting off the freeways and have to deal with traffic backing up on the freeways. She said this development looks great, but no one is going to reasonably be able to get out of that development. Ms. Clements added there is a large church on the other side of the bridge which also adds to the traffic problem.

Gordon Holt, 5456 Daisy Lane, said adding apartments will add to the traffic problem. He said he refinanced his home and the property value has dropped considerably and the location is one reason and also because of the apartment complex that is already there.

Steve Cobb, 3532 Euclid Drive, said traffic is an issue, and there is an influx of traffic coming through the neighborhood leading to trash and crime. He said Lincoln Properties managed an apartment complex he once lived in and it looked bad. Mr. Cobb said the weekend traffic is very bad and residents do not want to leave their development on weekends but it is bad at all times. He asked Council not to approve this case. Mr. Cobb added there is not enough parking at the Outlet Mall and they are being shuttled in from the large church near this area.

Mr. Postell read into the record those in opposition but not wishing to speak: Robert Pate, 3518 Daisy Lane; LeRoy Champion, 3502 Daisy Lane; Donna Brown, 3160 Atrium Drive; Destiny Holtman, 2947 Paladium Drive; Vicki Hernandez, 2805 Spartacus Drive; Karen Clements, 2802 Spartacus Drive; Mario Lopez, 2947 Paladium Drive; Debbie Lopez, 2947 Paladium Drive; and Jason Lopez, 2947 Paladium Drive.

Mayor Jensen said this would not be an easy decision, but the landowner has rights. He said this property currently has zoning that would allow the developer to put many things there without changing the zoning and some of those uses could create more traffic than this use. Mayor Jensen said he felt it was the highest and best use and the developer should not have to wait to develop this property until the traffic situation improves.

Council Member Shotwell asked how much distance there was from the service road going toward the east to turn into the apartments because he had a concern about how many cars could queue in this area. Mr. Hinderaker said it was around 500 ft. Mr. Sparks estimated that 20 cars could queue in that space. Mr. Shotwell said there are other apartments on SH360 that use the access off the service road, but he had a concern regarding access off of Outlet Parkway. Council Member Copeland said Traders Village was there when he bought his home. He said this would be a tough decision, but he was not a fan when they built the apartments on Forum Drive. However, he has been pleasantly surprised about the few cars that come out of that apartment complex. He said when people live in upper-end apartments, they usually want to buy homes in that area. Mr. Copeland said studies have shown that high-end apartments may increase home values (these are studies he read when the



apartments went in on Forum Drive). He said if this case passes, Council and staff will keep an eye on this development and will work on the traffic in that area because safety is of utmost importance in our city.

Deputy Mayor Pro Tem Fregoe said this is a property owner who has rights although he was not overjoyed with increasing the apartment population in Grand Prairie. If approved, the apartments will not have a significant impact on traffic. He said the city would continue to work on traffic safety issues in this area. Mr. Fregoe said he believed this was a project that is appropriate for this location.

Deputy Mayor Pro Tem Fregoe moved, seconded by Council Member Copeland, to close the public hearing and approve Case Z140201. The motion carried.

(NOTE: After the vote was taken Council Member Shotwell stated he supported the apartments but did not support the only access off Outlet Parkway.)

**Ayes:** 8 - Mayor Ron Jensen; Mayor Pro Tem Greg Giessner; Deputy Mayor Pro Tem Richard Fregoe; Council Member Jorja Clemson; Council Member Jeff Copeland; Council Member Jim Swafford; Council Member Lila Thorn and Council Member Jeff Wooldridge

**Nayes:** 1 - Council Member Tony Shotwell

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### Citizen Comments

*There were no citizen comments.*


Mayor Jensen convened a closed session at 7:58 p.m. pursuant to Chapter 551, Subchapter D of the Government Code, V.T.C.A., to discuss Section 551.071 "Consultation with Attorney" Tommy Winn and Leland Gjetley v. City of Grand Prairie; Sheila Moore v. City of Grand Prairie et al and Section 551.072 "Deliberation Regarding Real Property" and Section 551.087 "Deliberation Regarding Economic Development." The closed session was adjourned at 8:35 p.m.

**Adjournment**

Council Member Jorja Clemson announced that Lifeline Shelter was hosting a Gospel Concert on March 8 at 7:00 p.m. at Calvary Baptist Church and extended an invitation to attend. Ms. Clemson added that the concert was free but a donation could be made to Lifeline Shelter.

Mayor Jensen adjourned the meeting at 8:35 p.m.

The foregoing minutes were approved at the March 18, 2014 Council Meeting.

  
*Catherine E. DiMaggio*  
Catherine E. DiMaggio, City Secretary