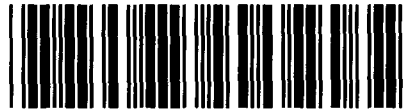




Control Number: 47863



Item Number: 25

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**SOAH DOCKET NO. 473-18-1905.WS**  
**PUC DOCKET NO. 47863**

473-18-1905.WS  
 11/2/22

<b>PETITION OF THE CITIES OF          GARLAND, MESQUITE, PLANO AND          RICHARDSON APPEALING THE          DECISION BY NORTH TEXAS          MUNICIPAL WATER DISTRICT          AFFECTING 2018 WHOLESALE          WATER RATES</b>	§ § § § § § §	<b>BEFORE THE STATE OFFICE</b>       <b>OF</b>    <b>ADMINISTRATIVE HEARINGS</b>
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**NORTH TEXAS MUNICIPAL WATER DISTRICT'S  
MOTION TO DISMISS**

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- A**    North Texas Municipal Water District Regional Water Supply Facilities Amendatory Contract
- B**    Excerpts from the 2017-2018 Budget
- C**    Letter from Jim Mattox, Attorney General of the State of Texas, (Aug. 10, 1989)
- D**    Certificate of Registration from Bob Bullock, Comptroller of Public Accounts (Aug. 10, 1989)

**SOAH DOCKET NO. 473-18-1905.WS  
PUC DOCKET NO. 47863**

<b>PETITION OF THE CITIES OF</b>	<b>§</b>	<b>BEFORE THE STATE OFFICE</b>
<b>GARLAND, MESQUITE, PLANO AND</b>	<b>§</b>	
<b>RICHARDSON APPEALING THE</b>	<b>§</b>	<b>OF</b>
<b>DECISION BY NORTH TEXAS</b>	<b>§</b>	
<b>MUNICIPAL WATER DISTRICT</b>	<b>§</b>	
<b>AFFECTING 2018 WHOLESALE</b>	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>
<b>WATER RATES</b>	<b>§</b>	

**NORTH TEXAS MUNICIPAL WATER DISTRICT’S  
MOTION TO DISMISS**

The North Texas Municipal Water District (“District”) files this Motion to Dismiss under Procedural Rule 22.181 of the rules of the Public Utility Commission of Texas (“Commission”). This matter concerns an appeal filed by four of the 13 cities that comprise the membership of the District (the “Member Cities”) challenging the District’s fiscal year 2018 wholesale water rate paid by the Member Cities under the 1988 North Texas Municipal Water District Regional Water Supply Facilities Amendatory Contract (the “Facilities Contract”). In support of its argument that the petition and this proceeding should be dismissed for (1) lack of jurisdiction, (2) moot questions, (3) collateral estoppel, and (4) failure to state a claim for which relief can be granted, the District respectfully shows the following:

**I. EXECUTIVE SUMMARY**

The Facilities Contract is different from typical wholesale water supply contracts that have been the subject of wholesale water rate appeals. As explained in more detail below, the Facilities Contract is not simply an agreement between a single seller and a single buyer for wholesale water service. Rather, it is a multilateral public financing and facilities contract with 14 independent parties that pledges revenues charged and paid under its terms as security for repayment of large amounts of public debt. Therefore, as has been demonstrated in the previous rate appeal filed in Docket No. 46662, it is challenging to reconcile the particulars of the Facilities Contract with the

Commission’s wholesale water service rules, which seem to contemplate Commission review of a simple, bilateral contract structure.<sup>1</sup>

This reconciliation does not, however, have to occur because dismissal of this proceeding is appropriate. The Facilities Contract has been deemed “incontestable in any court or other forum for any reason” by the Texas Legislature.<sup>2</sup> The Legislature has deemed the Facilities Contract incontestable because it pledges the rates paid by the Member Cities for wholesale water service as revenues necessary for the District to repay public debt. The District has issued that debt to provide wholesale water service in quantities demanded by the Member Cities. The Member Cities unconditionally agreed to those contractual obligations as parties to the Facilities Contract.

The Petition is not a wholesale rate appeal, but rather is a collateral attack on a contract whose provisions have already been deemed by statute to be valid and binding, and incontestable in any forum. This matter does not involve a complaint about a rate; it is a request for a unilateral reformation of the cost-allocation provisions of a municipal public financing agreement. The Commission simply does not have jurisdiction to review or reform the price terms of a statutorily incontestable contract even if it provides for the provision of wholesale water service. And, because the Legislature has specifically prohibited judicial review of the Facilities Contract, the petitioners are estopped from pursuing this action.

Further, the Commission’s Substantive Rules authorize the Commission to conduct a rate hearing on a contractual wholesale rate only after first determining that the protested rate adversely affects the public interest. The Legislature has already determined that the Facilities Contract and

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<sup>1</sup> See 16 TAC §§ 24.131(d) (“[i]f the seller and buyer do not agree . . .”), 24.133(a) (“the protested rate impairs the seller’s ability . . .” “the protested rate impairs the purchaser’s ability . . .”).

<sup>2</sup> Act of April 23, 1975, 64th Leg., R.S., ch. 90, § 27(j), 1975 Tex. Gen. Laws 238, 238-242 (“any such contract shall be incontestable in any court or other forum for any reason, and shall be valid and binding obligations in accordance with their terms for all purposes”); see Tex. Gov’t Code § 1202.006(a).

all of its terms are valid and binding. Because the Legislature has already resolved the threshold jurisdictional question in this matter, it is necessarily moot. Rather than improperly request that the Commission reform the Facilities Contract, the petitioners should pursue the dispute resolution procedures provided for in the Facilities Contract.

For these reasons, the Commission should dismiss the Petition.<sup>3</sup>

## **II. BACKGROUND: DISTRICT SYSTEM AND FACILITIES CONTRACT**

On December 15, 2017, the Cities of Garland, Mesquite, Plano, and Richardson, Texas (collectively, the “Petitioning Cities”) filed the Petition, which requests the Commission’s review of matters related to the Facilities Contract under which the District supplies wholesale water service to each of the Petitioning Cities along with the nine other cities that make up the District’s membership. The District is comprised of 13 cities—collectively referred to as the Member Cities—and it provides wholesale water service to those 13 Member Cities and other non-member regional customers (“Customers”). The District’s water system consists of six water treatment plants, 573 miles of water transmission pipelines, nine pump stations, large man-made wetlands, and water rights in four lakes and ultimately serves a population of approximately 1.7 million people across 10 counties in one of the fastest growing areas of the nation (the “Regional Water System”).

The original Member Cities encouraged the Legislature to create the District in 1951 because they were, individually, unable to secure bonds and meet the revenue requirements that were necessary to own and operate a municipal water system.<sup>4</sup> The primary impetus for the

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<sup>3</sup> The District notes that the jurisdictional issues raised in this Motion are also germane to the ongoing proceeding in Docket No. 46662 referred by the Commission to the State Office of Administrative Hearings (“SOAH”) on June 29, 2017. The District similarly moved to dismiss that Docket for the same reasons it now so moves in this matter. The District maintains its position that the Commission lacks jurisdiction to consider both dockets and that both should be dismissed for lack of jurisdiction pursuant to 16 Tex. Admin. Code § 22.181 (TAC).

<sup>4</sup> BILL SLOAN, GIFT OF WATER, LEGACY OF SERVICE: A HISTORY OF THE NORTH TEXAS MUNICIPAL WATER

creation of the District was the original Member Cities' desire to facilitate unprecedented urban growth and development—growth that has essentially been ceaseless since the District's creation.<sup>5</sup> The District and all Member Cities voluntarily entered into the Facilities Contract in 1988 to reaffirm the terms under which the Member Cities pledge revenues sufficient for the District to secure funding to construct and maintain the Regional Water System for the benefit of the Member Cities. As the Member Cities grow, the District must keep up.

Under the Facilities Contract,<sup>6</sup> the District is obligated to issue bonds to finance, construct, and expand the Regional Water System as needed.<sup>7</sup> The Facilities Contract does not place a limit on either the capacity of the Regional Water System or the amount of bonds that must be issued to finance it.<sup>8</sup> In return, each Member City agreed in the Facilities Contract to pay its proportionate share of the Regional Water System annual debt service, capital costs, and operation and maintenance costs (defined as the “Annual Requirement”) with such proportionate share—again according to the Facilities Contract—to be based on each Member City's highest actual historic annual use (defined as the “Annual Minimum”).<sup>9</sup> This unconditional agreement on how costs will be allocated among the Member Cities is integral to the calculation of the “rate” challenged by the Petitioning Cities here.<sup>10</sup>

In addition, each Member City contractually agreed to be unconditionally obligated to annually pay its proportionate share regardless of whether it actually receives or uses water from

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DISTRICT, 23-46 (Taylor Publishing Co., 1994), <https://www.ntmwd.com/documents/gift-water-legacy-service-book/>.

<sup>5</sup> *Id.* at 24-25, 116-117.

<sup>6</sup> A complete copy of the Facilities Contract is attached to this Motion as Attachment A.

<sup>7</sup> Facilities Contract at § 1(o), § 10(g).

<sup>8</sup> *Id.* § 2.

<sup>9</sup> *Id.* § 9(c).

<sup>10</sup> *Id.* § 10(g); *see* Petition at 4-5, 12.

the Regional Water System.<sup>11</sup> This arrangement is reasonable because the District must construct and install the infrastructure necessary to provide water to each of the Member Cities regardless of the amount of water the Member Cities demand as they demand it. Stated more simply, the Member Cities do not pay only for water under the terms of the Facilities Contract—they pay for the design, construction, operation, and maintenance of the facilities necessary to deliver the water.<sup>12</sup> The District is beholden to meet the demands of the Member Cities and is obligated to construct and maintain the Regional Water System as necessary to deliver such water as those demands are made. Thus, the District’s capital investment costs are fixed and must be incurred to have the facilities necessary to provide water service at all times. Over the years, the District has issued over \$1.4 billion dollars in Regional Water System revenue bonds based on the Facilities Contract and plans to issue more bonds in 2018 to meet future Member City wholesale water needs.

As discussed in more detail in the motion below, the Facilities Contract—including the challenged cost-allocation provisions—has been approved by the Attorney General of Texas, registered with the Texas Comptroller of Public Accounts, and its provisions are therefore deemed incontestable in any court or other forum and valid for all purposes by the District’s Enabling Act.<sup>13</sup>

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<sup>11</sup> Facilities Contract at § 10(g).

<sup>12</sup> The Member Cities are owners of the Regional Water System every bit as much as the District. In recognition of that fact, each Member City appoints members of the District’s Board of Directors, who ultimately make all of the District’s bond-issuing and rate-setting decisions. In essence, this case represents the dissatisfaction of a minority of the District’s membership. The Petition invites the Commission to wade into a local political dispute.

<sup>13</sup> Act of April 4, 1951, 52nd Leg., R.S., ch. 62, § 14, 1951 Tex. Gen. Laws 96, 103-04; Act of April 23, 1975, 64th Leg., R.S., ch. 90, § 1, 1975 Tex. Gen. Laws 238, 240-41 (West).

### III.MOTION TO DISMISS

**A. The Commission has authority to review wholesale water rates charged pursuant to written contracts under specific circumstances, but altogether lacks jurisdiction over certain legislatively protected classes of contracts.**

Generally speaking, the Commission has jurisdiction to hear appeals of wholesale water rates under Sections 12.013 and 13.043(f) of the Texas Water Code (“TWC”). But, that jurisdiction is not unlimited. For instance, Section 12.013 states the Commission’s “jurisdiction under this section relating to incorporated cities, towns, or villages shall be limited to water furnished by such city, town, or village to another political subdivision on a wholesale basis.”<sup>14</sup> The Commission’s jurisdiction under Section 13.043, likewise, extends only to an appeal filed by a “retail public utility that receives water or sewer service from another retail public utility or political subdivision of the state[.]” Consequently, for example, if a private non-utility entity filed a petition appealing wholesale rates set by a city, the Commission would necessarily have to dismiss that petition. The Legislature has not provided a regulatory appeal procedure for such a scenario, therefore the Commission does not have jurisdiction to hear it.<sup>15</sup>

Similarly, the Texas Constitution’s Contracts Clause requires that the state may not make laws impairing the obligation of contracts.<sup>16</sup> Therefore, as a general matter, the Constitution prohibits the Commission from exercising authority or jurisdiction under Sections 12.013 and 13.043(f) when a protested rate is one charged pursuant to a contract.

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<sup>14</sup> Tex. Water Code § 12.013(d).

<sup>15</sup> *City of Sherman v. Pub. Util. Comm’n of Tex.*, 643 S.W.2d 681, 686 (Tex. 1983) (Commission may only exercise those powers granted by statute).

<sup>16</sup> *Id.* (citing Tex. Const. art. I § 16).



An exception to the constitutional prohibition on impairment of contracts is that the state may impair contractual obligations by statute when public safety and welfare must be protected.<sup>17</sup> The Austin Court of Appeals has held that the Commission may exercise its wholesale rate powers under the TWC in appeals of contractual rates only when the public interest is adversely affected.<sup>18</sup> Therefore, the Commission has adopted a two-phased procedure for reviewing contractual rates.<sup>19</sup> Before taking action to impair wholesale water or wastewater service contractual obligations, the Commission first holds a hearing to determine only whether a protested rate that is set pursuant to a contract adversely affects the public interest.<sup>20</sup>

But as discussed above, the Commission's wholesale rate authority does not extend to any and all contractual rates, irrespective of the question of whether the rate adversely affects the public interest. As an agency, the Commission has no power where the Legislature has not granted any.<sup>21</sup> Not only has the Legislature not granted the Commission power to impair the terms of the Facilities Contract at issue in this matter, it has expressly prohibited and preempted it through the District's Enabling Act.

The Legislature has prohibited the Commission's otherwise broad exercise of its wholesale rate jurisdiction by declaring the Facilities Contract incontestable in the District's Enabling Act, thus precluding all judicial inquiry into the validity and enforceability of the Facilities Contract's terms. As addressed in more detail below, the Legislature has preempted exercise of wholesale

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<sup>17</sup> *Id.* (citing *Texas State Teachers Ass'n v. State*, 711 S.W.2d 421 (Tex. App.—Austin 1986, writ ref'd n.r.e.).

<sup>18</sup> *Id.* at 336.

<sup>19</sup> 16 TAC §§ 24.131, 24.134.

<sup>20</sup> *Id.*

<sup>21</sup> *City of Sherman*, 643 S.W.2d at 686.

rate jurisdiction by deeming the Facilities Contract valid for all purposes. However, the Petition in this case challenges the validity of the rate provisions in the Facilities Contract.

**B. Under the District’s Enabling Act, the terms of the Facilities Contract are statutorily incontestable and not subject to challenge at the Commission.**

The Commission lacks jurisdiction to consider the Petition because the Facilities Contract’s terms are not subject to challenge in any state court or other forum, and they are valid for all purposes as a matter of law.

**1. The purpose of the incontestability statute is to preclude any litigation of, or judicial inquiry into, the terms of the Facilities Contract, including its cost-allocation provisions.**

Because of the District’s bond-issuing responsibilities, the Facilities Contract, including its rate provisions, is made incontestable by the District’s enabling legislation.<sup>22</sup> Since its inception, the Enabling Act has provided at Section 14:

After any bonds . . . are authorized by the District, such bonds and the record relating to their issuance shall be submitted to the Attorney General for his examination as to the validity thereof. Where such bonds recite that they are secured by a pledge of the proceeds of a contract therefore made between the District and any city or other governmental agency or district, a copy of such contract and the proceedings of the city or other governmental agency or District authorizing such contract shall also be submitted to the Attorney General. If such bonds have been authorized and if such contracts have been made in accordance with the Constitution and Laws of the State of Texas he shall approve the bonds and such contracts. . . . *Thereafter the bonds, and the contracts, if any, shall be valid and binding and shall be incontestable for any cause.*<sup>23</sup>

The Enabling Act, as it existed at the time the Facilities Contract was executed and approved by the Attorney General, also stated the following: “any such contract *shall be incontestable in any court or other forum for any reason*[.]”<sup>24</sup>

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<sup>22</sup> Act of April 4, 1951, 52nd Leg., R.S., ch. 62, § 14, 1951 Tex. Gen. Laws 96, 103-04; Act of April 23, 1975, 64th Leg., R.S., ch. 90, § 1, 1975 Tex. Gen. Laws 238, 240-41.

<sup>23</sup> *Id.* (emphasis added).

<sup>24</sup> Act of April 4, 1951, 52nd Leg., R.S., ch. 62, 1951 Tex. Gen. Laws 96, 103-04; Act of April 24, 1969, 61st Leg., R.S., ch. 122, 1969 Tex. Gen. Laws 334, 334-337; Act of April 23, 1975, 64th Leg., R.S., ch. 90, § 27(j),

In *Leonard v. Cornyn*, the Austin Court of Appeals considered a district court contest of a bond issuance by the City of Houston and Harris County.<sup>25</sup> Like the District’s enabling legislation relating to the District’s bonds and the Facilities Contract,<sup>26</sup> the Legislature expressly declared the bonds issued by Houston and Harris County to be “valid, enforceable, and incontestable in any court or other forum for any reason . . . .”<sup>27</sup> The Court of Appeals affirmed the decision of the Travis County District Court to dismiss the contest for want of jurisdiction because the court, as a matter of law, lacked subject-matter jurisdiction to even consider the contest.<sup>28</sup> Importantly, the Court of Appeals noted that “[t]he intended meaning of the [incontestability] statute is about as plain as words can make it” and “requires no italics to emphasize its unique character and the legislature’s unambiguous statement of its intention to preclude judicial inquiry.”<sup>29</sup>

That incontestability principle is no less true in this matter. The District’s Enabling Act, as quoted above, contains incontestability provisions for the District’s bonds and the Facilities Contract. This language is nearly identical to the incontestability language the Court considered in *Leonard v. Cornyn* in making its determination that the language is an “unambiguous statement of [the Legislature’s] intention to preclude judicial<sup>30</sup> inquiry . . . .”<sup>31</sup> As explained in more detail

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1975 Tex. Gen. Laws 238, 238-242; see also Act of April 28, 2009, 81st Leg., R.S., ch. 20, § 4, 2009 Tex. Gen. Laws 37, 39 (West) (hereinafter, collectively, “Enabling Act”) (the Legislature amended the Enabling Act in 2009 to strike this provision and replaced it with a reference to Tex. Gov’t Code § 1202.006, which provides the same incontestability requirement for contracts that pledge revenues for repayment of public securities) (emphasis added).

<sup>25</sup> *Leonard v. Cornyn*, 47 S.W.3d 524, 527 (Tex. App.—Austin 1999, pet. denied).

<sup>26</sup> Act of April 4, 1951, 52nd Leg., R.S., ch. 62, § 14, 1951 Tex. Gen. Laws 96, 103-04; Act of April 23, 1975, 64th Leg., R.S., ch. 90, § 1, 1975 Tex. Gen. Laws 238, 240-41 (West).

<sup>27</sup> *Leonard*, 47 S.W.3d at 526.

<sup>28</sup> *Id.* at 527, 529.

<sup>29</sup> *Id.* at 527.

<sup>30</sup> The Commission is an “adjudicative forum” akin to a judicial court. *State v. Thomas*, 766 S.W.2d 217, 219 (Tex. 1989).

<sup>31</sup> *Leonard*, 47 S.W.3d at 527 (footnote added).

below, due to the incontestability provisions in the District's Enabling Act, the Commission cannot conduct a hearing, or otherwise make inquiry into whether the rate charged pursuant the terms of the Facilities Contract adversely affects the public interest, without necessarily making judicial inquiry into the terms of the Facilities Contract itself. The Petition's pervasive references to the Facilities Contract bear that out.<sup>32</sup>

Because the Legislature has deemed the Facilities Contract incontestable—thereby unambiguously precluding judicial inquiry into the terms of the Facilities Contract in any forum, not just the Commission—the Commission does not have subject-matter jurisdiction over the Petitioning Cities' contest of the rate calculated consistent with the terms of the Facilities Contract.<sup>33</sup> As the *Leonard v. Cornyn* Court explained,

[incontestability statutes] provide an orderly, efficient system for assuring that the bonds have been issued with the requisite authority and in compliance with what the law requires. By this means, protection is given alike to taxpayers, the [political subdivisions] that issue the bonds, and those who take them. Without such a system, the questions of validity and enforceability *would have to be determined through litigation*.<sup>34</sup>

The Petition recognizes that the protested rate is set according to the terms of the Facilities Contract,<sup>35</sup> and the Commission's rules assume that the District has correctly interpreted the Facilities Contract in setting the rate.<sup>36</sup> Consequently, this proceeding is exemplary of the kind of litigation challenging the enforceability of the Facilities Contract the Legislature sought to preclude through the incontestability statutes.

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<sup>32</sup> Petition at 4-5, 7-9.

<sup>33</sup> See *Leonard*, 47 S.W.3d at 527, 529.

<sup>34</sup> *Leonard*, 47 S.W.3d at 528 (emphasis added).

<sup>35</sup> Petition at 4.

<sup>36</sup> 19 Tex. Reg. 6227 (preamble to the Commission's Wholesale Water or Sewer Service rules, which states that "the rule assumes the seller's protested rate correctly interprets any existing agreement between the seller and purchaser." (internal quotations omitted)).

Notably, the court in *Leonard v. Cornyn* acknowledged that incontestability of the bonds cannot be interpreted to mean incontestability of the conduct or actions of the parties affected by the bond issuance.<sup>37</sup> The same is true here—the District is not arguing that the incontestable nature of the District’s bonds and Facilities Contract mean no inquiry can ever be made into the District’s or a Member City’s actions under the Facilities Contract. For instance, a court could consider a breach of contract claim in which one party challenged another party’s compliance with the terms of the Facilities Contract. But that is not what the Petition challenges. The Petition challenges the terms of the Facilities Contract itself, which the Legislature has precluded.

The District has, over time, issued bonds for the benefit of the development of the Regional Water System and the provision of service and is currently preparing another bond issue for early 2018.<sup>38</sup> The bonds are secured by the proceeds of the Facilities Contract.<sup>39</sup> In 1989, the Attorney General approved both the bonds and the Facilities Contract pursuant to Sections 14 and 27(j) of the District’s Enabling Act,<sup>40</sup> and the bonds are approved and registered with the Comptroller of Public Accounts.<sup>41</sup> As such, the Facilities Contract is “incontestable in any court or other forum for any reason . . . and [is] valid . . . for all purposes.”<sup>42</sup>

The entire purpose of the incontestability provision of the Enabling Act is to preclude litigation contesting the validity or enforceability of the Facilities Contract—including the

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<sup>37</sup> *Leonard*, 47 S.W.3d at 527.

<sup>38</sup> North Tex. Mun. Water Dist., 2017-2018 Annual Budget (Oct. 10, 2017) at xiii-xiv, 160, <https://www.ntmwd.com/wp-content/uploads/2016/11/2016-17-Annual-Budget.pdf> [hereinafter 2017-2018 Budget] (excerpts are attached hereto as Attachment B).

<sup>39</sup> Facilities Contract § 10(g).

<sup>40</sup> Letter from Jim Mattox, Attorney General of the State of Texas (Aug. 10, 1989) (attached hereto as Attachment C).

<sup>41</sup> Certificate of Registration from Bob Bullock, Comptroller of Public Accounts (Aug. 10, 1989) (attached hereto as Attachment D).

<sup>42</sup> Tex. Gov’t. Code § 1202.006(a).

provisions addressing how the District's rate must be calculated—which is what the Petition does. That purpose is defeated by the continuation of this proceeding. It is expressly prohibited by statute. More than that, the proceeding is moot because the Legislature has determined that the terms of the Facilities Contract are valid and binding and precluded challenges to their validity and enforceability.

**2. The Petition is a collateral attack on the Facilities Contract because the Facilities Contract must be set aside if the rate charged under it adversely affects the public interest; this proceeding is therefore moot.**

In addition to declaring the Facilities Contract incontestable, the Legislature also provided the following with respect to the District's bonds and contracts:

If [the Attorney General] finds that such bonds have been authorized and any such contract has been made in accordance with law, he shall approve the bonds and any such contract, and thereupon the bonds shall be registered by the Comptroller of Public Accounts of the State of Texas; and after such approval and registration, such bonds and any such contract . . . *shall be valid and binding obligations in accordance with their terms for all purposes.*<sup>43</sup>

As explained above, the Commission is constitutionally prohibited from applying TWC wholesale rate provisions to contractual wholesale rates without first determining that the contractual rates in question adversely affect the public interest.<sup>44</sup> The Commission may only proceed with a wholesale rate hearing after first holding a hearing to determine whether the protested rate adversely affects the public interest.<sup>45</sup>

The relief available to the Petitioning Cities in this matter would necessarily require the Commission to impair the obligations of the Facilities Contract. The controlling appellate

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<sup>43</sup> Act of April 23, 1975, 64th Leg., R.S., ch. 90, § 27(j), 1975 Tex. Gen. Laws 238, 238-242 (emphasis added); *see also* Act of April 28, 2009, 81st Leg., R.S., ch. 20, § 4, 2009 Tex. Gen. Laws 37, 39 (West); Tex. Gov't Code § 1202.006.

<sup>44</sup> *City of Fort Worth*, 875 S.W.2d at 335.

<sup>45</sup> *Id.*; 16 TAC § 24.133(a).

jurisprudence makes clear that the legal effect of a Commission determination that the protested rate in this matter adversely affects the public interest would be that the Facilities Contract should be modified or set aside.<sup>46</sup> If the Commission reaches this conclusion and goes on to set a new rate, the Facilities Contract would not retain its validity, effectively reversing a statutory mandate. In *City of Fort Worth*, the Austin Court of Appeals relied on a previous case concerning oversight of contractual gas service rates—the *High Plains* case—and a similar United States Supreme Court opinion to hold that the Water Commission can only exercise its wholesale rate jurisdiction over contractual rates if such contracts and rates adversely affect the public interest.<sup>47</sup> Following this decision, the Commission’s predecessor agency—the Texas Water Commission—created the two-phased approach contained in the Commission’s rules that first requires a public interest analysis and then turns to a cost-of-service hearing, only if necessary. This was done in an effort to avoid situations that occurred previously in which the TWC wholesale rate provisions were applied to set new contractual wholesale rates without first finding that such contracts and rates adversely affected the public interest.<sup>48</sup>

The *High Plains* case—also decided by the Austin Court of Appeals—concerned the Railroad Commission’s review of wholesale contractual gas rates in light of the Constitution’s Contracts Clause.<sup>49</sup> The Court of Appeals there affirmed the district court’s holding that “the Commission could not constitutionally change the rates established in the Contract up or down without a showing before that agency and a determination by it that the public interest required the

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<sup>46</sup> *City of Fort Worth*, 875 S.W.2d at 335; *High Plains*, 467 S.W.2d at 536-37.

<sup>47</sup> *City of Fort Worth*, 875 S.W.2d at 336.

<sup>48</sup> *City of Fort Worth*, 875 S.W.2d at 334-35 (citing *Federal Power Comm’n v. Sierra Pac. Power Co.*, 350 U.S. 348, 76 S.Ct. 368, 100 L.Ed 388 (1955) and *High Plains Natural Gas Co. v. R.R. Comm’n of Tex.*, 467 S.W.2d 532 (Tex. Civ. App.—Austin 1971, writ ref’d n.r.e.).

<sup>49</sup> *High Plains*, 467 S.W.2d at 533, 536.

Contract to be modified.”<sup>50</sup> The Court of Appeals went on to hold that, “in order to set the contract aside, the Appellant [is] charged with the burden of showing that continuance of the contract would adversely affect the public interest . . . .”<sup>51</sup> Like the Railroad Commission’s effort to “change the rates established in the Contract up or down[,]”<sup>52</sup> the Petitioning Cities have asked the Commission to “set new rates consistent with the ratemaking mandates of Chapters 12 and 13 of the Texas Water Code.”<sup>53</sup>

Doing so, however, would lead to a situation requiring the Facilities Contract to be modified or set aside.<sup>54</sup> That outcome is irreconcilable with the Legislature’s specific mandate that the Facilities Contract is incontestable and valid for all purposes. In effect, the Legislature has already declared that the Facilities Contract and its rate-setting terms—having been pledged as security for public bonds, approved by the Attorney General, and registered with the Comptroller—do not adversely affect the public interest. Accordingly, the Petition in this case constitutes a collateral attack on a valid contract and is moot because there is no relief the Commission can legally grant the Petitioning Cities because declaring the rate adversely affects the public interest would require setting aside, or modification of, the incontestable Facilities Contract.

Even though the Commission’s otherwise broad exercise of jurisdiction over wholesale water rate issues is prohibited by the District’s Enabling Act, the Legislature has empowered the Attorney General to review and affirm the terms of the Facilities Contract. The Legislature

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<sup>50</sup> *Id.* at 535.

<sup>51</sup> *Id.* at 537.

<sup>52</sup> *High Plains*, 467 S.W.2d at 535.

<sup>53</sup> Petition at 12.

<sup>54</sup> *High Plains*, 467 S.W.2d at 535, 537



established a specific procedure by which the Attorney General can find that “any such contract has been made in accordance with law” and, thereafter, such contracts “shall be valid and binding obligations in accordance with their terms for all purposes.”<sup>55</sup> The Texas Supreme Court has observed that this “duty thus imposed upon the Attorney General is important and is in no sense perfunctory.”<sup>56</sup>

#### **IV. REQUESTED RELIEF**

The District acknowledges that the relief it seeks through this motion is significant and requires consideration of weighty public policy issues—issues related not only to the Commission’s jurisdiction but also the provision of water service in this state, including public financing issues. Nevertheless, state law establishes the incontestable nature of the District’s bonds and the Facilities Contract whose rate-setting terms are directly challenged in the Petition. The District’s requested relief relates to the unique nature of the District, as a legislatively created entity with a Facilities Contract has been approved by the Texas Attorney General. These circumstances would not apply to many, if not the majority of, wholesale water contracts in this state.

For the reasons set forth herein, the District requests that the Petition be dismissed pursuant to Commission Procedural Rule 22.181 for any or all of the following reasons: lack of jurisdiction, moot questions, collateral estoppel, or failure to state a claim for which relief can be granted. Specifically, the Petitioning Cities are seeking reformation of a contract that is incontestable under state law. This case is moot, is collaterally estopped from continuing further, and presents no claim for which the Commission can legally grant any relief.

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<sup>55</sup> Act of April 23, 1975, 64th Leg., R.S., ch. 90, § 27(j), 1975 Tex. Gen. Laws 238, 238-242 (emphasis added); *see also* Act of April 28, 2009, 81st Leg., R.S., ch. 20, § 4, 2009 Tex. Gen. Laws 37, 39 (West); Tex. Gov’t Code § 1202.006.

<sup>56</sup> *City of Galveston v. Mann*, 143 S.W.2d 1028, 1035 (Tex. 1940), *quoted in* *Leonard*, 47 S.W.3d at 528.

## V. PRAYER

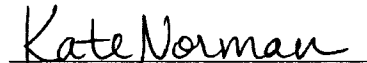
For these reasons, the District respectfully requests that the Commission issue an order:

1. Dismissing the Petitioning Cities' Petition with prejudice for lack of jurisdiction, moot questions, collateral estoppel, or failure to state a claim for which relief can be granted, or, in the alternative,
2. Denying Petitioning Cities' appeal on all grounds, and
3. Granting the District any and all other relief to which it is justly entitled.

Respectfully submitted,

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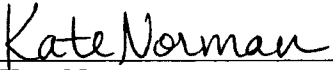


Kate Norman  
State Bar No. 24051121  
Gene Montes  
State Bar No. 14284400

**ATTORNEYS FOR NORTH TEXAS  
MUNICIPAL WATER DISTRICT**

### **CERTIFICATE OF SERVICE**

I hereby certify that true and correct copy of the foregoing document has been served on all parties of record on February 16, 2017 in accordance with 30 Tex. Admin. Code § 22.74.

  
\_\_\_\_\_  
Kate Norman

NORTH TEXAS MUNICIPAL WATER DISTRICT  
REGIONAL WATER SUPPLY FACILITIES AMENDATORY CONTRACT

THE STATE OF TEXAS :

NORTH TEXAS MUNICIPAL WATER DISTRICT :

THIS AMENDATORY CONTRACT (the "Contract") made and entered into as of the 1st day of AUGUST, 1988 (the "Contract Date"), by and between NORTH TEXAS MUNICIPAL WATER DISTRICT (the "District"), a conservation and reclamation district and political subdivision of the State of Texas, created and functioning under Article 16, Section 59, of the Texas Constitution, pursuant to Chapter 62, Acts of the 52nd Legislature, Regular Session, 1951, as amended (the "District Act"), and the following:

CITY OF FARMERSVILLE, IN COLLIN COUNTY, TEXAS,  
CITY OF FORNEY, IN KAUFMAN COUNTY, TEXAS,  
CITY OF GARLAND, IN DALLAS COUNTY, TEXAS  
CITY OF MCKINNEY, IN COLLIN COUNTY, TEXAS,  
CITY OF MESQUITE, IN DALLAS COUNTY, TEXAS,  
CITY OF PLANO, IN COLLIN AND DENTON COUNTIES, TEXAS,  
CITY OF PRINCETON, IN COLLIN COUNTY, TEXAS,  
CITY OF RICHARDSON, IN DALLAS AND COLLIN COUNTIES, TEXAS,  
CITY OF ROCKWALL, IN ROCKWALL COUNTY, TEXAS,  
CITY OF ROYSE CITY, IN ROCKWALL AND COLLIN COUNTIES, TEXAS, and  
CITY OF WYLIE, IN COLLIN COUNTY, TEXAS

(collectively the "Initial Contracting Parties").

W I T N E S S E T H

WHEREAS, each of the Initial Contracting Parties is a duly incorporated city and political subdivision of the State of Texas operating under the Constitution and laws of the State of Texas; and

WHEREAS, the District and the Initial Contracting Parties are authorized to enter into this Contract pursuant to the District Act, Vernon's Ann. Tex. Civ. St. Article 4413(32c) (the "Interlocal Cooperation Act"), and other applicable laws; and

WHEREAS, the District presently owns water rights in Lavon Reservoir on the East Fork of the Trinity River in Collin County, Texas, and owns and operates other water supply and treatment facilities which serve the Initial Contracting Parties (the "Existing System"); and

WHEREAS, the District has duly issued and delivered the following described bonds (the "Outstanding Bonds") which were issued to acquire and construct, and to refund bonds issued to acquire and construct, the Existing System:

North Texas Municipal Water District Water System Revenue Bonds, Series 1985, dated August 1, 1985, now outstanding in the aggregate principal amount of \$78,967,321.45; and

North Texas Municipal Water District Water System Revenue Bonds, Series 1987, dated March 1, 1987, now outstanding in the aggregate principal amount of \$24,565,000; and

WHEREAS, the District presently supplies and sells treated water from the Existing System to the Initial Contracting Parties under eleven separate treated water supply contracts, including various amendments thereto, now in effect; and it is acknowledged and agreed that the Existing System is inadequate to provide known future treated water requirements of the Initial Contracting Parties, thus making this Contract

necessary to enable the District to acquire and construct additional treated water supply and treatment facilities and make it possible for the District to supply such requirements; and

WHEREAS, the existing treated water supply contracts recognize that the District has assumed the responsibility for supplying all treated water needs of the Initial Contracting Parties; and

WHEREAS, each of said existing treated water supply contracts originally was dated as of December 12, 1953, except for the City of Richardson contract originally dated as of April 7, 1965, and each is similar in form and substance, and such contracts, including all amendments thereto, collectively presently provide the principal source and security for the payment of the District's Outstanding Bonds; and

WHEREAS the District proposes to acquire, construct, and complete additional surface water supply and treatment facilities from the following additional sources: Lake Texoma on the Red River, Cooper Dam and Reservoir in Hopkins and Delta Counties, Texas, a proposed new Bonham Dam and Reservoir in Fannin County, Texas, and other facilities wherever located to enable the District to supply treated water as needed to Contracting Parties and others (the "Projects"); and

WHEREAS, it is deemed necessary and advisable by the parties hereto that each of the eleven separate existing

treated water supply contracts, and amendments thereto, between the District and each Initial Contracting Party be amended and completely replaced with this single Contract so that the entire relationship between the District and all of the Initial Contracting Parties with respect to the System and the Bonds (as such terms are hereinafter defined) will be set forth in this Contract; and

WHEREAS, it is specifically represented, certified, and covenanted by the District that none of the amendments or modifications to the aforesaid existing treated water supply contracts with the Initial Contracting Parties which will occur as a result of entering into this Contract will in any way have an adverse affect on the operation of the System or the rights of the owners of any Bonds; and that this Contract will provide security for the owners of all Bonds and obligate the Initial Contracting Parties to make and assume unconditional specific payments with respect to the System and the Bonds; and

WHEREAS, the provisions of this Contract are similar in concept, essence, and intent to the provisions of the aforesaid existing treated water supply contracts and basically restate, reorganize, and expand same, including certain clarifications and updating, and establishing certain billing procedures and adjustments between the parties with respect to the use of, and payments with respect to, treated water from the System, which billing procedures and adjustments are solely between the

Initial Contracting Parties and do not affect the unconditional obligations of such parties with respect to the System and Bonds; and

WHEREAS, it is expected by the parties hereto that after the execution of this Contract, Bonds for parts of the Projects will be issued as soon as deemed advisable and necessary by the District.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the District agrees to use its best efforts to acquire, construct, and complete the Projects and other System facilities, when and as the District deems it advisable, and to supply treated water to Contracting Parties and others from the System, upon and subject to the terms and conditions hereinafter set forth, and, subject to the provisions of Section 13(b) and (c) hereof, the District and the Initial Contracting Parties agree that each of the eleven presently existing treated water supply contracts described above between the District and the Initial Contracting Parties are hereby amended, modified, combined, and consolidated so as henceforth to be in their entirety and for all purposes as follows, to-wit:

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



(a) "Additional Contracting Party" means any party not defined as one of the Initial Contracting Parties with which the District makes a contract similar to this Contract for supplying treated water from the System, provided that after execution of any such contract such party shall become one of the Contracting Parties for all purposes of this Contract.

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

(c) "Annual Payment Period" means the District's fiscal year, which currently begins on October 1 of each calendar year and ends on September 30 of the next following calendar year, but which may be any twelve consecutive month period fixed by the District; and the first Annual Payment Period under this Contract shall be the period of October 1, 1988, through September 30, 1989.

(d) "Annual Requirement" means the total amount of money required for District to pay all Operation and Maintenance Expenses of the System, and to pay the Bond Service Component of the Annual Requirement as described in Section 9(a) hereof, including debt service on its Bonds, and any sums required to pay or restore any amounts required to be deposited in any special or reserve funds required to be established and/or maintained by the provisions of the Bond Resolutions.

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

(f) "Bonds" means the Outstanding Bonds listed in the preamble to this Contract, and all bonds hereafter issued by the District, whether in one or more series or issues, and the interest thereon, to acquire, construct, complete, improve, and/or extend the System or any System facilities, including the Projects, and/or otherwise to improve or extend the System, and any bonds issued to refund any Bonds or to refund any such refunding bonds.

(g) "Contracting Parties" means the "Initial Contracting Parties", as defined in the first paragraph of this Contract, together with any other party or parties which hereafter becomes one of the Contracting Parties by becoming an Additional Contracting Party.

(h) "Contracting Party" means any one of the Contracting Parties.

(i) "District" means the "District" as defined in the preamble to this Contract.

(j) "Existing System" means the "Existing System" as defined in the preamble to this Contract.

(k) "MGD" is an abbreviation for "million gallons of water per day" and means a quantity of water during a period of time expressed for convenience in terms of an average annual daily quantity during an Annual Payment Period. The value of 2

MGD, for example, is calculated as follows: two million gallons multiplied by the number of days in an Annual Payment Period.

(1) "Operation and Maintenance Expenses" means all reasonable costs and expenses of operation and maintenance of the System, including (for greater certainty but without limiting the generality of the foregoing) repairs and replacements, operating personnel, the cost of utilities, the amounts required to pay the U.S. Army Corps of Engineers or any other federal, state, or local agency for water storage rights or other interests in water in any reservoir, or for the purchase of water, or for the use or operation of any property or facilities, the costs of supervision, engineering, accounting, auditing, legal services, insurance premiums, supplies, services, administration of the System, and equipment necessary for proper operation and maintenance of the System, and payments made by District in satisfaction of judgments resulting from claims not covered by District's insurance arising in connection with the acquisition, construction, operation, and maintenance of the System. The term also includes the charges of the bank or banks acting as paying agents and/or registrars for any Bonds. The term does not include depreciation.

(m) "Outstanding Bonds" means the Outstanding Bonds, as defined in the preamble to this Contract.

(n) "Projects" means the "Projects" as defined in the preamble to this Contract.

(o) "System" means collectively the Existing System and the Projects, and all of the District's existing water rights, and water storage, treatment, transportation, distribution, and supply facilities, including all dams, reservoirs, and other properties or interests therein wherever located, which heretofore have been acquired or constructed with the proceeds from the sale of the Outstanding Bonds, or the bonds refunded by same, or with any other bonds or other obligations of the District payable from and secured by a lien on and pledge of any part of the revenues of the System, or with revenues from said System, together with all future improvements, enlargements, extensions, and additions to any of the foregoing, and all future new facilities and/or water rights, which are acquired or constructed with the proceeds from the sale of any Bonds or revenues from the System, and any water supply or treatment facilities which are deliberately and specifically, at the option of the District, made a part of the System by resolution of the Board of Directors of the District, and all repairs to or replacements of the System. Said terms do not include any District facilities which provide wastewater treatment or disposal services, or solid waste disposal services, of any kind. Said terms do not include any facilities acquired or constructed by the District with the proceeds from

the issuance of "Special Facilities Bonds", which are hereby defined as being revenue obligations of the District which are not issued as Bonds (as hereinbefore defined), and which are payable from any source, contract, or revenues whatsoever other than revenues from the System.

(p) "treated water" means potable water treated to the standards of quality specified in Section 5 of this Contract. Such term does not include non-potable water such as wastewater or other non-potable water derived, treated, or produced from any source by any Contracting Party.

(q) "Water Year" means the period of August 1 of each calendar year through July 31 of the next following calendar year.

Section 2. CONSTRUCTION OF PROJECTS. The District agrees to use its best efforts to issue its Bonds, payable from Annual Payments under this Contract, to acquire and construct the Projects and other System facilities when and as needed, as determined by the District, to supply treated water to all Contracting Parties. It is anticipated that such acquisition and construction will be in phases and that each phase will be financed by the District through the issuance of one or more series or issues of its Bonds; and the District agrees to use its best efforts to issue its Bonds for such purpose. Bonds also may, at the discretion of the District, be issued to refund any Bonds, and be issued to improve and/or extend

any System facilities. The proceeds from the sale and delivery of the Bonds may be used to fund debt service reserve funds or contingency funds and interest during construction to the extent deemed advisable by the District, and for the payment of all of the District's expenses and costs in connection with any Projects or other System facilities and the Bonds, including, without limitation, all financing, legal, printing, and other expenses and costs related to the Bonds and the Projects and other System facilities.

Section 3. QUANTITY. (a) The District agrees to sell and to deliver treated water under this Contract to each Initial Contracting Party, respectively, at its Point or Points of Delivery as described in Section 6 hereof, and each Initial Contracting Party agrees to take at its Point or Points of Delivery all treated water required for use by such Initial Contracting Party during the term of this Contract, including all treated water for such Initial Contracting Party's own use and for distribution to all customers served by such Initial Contracting Party's treated water distribution system, whether inside or outside its boundaries. It is specifically provided, however, that after the Contract Date, no Contracting Party shall enter into, renew, or amend with regard to volume of water to be supplied, any agreement to supply any such treated water for use outside its boundaries or the area of its statutory extraterritorial jurisdiction unless each such agreement

is approved by the Board of Directors of the District (which approval shall not be unreasonably withheld) and made subject and subordinate in all respects to the water requirements of all of the Contracting Parties collectively. No Contracting Party shall become a party to any contract for the sale of treated water which would violate or be inconsistent with the provisions of this Contract, and all such contracts shall recognize the priority of treated water use as provided in this Contract. It is the intention of the parties hereto that the System shall be the sole and exclusive source of all treated water supply for each of the Contracting Parties. However, notwithstanding the foregoing provisions of this subsection (a), if, after the Contract Date, any Contracting Party should legally and finally annex or consolidate with any territory which has a source of treated water supply other than from such Contracting Party, then the District and such Contracting Party are authorized to, and may, negotiate and enter into agreements which would allow the continued use of such other source within such annexed territory upon such terms and conditions as are mutually agreeable to the District and such Contracting Party, and as an exception to the foregoing requirements with respect to exclusivity. The District will use its best efforts to furnish and remain in position to furnish treated water sufficient for all reasonable treated water requirements of each Contracting Party, but its obligation shall be limited to the

amount of treated water available to it from the System; and provided that the maximum rate of delivery shall be consistent with the capacities and abilities of System facilities, and shall not exceed the amounts fixed on an equitable and uniform basis by the Board of Directors of the District. The District agrees to use its best efforts to issue its Bonds in amounts necessary to acquire, construct, maintain, improve, and extend the entire System, including the Projects and other System facilities, so as to enable the District to furnish such treated water. As between the Contracting Parties, if treated water from the System must be rationed such rationing shall, within the limits permitted by law, be done by the District on the basis of the relative actual total amount of all treated water from the entire System taken by each such Contracting Party, respectively, during the last preceding Annual Payment Period in which rationing among said parties was not necessary.

(b) If the District is at any time during the term of this Contract unable to supply all the treated water requirements of the Contracting Parties for any reason, or if it should become apparent that the District will become unable to supply the Contracting Parties with their water requirements, and any Contracting Party determines that it is necessary to procure treated water from sources other than the District, then such Contracting Party shall give written notice to the District of its intention and desire to procure treated water



from sources other than the District, and its reasons therefor. Unless, within sixty (60) days from the receipt by the District of such written notice, the District shall object to such procurement (such objection to be evidenced by a resolution adopted by a vote of a majority of all members of the District's Board of Directors), then such Contracting Party may proceed to procure such treated water from other sources at its sole cost, and without any liability for damages accruing in favor of or against the District by reason thereof. However, such Contracting Party shall nevertheless continue to be obligated to take from the District and pay for all treated water at any time available to such Contracting Party from the District's System up to the full treated water requirements of such Contracting Party. In no event shall the taking of treated water from a source other than the District relieve any Contracting Party from making all payments due the District under this Contract. Further, all Contracting Parties shall at all times have the right to secure treated water from any possible source (i) in any emergency when the District is unable to deliver treated water from the System because of any "Force Majeure" as defined in this Contract, or (ii) in any other emergency situation, as determined by a Contracting Party for a period not to exceed thirty days, or for any longer period approved in writing by the District. Notwithstanding the foregoing provisions of this Contract, any Contracting

Party also may purchase treated water from a source other than the System, if the District determines that such purchase is in the best interests of the District and the Contracting Parties and gives written approval to such purchase; and in such case, for the purposes of this Contract, the District shall be deemed to be the constructive purchaser of such water and such water shall be deemed to be System water, and the District shall either pay for said water on behalf of such Contracting Party or reimburse such Contracting Party for the cost of such water, and such Contracting Party shall pay the District for such water the same as if it were regular System water.

Section 4. OTHER CONTRACTS. (a) The District reserves the right to supply treated water from the System to Additional Contracting Parties under contracts similar to this Contract, subject to the requirements concerning "minimums" as provided in Section 9(c) hereof. Each contract with any Additional Contracting Party shall comply with the requirements of this Contract, shall substantially restate the essential provisions of this Contract, and shall be structured to be similar hereto to the fullest extent applicable and practicable, with such additions or changes as are necessary to meet the actual circumstances, with the effect that each Additional Contracting Party will in effect adopt the provisions of this Contract, as supplemented and necessarily changed by its contract.

(b) It is recognized and agreed that the District now has many System water supply contracts with entities other than the Initial Contracting Parties, which contracts will remain in full force and effect, in accordance with their terms and provisions, after the Contract Date. The District shall enforce the aforesaid existing water supply contracts during the entire terms thereof, unless any such contract is replaced by a contract with an Additional Contracting Party hereunder. Upon the expiration of each such contract with any party the District thereafter may sell water to such party only on the basis that it is a new customer with respect to System water.

(c) It is further recognized and agreed that in the future the District may sell any water from the System to parties which are not Additional Contracting Parties, provided that all such future sales of water from the System to parties which are not Additional Contracting Parties shall, within the limits permitted by law, in all respects be subordinate to the prior rights of the Contracting Parties to water from the System, and all such sales and contracts relating thereto shall recognize, and be made subordinate to, such prior rights.

(d) It is recognized and agreed that concurrently with the execution of this Contract the District and the City of Garland will execute a separate agreement with respect to raw industrial water to be taken directly by Garland from Lavon Reservoir for use as cooling water for its steam electric

generating plant. Such agreement will substantially restate and completely replace the rights and obligations of the parties with respect to raw industrial water from Lavon Reservoir under the presently existing additions and modifications dated November 6, 1964, and August 7, 1973, respectively, to the original treated water contract dated December 12, 1953, between the District and Garland. After the execution of said separate agreement, it will constitute the sole agreement between said parties with respect to raw industrial water in Lavon Reservoir, and this Contract will constitute the sole agreement between said parties with respect to treated water from the System.

Section 5. QUALITY. The water to be delivered by the District and received by each Contracting Party shall be treated water from the System. Each Initial Contracting Party has satisfied itself that such water will be suitable for its needs, but the District is obligated to treat such water so as to meet the standards of all State and Federal agencies having jurisdiction over water quality. The District and the Contracting Parties shall cooperate, each within its legal powers, in preventing, to the extent practicable, the pollution and contamination of the reservoirs and watersheds from which System water is obtained.

Section 6. POINTS OF DELIVERY. The Point or Points of Delivery for each Initial Contracting Party shall be the Point

or Points of Delivery applicable to it under its present treated water supply contract with the District, or at any other Point or Points of Delivery mutually agreed upon between the District and such Initial Contracting Party. Each Contracting Party shall construct, maintain, and operate, at its own cost and expense, all facilities and equipment necessary to receive and take all treated water delivered to it under this Contract.

Section 7. MEASURING EQUIPMENT.

(a) District shall furnish, install, operate, and maintain at its own expense at each Point of Delivery of each Contracting Party the necessary equipment and devices of standard type for measuring properly the quantity of treated water delivered under this agreement. Such meter or meters and other equipment so installed shall remain the property of District. Each Contracting Party shall have access to such metering equipment at all reasonable times, but the reading, calibration, and adjustment thereof shall be done only by the employees or agents of the District. For the purpose of this agreement the original record or reading of the meter or meters shall be the journal or other record book of District in its office in which the records of the employees or agents of District who take the reading are or may be transcribed. Upon written request of any Contracting Party, District will send it a copy of such journal or record book, or permit it to have

access to the same in the office of District during reasonable business hours.

Not more than once in each calendar month, on a date as near the end of such calendar month as practical, District shall calibrate its meters if requested in writing by a Contracting Party to do so, in the presence of a representative of the Contracting Party, and the parties shall jointly observe any adjustments which are made to the meters in case any adjustments shall be necessary, and if the check meters hereinafter provided for have been installed, the same shall also be calibrated by Contracting Party in the presence of a representative of District and the parties shall jointly observe any adjustment in case any adjustment is necessary. If any Contracting Party shall in writing request District to calibrate its meters and District shall give the Contracting Party notice of the time when any such calibration is to be made and a representative of the Contracting Party is not present at the time set, District may proceed with calibration and adjustment in the absence of any representative of the Contracting Party.

If a Contracting Party or the District at any time observes a variation between the delivery meter or meters and the check meter or meters at that Contracting Party's Point or Points of Delivery, if any such check meter or meters shall be installed, such party will promptly notify the other party, and the District and such Contracting Party shall then cooperate to

procure an immediate calibration test and joint observation of any adjustment and the same meter or meters shall then be adjusted to accuracy. The party performing the test shall give the other party forty-eight (48) hours' notice of the time of all tests of meters so that the other party may conveniently have a representative present.

If upon any test, the percentage of inaccuracy of any metering equipment is found to be in excess of two per cent (2%), registration thereof shall be corrected for a period extending back to the time when such inaccuracy began, if such time is ascertainable, and if such time is not ascertainable, then for a period extending back one-half ( $\frac{1}{2}$ ) of the time elapsed since the last date of calibration, but in no event further back than a period of six (6) months. If for any reason any meters are out of repair so that the amount of water delivered to a Contracting Party cannot be ascertained or computed from the reading thereof, the water delivered through the period such meters are out of service or out of repair shall be estimated and agreed upon by the District and such Contracting Party upon the basis of the best data available. For such purpose, the best data available shall be deemed to be the registration of any check meter or meters if the same have been installed and are accurately registering. Otherwise, the amount of water delivered during such period may be estimated (i) by correcting the error if the percentage of the error is

ascertainable by calibration tests or mathematical calculation, or (ii) estimating the quantity of delivery by deliveries during the preceding periods under similar conditions when the meter or meters were registering accurately.

Any Contracting Party may, at its option and its own expense, install and operate a check meter to check each meter installed by District, but the measurement of water for the purpose of this agreement shall be solely by District's meters, except in the cases hereinabove specifically provided to the contrary. All such check meters shall be of standard make and shall be subject at all reasonable times to inspection and examination by any employee or agent of District, but the reading, calibration and adjustment thereof shall be made only by the Contracting Party, except during any period when a check meter may be used under the provisions hereof for measuring the amount of water delivered, in which case the reading, calibration, and adjustment thereof shall be made by District with like effect as if such check meter or meters had been furnished or installed by District.

Section 8. UNIT OF MEASUREMENT. The unit of measurement for treated water delivered under this Contract shall be 1,000 gallons of water, U.S. Standard Liquid Measure.

Section 9. PRICES AND TERMS; PAYMENTS BY CONTRACTING PARTIES. (a) Annual Requirement and Proportionate Payment.



It is acknowledged and agreed that payments to be made under this Contract and any similar contracts with Additional Contracting Parties will be the primary source available to the District to provide the Annual Requirement, and that, in compliance with the District's duty to fix and from time to time revise the rates of compensation or charges for water sold and services rendered and made available by the District, the Annual Requirement will change from time to time, and that each such Annual Requirement shall be allocated among the Contracting Parties as hereinafter provided, and that the Annual Requirement for each Annual Payment Period shall at all times be not less than an amount sufficient to pay or provide for the payment of:

- (A) An "Operation and Maintenance Component" equal to the amount paid or payable for all Operation and Maintenance Expenses of the System; and
- (B) A "Bond Service Component" equal to:
  - (1) the principal of, redemption premium, if any, and interest on, its Bonds, as such principal, redemption premium, if any, and interest become due, less interest to be paid out of Bond proceeds or from other sources if permitted by any Bond Resolution, and all amounts required to redeem any Bonds prior to maturity when and as provided in

- any Bond Resolution; and
- (2) the proportionate amount of any special, reserve, or contingency funds required to be accumulated and maintained by the provisions of any Bond Resolution; and
- (3) any amount in addition thereto sufficient to restore any deficiency in any of such funds required to be accumulated and maintained by the provisions of any Bond Resolution.

It is agreed that for the treated water supply to be provided to Contracting Parties under this Contract and similar contracts, each of the Contracting Parties shall pay, at the time and in the manner hereinafter provided, its proportionate share of the Annual Requirement, which shall be determined as hereafter described and shall constitute a Contracting Party's Annual Payment. Each of the Contracting Parties shall pay its proportionate share of the Annual Requirement for each Annual Payment Period directly to the District, in approximately equal monthly installments, or before the 10th day of each month.

(b) Calculation of Proportionate Payments; Rates. For each Annual Payment Period each Contracting Party's proportionate share of the Annual Requirement shall be a percentage obtained by dividing the minimum amount specified and calculated for it for such period, in accordance with sub-section (c)

of this Section 9, by the aggregate minimum amounts specified and calculated for all Contracting Parties for such period in accordance with said sub-section (c). Thus the base "rate" per 1,000 gallons of treated water which each Contracting Party must pay for treated water during any Annual Payment Period may be calculated and expressed by dividing the dollar amount of such Contracting Party's proportionate share of the Annual Requirement by the number of 1,000 gallons contained within its specified minimum amount for such Annual Payment Period. All such payments for each Annual Payment Period shall be made in accordance with a schedule of payments for the appropriate Annual Payment Period which will be supplied to each of the Contracting Parties by the District.

(c) Minimums. For the purpose of calculating the minimum amount of each Annual Requirement for which each Initial Contracting Party is unconditionally liable, without offset or deduction (also see Section 10(g)), each Initial Contracting Party, during each Annual Payment Period, shall be deemed to have taken and used the minimum annual average daily amount of System treated water (regardless of whether or not such amount is or was actually taken or used) specified for such Initial Contracting Party as follows:

for each of the Initial Contracting Parties, respectively, a minimum amount, expressed in MGD, during each Annual Payment Period, equal to the greater of:

- (1) .898 MGD for the City of Farmersville  
1.159 MGD for the City of Forney  
32.476 MGD for the City of Garland  
4.433 MGD for the City of McKinney  
15.806 MGD for the City of Mesquite  
28.688 MGD for the City of Plano  
.634 MGD for the City of Princeton  
19.760 MGD for the City of Richardson  
2.633 MGD for the City of Rockwall  
.523 MGD for the City of Royse City  
1.186 MGD for the City of Wylie, or
- (2) the maximum number of MGD actually taken from the System by such Initial Contracting Party during any previous Water Year (as hereinbefore defined) during the term of this Contract; it being agreed and understood that any use of System water in any Water Year by any Initial Contracting Party in excess of (i) the minimum amount specified for it in clause (1), above, or (ii) as determined in accordance with this clause (2), will establish a new minimum amount to be effective for the next following Annual Payment Period and thereafter until any previously increased minimum amount is further

exceeded in any subsequent Water Year, with each such increase in minimums to be effective for the next following Annual Payment Period and thereafter until further increased in accordance with this clause (2) .

Notwithstanding the foregoing provisions of this subsection (c), if any portion of an Initial Contracting Party's minimum amount is attributable to treated water sold or delivered to an entity outside of its boundaries, pursuant to a treated water supply contract, and (i) if such entity should become an Additional Contracting Party and such treated water supply contract be terminated, or (ii) if such treated water supply contract with such Initial Contracting Party otherwise should be terminated and in lieu thereof such entity should enter into a treated water supply contract with the District as permitted in Section 4 hereof, then such Initial Contracting Party's minimum amount for the next Annual Payment Period and thereafter shall be reduced by the maximum MGD previously taken by said entity from such Initial Contracting Party during any previous Water Year pursuant to such terminated treated water supply contract with such Initial Contracting Party.

All contracts with Additional Contracting Parties shall provide for equitable minimums similar to those provided for above. Such minimums shall be fixed in amounts at least sufficient, as determined by the District, to assure an initial

Annual Payment by each Additional Contracting Party for not less than the amount of its estimated use of treated water during the first year of service under such contract.

(d) Excess Water Charges. It is further agreed that, in addition to the amounts required to be paid by Contracting Parties pursuant to sub-sections (a), (b), (c), and (e) of this Section 9, if any Contracting Party during any Water Year uses System treated water in excess of the minimum amount applicable to it for the Annual Payment Period which commenced during such Water Year, then such Contracting Party shall pay an "Excess Water Charge" equal to that part of the Operation and Maintenance Expenses (electric power, chemicals, and other similar costs) directly attributable to supplying such excess treated water to such Contracting Party, all as determined by the District. Such Excess Water Charge shall be billed by the District to such Contracting Party as soon as practicable after the end of such Water Year and shall be paid to the District as soon as practicable thereafter, and in all events prior to the beginning of the next Annual Payment Period. Such Excess Water Charges shall be credited to and be used for paying part of the Operation and Maintenance Expenses for the then current Annual Payment Period and reduce to the extent of such credits the amounts which otherwise would be payable by the Contracting Parties during such then current Annual Payment Period.

(e) Redetermination of Annual Requirement. Each Contracting Party's share of the Annual Requirement shall be redetermined, after consultation with each of the Contracting Parties, at any time during any Annual Payment Period, to the extent deemed necessary or advisable by the District, if:

- (i) The District commences supplying System treated water to an Additional Contracting Party or Parties;
- (ii) Unusual, extraordinary, or unexpected expenditures for Operation and Maintenance Expenses are required which are not provided for in the District's Annual Budget for the System or in any Bond Resolution;
- (iii) Operation and Maintenance Expenses are substantially less than estimated;
- (iv) The District issues Bonds which require an increase in the Bond Service Component of the Annual Payment; or
- (v) The District receives either significantly more or significantly less revenues or other amounts than those anticipated.

(f) Other Revenues. During each Annual Payment Period the revenues derived from sales of System water, other than sales of treated water to Contracting Parties, shall be credited to and be used for paying part of the Annual Requirement in the manner determined by the District, with the result that

such credits shall reduce, to the extent of such credits, the amounts which otherwise would be payable by the Contracting Parties pursuant to the methods prescribed in sub-sections (a) (b), (c), and (e), above. The District shall estimate all such credits which it expects to make during each Annual Payment Period in calculating each Annual Payment.

(g) Annual Budget. On or before the first day of the fourth calendar month prior to the beginning of each Annual Payment Period hereafter the District shall furnish each Contracting Party with a tentative or preliminary estimated schedule of the monthly payments to be made by such party to the District for the ensuing Annual Payment Period. On or before the first day of the second calendar month prior to the beginning of each Annual Payment Period hereafter the District shall furnish each Contracting Party with an updated estimated schedule of the monthly payments to be made by such Party to the District for the next ensuing Annual Payment Period. Prior to the first day of each Annual Payment Period hereafter the District shall furnish each Contracting Party with a final estimated schedule of the monthly payments to be made by such Party to the District for the next ensuing Annual Payment Period, together with the supporting budgetary data showing the basis for arriving at such schedule. Any surplus budgeted funds remaining on hand at the end of any Annual Payment Period shall be used during the following Annual Payment Period and



reduce in the manner determined by the District, to the extent of any such surplus funds, the amounts which otherwise would be payable by the Contracting Parties under sub-sections (a), (b), (c), and (e), above. Each Contracting Party hereby agrees that it will make such payments to the District on or before the 10th day of each month of such Annual Payment Period. If any Contracting Party at any time disputes the amount to be paid by it to the District, such complaining party shall nevertheless promptly make such payment or payments, but if it is subsequently determined by agreement or court decision that such disputed payments made by such complaining party should have been less, or more, the District shall promptly revise and reallocate the charges among all Contracting Parties in such manner that such complaining party will recover its overpayment or the District will recover the amount due it.

(h) Delinquencies. All amounts due and owing to the District by each Contracting Party or due and owing to any Contracting Party by the District shall, if not paid when due, bear interest at the rate of ten (10) percent per annum from the date when due until paid. The District shall, to the extent permitted by law, suspend delivery of water from the System to any Contracting Party which remains delinquent in any payments due hereunder for a period of sixty days, and shall not resume delivery of water while such Contracting Party is so delinquent. It is further provided and agreed that if any

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

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

Section 10. SPECIAL CONDITIONS AND PROVISIONS. (a) Operation and Maintenance of System. The District will continuously operate and maintain the System in an efficient manner and in accordance with good business and engineering practices, and at reasonable cost and expense. By executing this Contract the Initial Contracting Parties waive any and all claims, as against each other, to any preferential right or entitlement to the capacity or use of specific water sources of the District. The District recognizes its right and duty to operate the various facilities of the System in the most prudent and economical manner for the benefit of all the Contracting Parties. The District shall exercise loyalty, good faith, and fair dealing relating to all System activities undertaken by the District as between the District and the Contracting Parties.

(b) Permits, Financing, and Applicable Laws. It is understood that any obligations on the part of the District to acquire, construct, and complete the Projects and other System facilities and to provide treated water from the Projects and other System facilities to the Contracting Parties shall be (i) conditioned upon the District's ability to obtain all necessary

permits, material, labor, and equipment, and upon the ability of the District to finance the cost of the Projects and other System facilities through the actual sale of the District's Bonds and (ii) subject to all present and future valid laws, orders, rules, and regulations of the United States of America, the State of Texas, and any regulatory body having jurisdiction.

(c) Title to Water; Indemnification. Title to all treated water supplied to each Contracting Party shall be in the District up to each Point of Delivery, at which point title shall pass to the receiving Contracting Party. The District and each of the Contracting Parties shall save and hold each other party harmless from all claims, demands, and causes of action which may be asserted by anyone on account of the transportation and delivery of said water while title remains in such party. Notwithstanding any other provision of this Contract, it is specifically provided that water obtained or resulting from the wastewater treatment operations of any Contracting Party shall be under the sole and exclusive dominion, control, and ownership of such Contracting Party and the District shall have no right, title, or interest in or claim against such water of any nature whatsoever.

(d) Payments Solely From Revenues. The District shall never have the right to demand payment by any Initial Contracting Party of any obligations assumed by it or imposed on it under and by virtue of this Contract from funds raised or to be raised by taxes, and the obligations under this Contract shall

never be construed to be a debt of such kind as to require any of the Initial Contracting Parties to levy and collect a tax to discharge such obligation.

(e) Operating Expenses of Initial Contracting Parties.

Each of the Initial Contracting Parties represents and covenants that all payments to be made by it under this Contract shall constitute reasonable and necessary "operating expenses" of its waterworks system, in accordance with Vernon's Ann. Tex. Civ. St. Articles 1113 and 4413(32c). It is further recognized that the waterworks system of each Initial Contracting Party is presently combined with its sewer system in accordance with law for operating and financing purposes. Each of the Initial Contracting Parties, respectively, represents and has determined that the treated water supply to be obtained from the System, including the Projects and other System facilities, is absolutely necessary and essential to the present and future operation of its waterworks system and is the only available and adequate source of supply of treated water therefor. Accordingly, the payments required by this Contract to be made by each Initial Contracting Party shall constitute reasonable and necessary operating expenses of its waterworks system and shall be made as provided by law, including the aforesaid Articles 1113 and 4413(32c). In accordance with said Article 1113, such payments shall have priority over the payment of principal of and interest on all bonds and other

similar obligations heretofore or hereafter issued by any Initial Contracting Party.

(f) Initial Contracting Parties' Rates For Water and Sewer System Services. Each of the Initial Contracting Parties agrees throughout the term of this Contract to continuously operate and maintain its combined waterworks and sewer system, and to fix and collect such rates and charges for water and sewer services to be supplied by its combined waterworks and sewer system as aforesaid as will produce revenues in an amount equal to at least (i) all of its payments under this Contract and (ii) all other amounts required to be paid from said revenues by law and the provisions of the ordinances or resolutions authorizing its revenue bonds or other obligations now or hereafter outstanding.

(g) Initial Contracting Parties' Unconditional Obligations. Recognizing the fact that the Initial Contracting Parties urgently require the facilities and services of the System, and that such facilities and services are essential and necessary for actual use and for standby purposes, and recognizing the fact that the District will use payments received from the Initial Contracting Parties to pay and secure the Bonds, it is hereby agreed that each of the Initial Contracting Parties shall be unconditionally obligated to pay, without

offset or deduction, its proportionate share of each Annual Requirement, as provided and determined by this Contract (including the obligations for paying for "minimums" as described in Section 9 (c) hereof), regardless of whether or not the District actually acquires, constructs, or completes the Projects or other System facilities or is actually delivering water from the System to any Contracting Party, or whether or not any Contracting Party actually receives or uses water from the System whether due to Force Majeure or otherwise, and regardless of any other provisions of this or any other contract or agreement between any of the parties hereto. This covenant by the Initial Contracting Parties shall be for the benefit of, and enforceable by, the owners of the Bonds as well as the District.

Section 11. FORCE MAJEURE. If by reason of force majeure any party hereto shall be rendered unable wholly or in part to carry out its obligations under this Contract, other than the obligation of each Contracting Party to make the payments required under Section 9 of this Contract, then if such party shall give notice and full particulars of such force majeure in writing to the other parties within a reasonable time after occurrence of the event or cause relied on, the obligation of the party giving such notice, so far as it is affected by such force majeure, shall be suspended during the continuance of the inability then claimed, but for no longer period, and any such

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

Section 12. INSURANCE. The District agrees to carry and arrange for fire, casualty, public liability, and/or other insurance, including self insurance, on the System for purposes and in amounts which, as determined by the District, ordinarily would be carried by a privately owned utility company owning and operating such facilities, except that the District shall not be required to provide liability insurance except to insure itself against risk of loss due to claims for which it can, in the opinion of the District's legal counsel, be liable under the Texas Tort Claims Act or any similar law or judicial decision. Such insurance will provide, to the extent feasible and practicable, for the restoration of damaged or destroyed



properties and equipment, to minimize the interruption of the services of such facilities. All premiums for such insurance shall constitute an Operation and Maintenance Expense of the System.

Section 13. TERM AND EFFECT OF CONTRACT. (a) This Contract shall, upon execution by the District and all of the Initial Contracting Parties, be effective as of the Contract Date, and this Contract shall continue in force and effect until all Bonds and all interest thereon shall have been paid or provided for, and thereafter shall continue in force and effect during the entire useful life of the System. The requirement for making the Annual Payments as prescribed in Section 9 of this Contract shall commence as of October 1, 1988. Until October 1, 1988, payments for treated water shall continue to be made to the District by the Initial Contracting Parties in accordance with the eleven separate existing treated water supply contracts, and amendments thereto, between the District and the Initial Contracting Parties.

(b) It is specifically agreed and understood that this Contract, as of the Contract Date, will supersede all of the contracts, agreements, and arrangements between each of the parties hereto with respect to the System and treated water from the System and the Bonds, and that this Contract, as of the Contract Date, will completely amend and supersede all such contracts, agreements, and arrangements with respect to the

System and treated water from the System and the Bonds, and will constitute the sole agreement between the parties hereto or any of them with respect to the System and treated water from the System and the Bonds; and all such previous contracts, agreements, and arrangements shall be void and shall be of no force or effect, except for payments due and liabilities accrued thereunder prior to October 1, 1988, and except as provided in subsections (a) and (c), of this Section 13, and except that the "AGREEMENT BETWEEN THE NORTH TEXAS MUNICIPAL WATER DISTRICT AND THE CITY OF MCKINNEY FOR AN ADDITIONAL POINT OF DELIVERY", authorized by said City's resolution adopted September 2, 1986, and the District's resolution adopted December 18, 1986, shall be and remain in full force and effect until its expiration, and said City shall make payments to the District thereunder in addition to those required under this Contract, with such additional payments to be treated and applied as "other revenues" in accordance with Section 9(b) of this Contract.

(c) It is recognized by the parties to this Contract that the eleven previous treated water supply contracts, and amendments thereto, between the District and the Initial Contracting Parties, respectively, which are being amended hereby, together with the proceedings relating thereto, previously have been submitted to an Attorney General of Texas, along with bonds of the District heretofore issued, as provided in the District

Act, and that an Attorney General, in his certificates and opinions relating to such bonds, found that such contracts were made in accordance with the Constitution and laws of the State of Texas, and that they are valid and enforceable in accordance with their terms and provisions. Further, an Attorney General approved each of such contracts, with the effect that pursuant to the provisions of the District Act such contracts "shall be valid and binding and shall be incontestable for any cause". In order to protect the rights of the owners of the Bonds and the parties to this Contract, it is specifically agreed and understood by the parties to this Contract that, any provisions of this Contract to the contrary notwithstanding, if for any reason whatsoever this Contract, or any part of this Contract significantly affecting the rights of the owners of the Bonds, should be held to be invalid or unconstitutional, or in contravention of any law or any constitutional provisions, then the foregoing contracts shall be construed and deemed to be and to have been in full force and effect at all times to the extent required to protect the rights of the owners of the Bonds and the parties to such contracts. It is further agreed and understood by the parties to this Contract that this Contract is amendatory in nature and is not intended to, and does not, abrogate the rights of the owners of any Bonds, and is not intended to, and does not, affect adversely in any way the security therefor, but is intended to and does confirm the

security therefor, substantially restate, clarify, carry forward, update, improve, and extend the provisions of the previous contracts.

Section 14. MODIFICATION. No change or modification of this Contract shall be made which will affect adversely the prompt payment when due of all moneys required to be paid by any Contracting Party under the terms of this Contract or any similar contract, and no such change shall be effective which would cause a violation of any provisions of any Bond Resolution. No change or modification of this Contract shall be made without the written consent of all parties hereto.

Section 15. REGULATORY BODIES AND LAWS. This Contract is subject to all applicable Federal and State laws and any applicable permits, ordinances, rules, orders, and regulations of any local, state, or federal governmental authority having or asserting jurisdiction, but nothing contained herein shall be construed as a waiver of any right to question or contest any such law, ordinance, order, rule, or regulation in any forum having jurisdiction.

Section 16. NOTICES. Unless otherwise provided herein, any notice, communication, request, reply, or advice (herein severally and collectively, for convenience, called "Notice") herein provided or permitted to be given, made, or accepted by any party to any other party must be in writing and may be

given or be served by depositing the same in the United States mail postpaid and registered or certified and addressed to the party to be notified, with return receipt requested, or by delivering the same to an officer of such party, or by prepaid telegram when appropriate, addressed to the party to be notified. Notice deposited in the mail in the manner hereinabove described shall be conclusively deemed to be effective, unless otherwise stated herein, from and after the expiration of three days after it is so deposited. Notice given in any other manner shall be effective only if and when received by the party to be notified. For the purposes of notice, the addresses of the parties shall, until changed as hereinafter provided, be as follows:

If to the District, to:

North Texas Municipal Water District  
P. O. Drawer C  
Wylie, Texas 75098

If to the Initial Contracting Parties, as follows:

City of Farmersville  
303 S. Main  
Farmersville, Texas 75031

City of Forney  
101 E. Main Street  
Forney, Texas 75126

City of Garland  
200 N. Fifth Street  
P. O. Box 469002  
Garland, Texas 75040

City of McKinney  
P. O. Box 517  
McKinney, Texas 75069

City of Mesquite  
711 N. Galloway  
Mesquite, Texas 75149

City of Plano  
P. O. Box 860358  
Plano, Texas 75086-0358

City of Princeton  
306 N. Front Street  
Princeton, Texas 75077

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

City of Rockwall  
205 W. Rusk  
Rockwall, Texas 75087

City of Royse City  
P. O. Drawer A  
Royse City, Texas 75089

City of Wylie  
P. O. Box 428  
Wylie, Texas 75098

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

Section 17. SEVERABILITY. The parties hereto specifically agree that in case any one or more of the sections, subsections, provisions, clauses, or words of this Contract or the application of such sections, subsections, provisions, clauses, or words to any situation or circumstance should be, or should be held to be, for any reason, invalid or unconstitutional,

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

Section 18. REMEDIES UPON DEFAULT. It is not intended hereby to specify (and this Contract shall not be considered as specifying) an exclusive remedy for any default, but all such other remedies (other than termination) existing at law or in equity may be availed of by any party hereto and shall be cumulative. Recognizing however, that the District's undertaking to provide and maintain a supply of water hereunder is an obligation, failure in the performance of which cannot be adequately compensated in money damages alone, the District agrees, in the event of any default on its part, that each Contracting Party shall have available to it the equitable remedy of mandamus and specific performance in addition to any

other legal or equitable remedies (other than termination) which may also be available. Recognizing that failure in the performance of any Initial Contracting Party's obligations hereunder could not be adequately compensated in money damages alone, each Initial Contracting Party agrees in the event of any default on its part that the District shall have available to it the equitable remedy of mandamus and specific performance in addition to any other legal or equitable remedies (other than termination) which may also be available to the District. No waiver or waivers of any breach or default (or any breaches or defaults) by any party hereto or of performance by any other party of any duty or obligation hereunder shall be deemed a waiver thereof in the future, nor shall any such waiver or waivers be deemed or construed to be waiver of subsequent breaches or defaults of any kind, character, or description, under any circumstances.

Section 19. VENUE. All amounts due under this Contract, including, but not limited to, payments due under this Contract or damages for the breach of this Contract, shall be paid and be due in Collin County, Texas, which is the County in which the principal administrative offices of the District are located. It is specifically agreed among the parties to this Contract that Collin County, Texas, is a principal place of performance of this Contract; and in the event that any legal

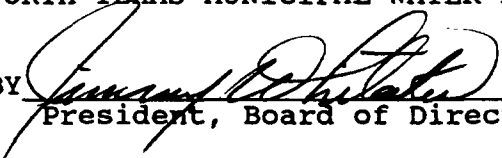


proceeding is brought to enforce this Contract or any provision hereof, the same shall be brought in Collin County, Texas.

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

NORTH TEXAS MUNICIPAL WATER DISTRICT

BY

  
President, Board of Directors

ATTEST:

  
Secretary, Board of Directors

APPROVED AS TO FORM AND LEGALITY:

  
Attorneys for the District


(DISTRICT SEAL)

CITY OF FARMERSVILLE, TEXAS

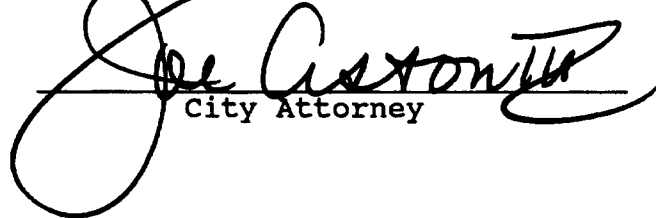
BY

  
Mayor

ATTEST:

  
City Secretary

APPROVED AS TO FORM AND LEGALITY:

  
City Attorney

(CITY SEAL)

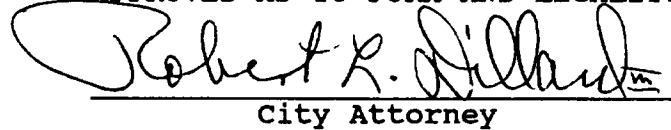
CITY OF FORNEY, TEXAS

  
Mayor

ATTEST:

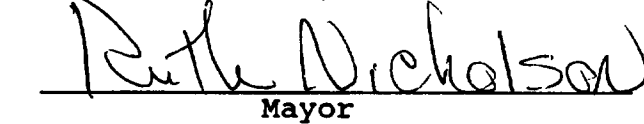
  
City Secretary

APPROVED AS TO FORM AND LEGALITY:

  
City Attorney

(CITY SEAL)

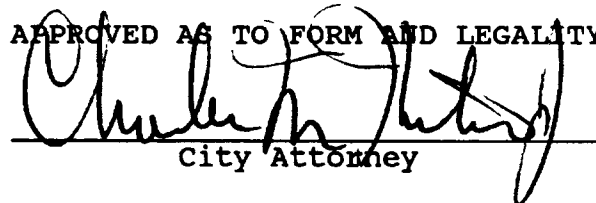
CITY OF GARLAND, TEXAS

  
Mayor

ATTEST:

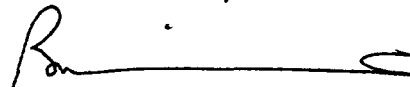
  
City Secretary

APPROVED AS TO FORM AND LEGALITY:

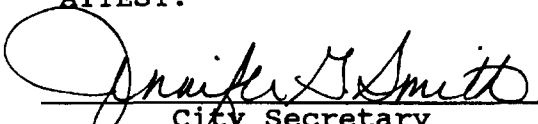
  
City Attorney

(CITY SEAL)

CITY OF MCKINNEY, TEXAS

BY   
Mayor

ATTEST:

  
City Secretary

APPROVED AS TO FORM AND LEGALITY:

  
City Attorney

(CITY SEAL)

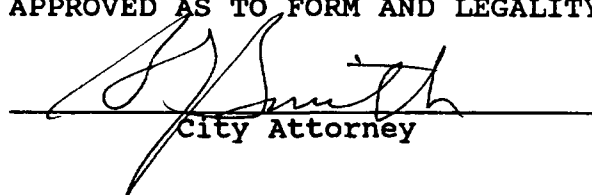
CITY OF MESQUITE, TEXAS

BY   
Mayor

ATTEST:

  
City Secretary

APPROVED AS TO FORM AND LEGALITY:

  
City Attorney

(CITY SEAL)

CITY OF PLANO, TEXAS

BY   
Mayor

ATTEST:

Jackie Blakely  
City Secretary

APPROVED AS TO FORM AND LEGALITY:

Larry Ottam  
City Attorney

(CITY SEAL)

CITY OF PRINCETON, TEXAS

BY Mary K. Edwards  
Mayor

ATTEST:

Winnie Price  
City Secretary

APPROVED AS TO FORM AND LEGALITY:

Mark R. P.  
City Attorney

(CITY SEAL)

CITY OF RICHARDSON, TEXAS

BY Charles Spann  
Mayor

ATTEST:

Paula Miller  
City Secretary

APPROVED AS TO FORM AND LEGALITY

Peter S. Smith  
City Attorney

(CITY SEAL)

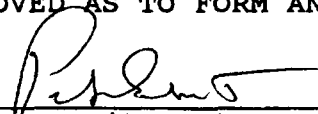
CITY OF ROCKWALL, TEXAS

BY   
Mayor

ATTEST:

  
City Secretary

APPROVED AS TO FORM AND LEGALITY

  
City Attorney

(CITY SEAL)

CITY OF ROYSE CITY, TEXAS

  
Mayor

ATTEST:

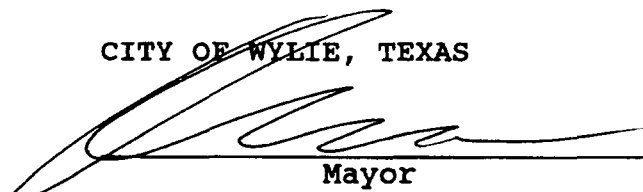
  
City Secretary

APPROVED AS TO FORM AND LEGALITY:

  
City Attorney

(CITY SEAL)

CITY OF WYLIE, TEXAS

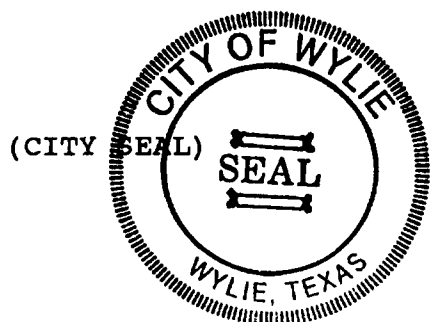
  
Mayor

ATTEST:

*Carolyn Jones*  
City Secretary

APPROVED AS TO FORM AND LEGALITY

*Robert L. Dillard III*  
City Attorney *PLS*



# **North Texas Municipal Water District**



## **2017-2018 Annual Budget**

**For All Systems:  
Regional Water System  
Sewer System  
Regional Wastewater System  
Regional Solid Waste System  
Upper East Fork Interceptor System**

## **NORTH TEXAS MUNICIPAL WATER DISTRICT**

### **BOARD OF DIRECTORS 2017- 2018**

ROBERT THURMOND  
JOHN SWEEDEN  
DON GORDON

PRESIDENT  
VICE-PRESIDENT  
SECRETARY

WYLIE  
RICHARDSON  
GARLAND

TERRY SAM ANDERSON  
PHIL DYER  
JOE FARMER  
MARVIN FULLER  
BILL GLASS  
DARRELL GROOMS  
ROD HOGAN  
DAVE ISLAND  
JOE JOPLIN  
JAMES KERR  
BILL LOFLAND  
MICHAEL LOPEZ  
JACK MAY  
WAYNE MAY  
CHARLES MCKISSICK  
JIM MELLODY  
JOHN MURPHY  
LARRY PARKS  
DAVID PASCHALL  
RICHARD PEASLEY  
LYNN SHUYLER  
VACANT

MESQUITE  
PLANO  
ALLEN  
WYLIE  
PRINCETON  
FORNEY  
PLANO  
PRINCETON  
MCKINNEY  
ALLEN  
ROCKWALL  
FORNEY  
GARLAND  
FARMERSVILLE  
MCKINNEY  
ROYSE CITY  
RICHARDSON  
ROCKWALL  
MESQUITE  
FRISCO  
FRISCO  
ROYSE CITY

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THOMAS W. KULA  
EXECUTIVE DIRECTOR / GENERAL MANAGER



**2017 - 2018 ANNUAL BUDGET**

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**NORTH TEXAS MUNICIPAL  
WATER DISTRICT**

*Regional Service Through Unity*

August 24, 2017

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

RE: 2017-18 ALL SYSTEMS BUDGET

Dear Directors:

Submitted herewith is the 2017-18 Annual All Systems Budget for the North Texas Municipal Water District. This budget document has been prepared by the Finance Staff as submitted by the System Managers and has been reviewed and approved by the Executive Director / General Manager.

The District remains in a sound financial condition and the Board's goal of meeting the contractual obligation of the participating cities within state and federal laws while protecting the environment continues to be accomplished with reasonable cost in all systems. The Budget as submitted provides the required funding for operation and maintenance expense, capital expenditures and debt service requirements to allow the District to continue to deliver essential services throughout its service area.

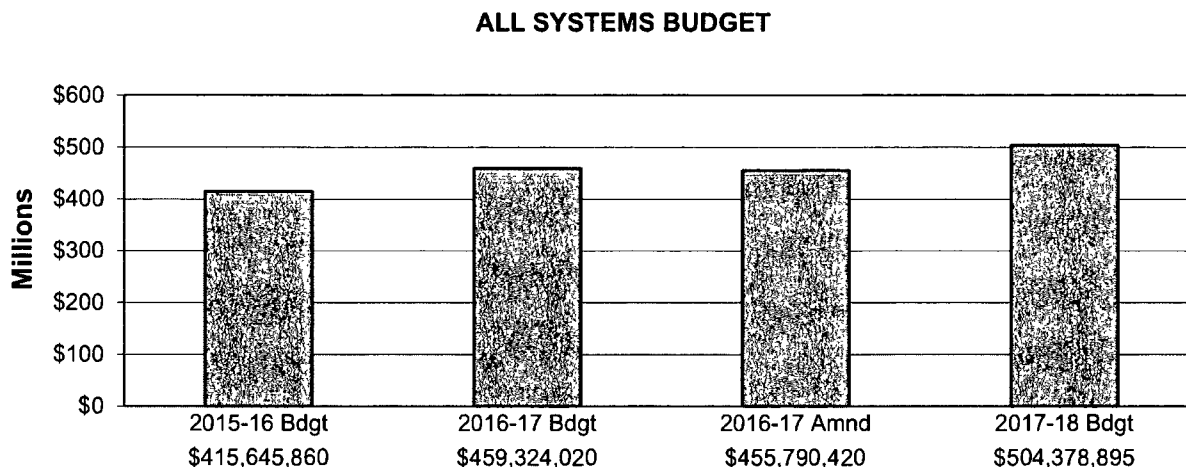
The District's service area is growing with the population expected to more than double over the next 50 years. Large capital projects must have adequate funding to plan, permit, acquire land and construct in time to meet future needs. The District's existing systems and infrastructure—some constructed 60 years ago—require maintenance and improvements to sustain reliability, comply with regulations, and ensure public health and safety. The 2017-18 budget was developed to continue meeting these responsibilities.

## **OVERALL BUDGET**

The 2017-18 Annual All Systems Budget as proposed in the amount of \$504,378,895 includes funding for the following:

- Issuance of approximately \$1 billion of revenue bonds to fund the District's capital programs.
- Construction of the Lower Bois d'Arc Creek Reservoir Dam, Pump Station, FM 897 road relocation, Riverby mitigation, 70 million gallons per day (mgd) Leonard Water Treatment Plant Site, and improvements to the Wylie Water Treatment Plant I Rapid Mix and Sedimentation.
- Construction of various expansion and improvement projects in the Regional Wastewater System, Regional Solid Waste System, Upper East Fork Interceptor System and Sewer System including construction of Forney Mustang Creek Lift Station Phase I.
- 17 additional personnel.

Comparisons of the Budget for fiscal years 2015-16 through 2017-18 for All Systems are presented below.



The 2016-17 Amended Budget is expected to be \$3,533,600 less than the 2016-17 Original Budget, which reflects a 0.8% decrease. This decrease is the result of chemical and power cost savings and less than expected raw water purchases due to decreased water consumption.

The proposed 2017-18 Budget requests an increase of \$45,054,875 or 9.8% over the 2016-17 Original Budget. This increase is primarily due to additional debt service requirements for the construction of the Lower Bois d'Arc Creek Reservoir and personnel costs.

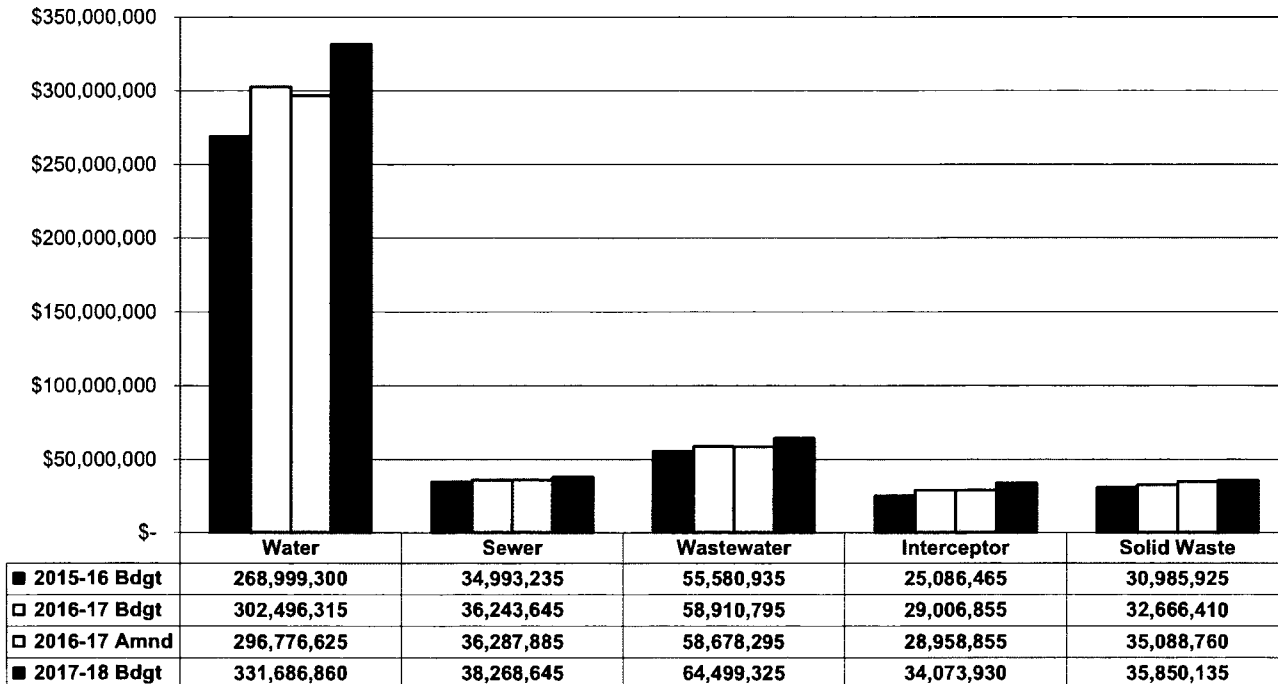
## REVIEW BY SYSTEM

Comparisons of the Budget for fiscal years 2015-16 through 2017-18 by System are presented as follows.

### BUDGET BY SYSTEM

System	2015-16 Budget	2016-17 Budget	2016-17 Amended	2017-18 Budget
Water	\$ 268,999,300	\$ 302,496,315	\$ 296,776,625	\$ 331,686,860
Sewer	34,993,235	36,243,645	36,287,885	38,268,645
Wastewater	55,580,935	58,910,795	58,678,295	64,499,325
Interceptor	25,086,465	29,006,855	28,958,855	34,073,930
Solid Waste	30,985,925	32,666,410	35,088,760	35,850,135
<b>Total</b>	<b>\$ 415,645,860</b>	<b>\$ 459,324,020</b>	<b>\$ 455,790,420</b>	<b>\$ 504,378,895</b>

### BUDGET BY SYSTEM

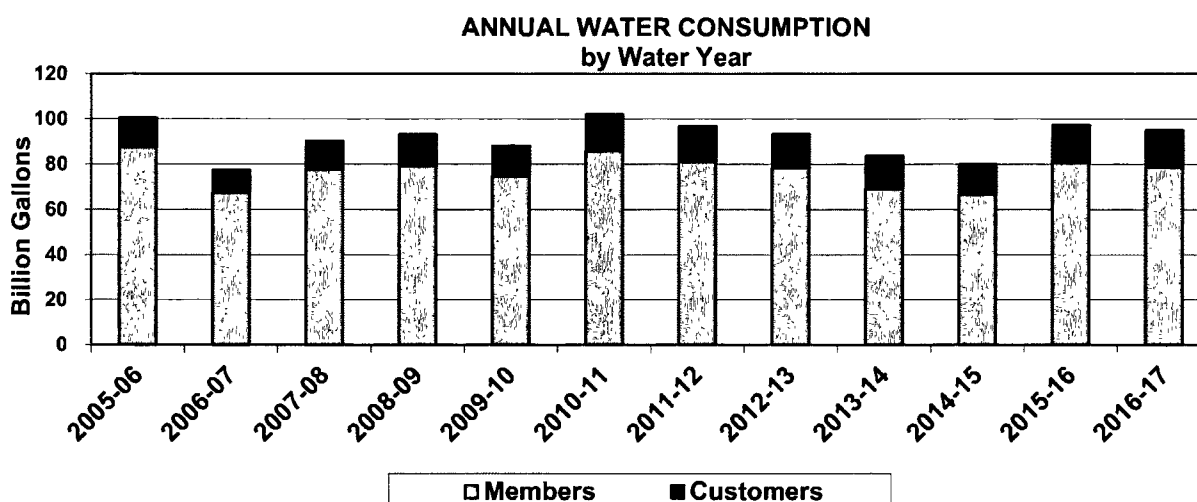


## WATER SYSTEM

### General

The Regional Water System currently provides treated water service to areas having an estimated population in excess of 1.6 million, including 13 Member Cities and 34 other area customer cities and water supply corporations. Member Cities currently utilize 83% of the total water produced by the District.

Consumption for the 2016-17 water year (August 1, 2016 through July 31, 2017) was 95,121,011,000 gallons, which was 2,220,250,000 gallons, or 2.3% less than the previous year's consumption of 97,341,261,000 gallons and 18,924,139,000 gallons, or 16.6% less than the expected consumption of 114,045,150,000 gallons for the year. Historical water consumption is presented below.



### Operating Condition

The current capacity of the Wylie Water Treatment Plant is 770 mgd. This facility can be expanded in 70 mgd units up to its ultimate capacity of 910 mgd. Construction commenced in fiscal year 2016-17 on a 70 mgd expansion of the Wylie Water Treatment Plant and is scheduled to be complete in fiscal year 2018-19. The Tawakoni Water Treatment Plant currently has a capacity of 30 mgd and the Bonham Water Treatment Plant currently has a capacity of 6 mgd. Construction of the Trinity River Main Stem Pump Station and Pipeline commenced in fiscal year 2016-17 and is scheduled to be complete in fiscal year 2018-19.

The pumping and transmission system remains in sound operating condition. Several improvements are currently underway including the North McKinney pipeline, improvements at the Shiloh Pump Station, Casa View control structure improvements, and a north system 10 million gallon ground storage tank hydraulic analysis.

## **Raw Water Supply**

The District's raw water is currently supplied by water rights held in Lavon Lake, Lake Texoma, and Lake Jim Chapman, with Lake Lavon serving as the primary source of raw water. Supplemental supplies are furnished by contracted rights in Lake Tawakoni and Lake Fork Reservoir. In addition to these supplies from reservoirs, the District has the following supplemental raw water sources:

- A permitted water right for up to 64 mgd of capacity from the Wilson Creek Regional Wastewater Treatment Plant of highly treated effluent that is discharged into Lavon Lake.
- A current supply of approximately 45 mgd that increases to approximately 91 mgd in 2019 from the East Fork Raw Water Supply Project that is discharged into Lavon Lake.
- A Lake Bonham supply of 4.8 mgd serving the Bonham Water Treatment Plant.

To meet future water needs, the District continues to plan and participate in the statewide water planning process mandated by Senate Bill 1 as passed into law in 1997. The 2016 Initially Prepared Region C Water Plan was submitted to the Texas Water Development Board (TWDB) and was included in the 2017 State Water Plan. The District will participate in the development of the sixth cycle of planning for the Region C Water Planning Group, which is mandated to submit its completed report to the TWDB in 2020. The planning process is very complex due to the 50-year planning horizon and the multifaceted water management strategies that have been identified to meet the region's water supply needs.

To emphasize the importance of water conservation and continue being a good steward of water resources, the District initiated the state-recognized water conservation campaign, Water IQ: Know your water (Water IQ) in 2006. Water IQ is a public awareness water conservation program that educates consumers about their water resources. Water IQ provides easy, everyday water-saving tips and resources to consumers.

Since 2006, the District has invested over \$17 million to develop and implement Water IQ and its youth program. Since the implementation of this award winning campaign, the District has seen annualized water use reductions of an estimated 12-15% and savings of 200-400 mgd during peak summer months. In 2013, the District, in partnership with Texas A&M AgriLife Extension Service, initiated WaterMyYard.org. Utilizing fifteen weather stations and twelve rain gauges that the District strategically placed in its service area that compute the water needs of lawns based on local weather conditions, consumers receive a weekly email or text of the recommended run time of their irrigation systems if supplemental lawn watering is needed. The District continues to coordinate with its Members, Customers, and other regional suppliers to implement water-efficient best management practices and develop consistent water conservation strategies and messages. The District has also participated financially in the Texas Water Smart Coalition, which is a public-private partnership of nearly 300 businesses, associations, research organizations, and state and local officials; with a goal of saving water through consumer education. Over a 3-year period, the District funded \$350,000 for the Texas Water Smart program.

NTMWD launched a youth water awareness and education campaign, Water4Otter in the fall of 2014. The goal of Water4Otter is to increase the number of household conversations about source water and water conservation. Research shows that only 15 percent of North Texas parents report that their children have reminded them to not waste water, yet most parents will listen if their kids ask them to conserve. Researchers also found that children easily identified with animals, understanding that their water source is also a home to wildlife. These findings inspired the creation of Otis the Otter.

Water4Otter launched its first year campaign during the 2014-2015 school year. With the completion of the 2016–2017 school year, in excess of 17,000 students have been reached with the Water4Otter performances. NTMWD remains committed to the implementation of the youth water awareness campaign, Water4Otter. Expansion of the Water4Otter campaign includes additional characters. During the 2015-2016 presentations, Water4Otter introduced Farah the Fox, who educates on wastewater treatment, indirect reuse as a water supply, and the concept of “One Water”; and the 2016–2017 presentation introduced Bob the Bobcat who educates on watershed protection and water quality in the natural waterways. The in-school performances are supported by a free mobile game and website. The Water4Otter app (available on the App Store and Google Play) is a fun way for students to practice their “Water-Spotting.” At Water4Otter.org, parents, teachers, and students increase their knowledge about Otis and his friends, and share digital images with friends and family. Water4Otter is raising awareness, increasing conversations of water, and teaching the next generation about responsible water use.

Protecting and preserving existing water sources to ensure long-term health and viability is important for all water suppliers and is especially critical for watersheds where urbanization is taking place. Lavon Lake has one such watershed. In 2016, the District partnered with Texas A&M Agrilife to begin development of a Lavon Lake Watershed Protection Plan (Plan) with the aim of protecting and improving the quality of water in Lavon Lake over the long term. Plan development included numerous public meetings open to the public for weighing in on specific strategies and a stakeholder group, representing diverse interests within the watershed, was the primary body tasked with reviewing and recommending activities to include in the plan. The Plan is scheduled to be complete in 2017 and Plan implementation will begin immediately after it is complete.

As a result of the increased water needs of all Metroplex water providers, partnerships have been developed to meet the many challenges that lie ahead. Through these partnerships, the District is actively pursuing many options for the development of additional supplies to meet short-term and long-term needs.

To meet short-term needs, the District is:

- Pursuing an agreement to purchase additional raw water from a Trinity River main stem pump station to deliver raw water to the District’s East Fork Water Reuse Project. The Trinity River main stem pump station is projected to be online in 2019.
- Pursuing a 3-year temporary over drafting permit of Lavon Lake from the Texas Commission on Environmental Quality.

To meet long-term needs, the District is:

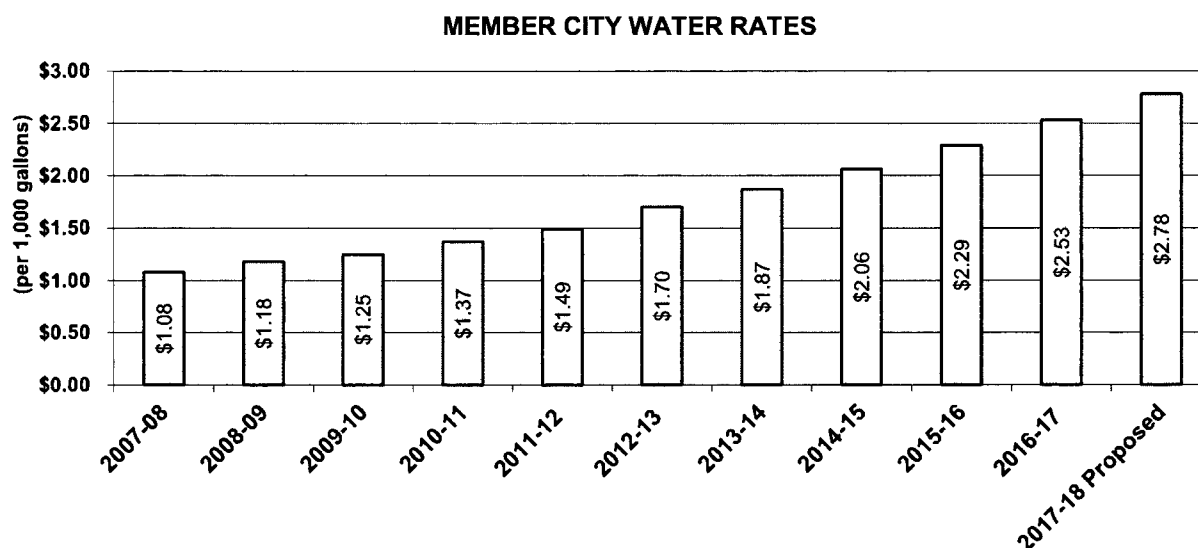
- Pursuing the development of the Lower Bois d’Arc Creek Reservoir, which is projected to supply 108 mgd and is currently scheduled to be online in 2022. The District was issued a Water Right from the Texas Commission on Environmental Quality on June 26, 2015. A U.S. Army Corps of Engineer’s Clean Water Act Section 404 permit application was submitted in 2007 and is under review. The District has acquired approximately 85% of the 22,000 acres needed for the proposed reservoir and the 15,000 acre Riverby Ranch as a mitigation site.
- Pursuing the development of the Sulphur Basin Supplies Strategy in partnership with the Sulphur River Basin Authority, Tarrant Regional Water District, City of Irving, City of Dallas, and the Upper Trinity Regional Water District. The first phase of this project is expected to provide 78 mgd and is currently scheduled to be online in 2060.

- Evaluating the feasibility of acquiring water from the Toledo Bend Reservoir that could potentially supply water to the District beginning in 2070.
- Seeking approval of a water rights application from the Oklahoma Water Resources Board for the right to use water from the State of Oklahoma from the Kiamichi and Muddy Boggy River Basins.
- Evaluating the following projects that were included as Alternative Water Management Strategies:
  - Toledo Bend – Phase 2
  - Lake O’ the Pines
  - Lake Texoma with desalination rather than blending
  - Freestone/Anderson County Groundwater
  - George Parkhouse Reservoir (North)
  - George Parkhouse Reservoir (South)
  - Marvin Nichols Reservoir

The District Staff remains confident that sufficient raw water supplies can be developed through the innovative and diligent efforts of the District’s Board of Directors and Staff. Through the partnerships now being developed, new supplies can be delivered at the lowest possible cost to the District’s Members and Customers.

### **Water Rate Adjustments**

In order to fund the development of additional raw water resources, treatment and transmission system improvements, and increased operating costs, it is recommended that the current Member City Water Rate be adjusted from \$2.53 per 1,000 gallons to \$2.78 per 1,000 gallons and that the current Customer City Water Rate be adjusted from \$2.58 per 1,000 gallons to \$2.83 per 1,000 gallons on October 1, 2017. Additional rate adjustments are anticipated in future years as cost estimates to develop raw water supplies and operational costs continue to increase. Historical and proposed Member City Water Rates are presented below.





Following are the components of the Member City Water Rate.

	<u>2016-17</u>	<u>Proposed 2017-18</u>	<u>Change</u>
Variable O&M Cost:			
Chemicals	\$ 0.22	\$ 0.23	\$ 0.01
Power	0.16	0.14	(0.02)
Water	<u>0.03</u>	<u>0.03</u>	-
Total	0.41	0.40	(0.01)
Fixed O&M Cost:			
Personnel	0.35	0.39	0.04
Supplies	0.05	0.05	-
Services	0.22	0.22	-
Capital Outlay	0.03	0.02	(0.01)
Other	<u>0.01</u>	<u>-</u>	<u>(0.01)</u>
Total	0.66	0.68	0.02
Capital Costs:			
Capital Improvement Fund	0.53	0.57	0.04
Debt Service	<u>0.93</u>	<u>1.13</u>	<u>0.20</u>
Total	<u>1.46</u>	<u>1.70</u>	<u>0.24</u>
Total Rate per 1,000	<u>\$ 2.53</u>	<u>\$ 2.78</u>	<u>\$ 0.25</u>

### **Minimum Annual Demand**

Minimum Annual Demands are established pursuant to Member and Customer City Water Service Contracts and are based on the greater of 1) an agreed minimum volume of water to be taken from the system during any water year or 2) the maximum volume of water actually taken from the system during any previous water year. The Minimum Annual Demand methodology requires each city to pay for the facilities it has required the District to construct in order to meet its demands. This method provides for an escalating Minimum Annual Demand for cities that place additional demands on the system and on cities that do not effectively manage their demands, thus encouraging conservation. Minimum Annual Demands for 2017-18 are scheduled at 114,549,820,000 gallons.

The budget provides funding for the production of treated water based on the Minimum Annual Demands. Should a city's actual annual demand exceed the budgeted Minimum Annual Demand, additional variable cost (power, chemicals and purchased water) are incurred to meet the increased demands placed on the system. In order to recover these costs, the Board of Directors has established Excess Water Rates for water demands in excess of the Minimum Annual Demands. The current Excess Water Rate is \$.41 per 1,000 gallons for Member Cities and \$.46 per 1,000 gallons for Customer Cities. It is proposed that the Excess Water Rate be adjusted to \$.40 per 1,000 gallons for Member Cities and \$.45 per 1,000 gallons for Customer Cities for 2017-18, primarily due to decreased power costs associated with favorable electric power contracts.

The Board of Directors has also established a Rebate Program. In accordance with the Program, each city's actual usage is compared to its Minimum Annual Demand and the Board determines whether to rebate the variable cost (\$.41 per 1,000 gallons for 2016-17) to the cities for water that was budgeted to be produced but was not actually consumed. This program rewards cities that effectively manage their water usage and also encourages conservation.

The schedule set forth below provides the potential water rebate for Member Cities for 2016-17.

**2016-17 POTENTIAL WATER REBATES**

<b>City</b>	<b>Minimum Annual Demand (1,000 Gallons)</b>	<b>WY17 Usage (1,000 Gallons)</b>	<b>Potential Rebate</b>
Allen	6,011,208	5,565,743	\$ 182,640.65
Farmersville	280,467	177,737	42,119.30
Forney	1,849,256	1,752,242	39,775.74
Frisco	10,225,090	9,695,210	217,250.80
Garland	13,721,955	10,141,139	1,468,134.56
McKinney	10,762,780	10,535,941	93,003.99
Mesquite	8,297,666	5,623,217	1,096,524.09
Plano	26,719,809	21,995,403	1,937,006.46
Princeton	485,886	465,129	8,510.37
Richardson	11,019,311	8,095,368	1,198,816.63
Rockwall	3,330,881	2,503,815	339,097.06
Royse City	448,255	439,770	3,478.85
Wylie	1,877,558	1,732,290	59,559.88
<b>Total</b>	<b>95,030,122</b>	<b>78,723,004</b>	<b>\$ 6,685,918.38</b>

**Budget Review**

The 2016-17 Amended Budget is \$5,719,690 or 1.9% less than the Original Budget. This decrease is due to reduced power and chemical cost and reduced water purchases as a result of less than expected consumption.

Member and Customer water sales revenues are expected to be \$282,572,414 for 2016-17. In addition, \$14,239,356 of other revenue is estimated for retail water sales, interest earnings and inter-fund charges to other systems for services provided by the Water System. Combined, total estimated revenues are expected to be \$296,811,770 and total expenditures are expected to be \$296,776,625 resulting in a \$35,145 increase in the operating fund balance. The fund balance is expected to be \$31,480,372 at the end of the 2016-17 fiscal year.

Expenditures in the amount of \$331,686,860 are requested for the 2017-18 Budget, which are \$29,190,545 or 9.6% greater than the 2016-17 Budget. This increase is primarily due to increased debt service cost of \$28,932,990 for financing \$831 million in revenue bonds and cash funding projects of \$104 million in the capital improvement fund.

2017-18 Member and Customer water sales revenues are projected to be \$319,392,485, which reflects a \$.25 per 1,000 gallons rate adjustment. Combined with other budgeted revenues of \$12,333,355, the total budgeted revenue for 2017-18 is \$331,725,840, which is \$29,193,870 or 9.6% greater than the 2016-17 Budget.

## **SEWER SYSTEM**

### **General**

The Sewer System provides funding for all Special Facility Contracts and includes wastewater plants owned by the District, wastewater plants owned by cities and operated by the District, and special projects funded with pledged revenues by cities. A total of ten operational wastewater plants (six District owned and four City owned) are currently budgeted by the District. Other special projects include the Buffalo Creek Interceptor, Forney Interceptor, McKinney Interceptor, Muddy Creek Interceptor, Mustang Creek Interceptor, Parker Creek Interceptor, Parker Creek Parallel Interceptor, Sabine Creek Interceptor, Lower East Fork Interceptor, Little Elm Water Transmission Facilities, Terrell Water Transmission Facilities, Plano Water Transmission Facilities, Rockwall-Heath Water Storage Facilities, Rockwall Water Pump Station Facilities, Wastewater Pretreatment Program and Kaufman Four-One Program.

### **New Facilities / Operational Changes**

The District plans to issue \$23 million of revenue bonds for the Forney Mustang Creek Interceptor System, which serves the city of Forney. Construction of the Forney Mustang Creek Lift Station is planned to begin in 2018 and to be completed in 2019. The 2017-18 Budget provides funding for the debt service requirements for this bond issue.

Due to increasing regulatory pressures to implement industry best practices in the sewer system, the District is utilizing a Capacity, Management, Operations, and Maintenance (CMOM) Plan to reduce risks of sanitary sewer overflows. The District will be building upon current practices and expanding activities to align with regulatory expectations in the next few years.

### **Charges for Service**

Charges for each facility or special project are based on current budgeted expenditure requirements and are adjusted at the end of each fiscal year for the difference between actual and budgeted expenditures. The cost of administration, conveyance services, IT services, laboratory services, safety services and maintenance services are charged through inter-fund transfers and are credited to the system providing the service.

### **Wastewater Treatment Plant Unit Cost**

In order to properly evaluate the efficiency and unit cost of wastewater treatment plants, many factors must be considered. These factors include plant capacity, utilization, amount of rainfall and the effects of inflow and infiltration, type and level of treatment required by permit, construction cost (debt service), power cost and chemical requirements.



**THE ATTORNEY GENERAL  
OF TEXAS**

  
**JIM MATTOX**  
**ATTORNEY GENERAL**

August 10, 1989

THIS IS TO CERTIFY that North Texas Municipal Water District (the "Issuer") has submitted to me North Texas Municipal Water District Water System Revenue Bond, Series 1989 (the "Bond"), in the principal amount of \$14,825,000 for approval. The Bond is dated August 1, 1989, numbered R-1, and was authorized by a Resolution of the Issuer passed on July 27, 1989 (the "Resolution"). In conjunction therewith, the Issuer has additionally submitted to me for approval the North Texas Municipal Water District Regional Water Supply Facilities Amendatory Contract, dated as of August 1, 1989 (the "Amendatory Contract").

I have examined the law and such certified proceedings and other papers as I deem necessary to render this opinion.

As to questions of fact material to my opinion, I have relied upon representations of the Issuer contained in the certified proceedings and other certifications of public officials furnished to me without undertaking to verify the same by independent investigation.

I express no opinion relating to any Official Statement or other offering material relating to the Bond.


Based on my examination, I am of the opinion, as of the date hereof and under existing law, as follows (capitalized terms, except as herein defined, have the meaning given to them in the Resolution):

1. The Bond has been issued in accordance with law and is a valid and binding special obligation of the Issuer.
2. The Bond is secured by and payable from a first lien on and pledge of the Pledged Revenues, which include the Net Revenues of the Issuer's Water System, including specifically certain amounts to be received by the Issuer pursuant to water supply contracts, including specifically the Amendatory Contract.
3. The registered owner of the Bond shall never have the right to demand payment of the Bond or the interest thereon out of any

North Texas Municipal Water District Water System Revenue Bond,  
Series 1989 - \$14,825,000 Page -2-  
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funds raised or to be raised by taxation or from any source  
whatsoever other than specified in the Resolution.

THEREFORE, the Bond and the Amendatory Contract are approved.

  
\_\_\_\_\_  
Attorney General of the State of Texas

No. 23490  
Book No. 86  
jh


OFFICE OF COMPTROLLER       |  
OF THE STATE OF TEXAS       |

I, Bob Bullock, Comptroller of Public Accounts of the State of Texas, do hereby  
certify that the attachment is a true and correct copy of the opinion of the Attorney  
General approving the North Texas Municipal Water District Water System  
Revenue Bond, Series 1989

numbered R-1 of the denomination of  
\$ 14,825,000 dated August 1, 19 89, as authorized by issuer,  
interest various percent, under and by authority of which said bonds were registered  
in this office, on the 10 day of August 19 89, as the same appears of  
record on page 630 Bond Register of the Comptroller's Office, Vol. 90,  
Register Number 51650.

Given under my hand and seal of office, at Austin, Texas, the 10  
day of August, 19 89.



  
BOB BULLOCK  
Comptroller of Public Accounts  
State of Texas

OFFICE OF COMPTROLLER  
OF THE STATE OF TEXAS

I, Arlene Chisholm, ☐ Bond Clerk ☒ Assistant Bond Clerk in the office of the Comptroller of the State of Texas, do hereby certify that, acting under the direction and authority of the Comptroller on the 10 day of August, 19 89 I signed the name of the Comptroller to the certificate of registration endorsed upon the North Texas Municipal Water District Water System Revenue Bond, Series 1989

numbered R-1, dated August 1, 1989, and that in signing the certificate of registration I used the following signature:

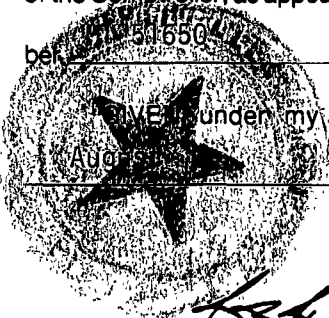
Bob Bullock

IN WITNESS WHEREOF I have executed this certificate this 10 day of August, 19 89.

Arlene Chisholm

I, Bob Bullock, Comptroller of Public Accounts of the State of Texas, certify that the person who has signed the above certificate was duly designated and appointed by me under authority vested in me by TEX. REV. CIV. STAT. ANN. art. 4362 (1969), with authority to sign my name to all certificates of registration, and/or cancellation of bonds required by law to be registered and/or cancelled by me, and was acting as such on the date first mentioned in this certificate, and that the bonds described in this certificate have been duly registered in the office of the Comptroller, as appears of record on page 630 of volume 90 under Registration Number 516504 in the Bond Register kept in the office of the Comptroller.

WITNESSED under my hand and seal of office at Austin, Texas, this 10 day of August, 19 89.



Bob Bullock

BOB BULLOCK  
Comptroller of Public Accounts of the  
State of Texas