



Control Number: 49043



Item Number: 1

Addendum StartPage: 0

PUC DOCKET NO. _____

49043

RECEIVED
2018 DEC 20 AM 11:02
PUBLIC UTILITY COMMISSION
FILING CLERK

PETITION OF THE CITIES OF §
GARLAND, MESQUITE, PLANO, AND §
RICHARDSON APPEALING THE §
DECISION BY NORTH TEXAS §
MUNICIPAL WATER DISTRICT §
AFFECTING WHOLESALE WATER §
RATES §

BEFORE THE

PUBLIC UTILITY COMMISSION

OF TEXAS

ORIGINAL PETITION APPEALING WHOLESALE WATER RATES

TABLE OF CONTENTS

I.	Parties.....	3
II.	Background.....	4
III.	Jurisdiction.....	5
IV.	The District's Rates Adversely Affect the Public Interest.....	6
	A. The District's Rates Impair the Petitioning Cities' Ability to Continue to Provide Service to Their Retail Customers, Based on the Petitioning Cities' Financial Integrity and Operational Capability (P.U.C. SUBST. R. 24.311(a)(2)).....	6
	B. The District's Rates Evidence the District's Abuse of Monopoly Power (P.U.C. SUBST. R. 24.311(a)(3)).....	7
	1. The District Has Abused Monopoly Power Based on its Disparate Bargaining Power (P.U.C. SUBST. R. 24.311(a)(3)(A)).....	7
	2. The District Has Abused Monopoly Power By Failing to Reasonably Demonstrate the Changed Conditions that are the Basis for the Change in Rates (P.U.C. SUBST. R. 24.311(a)(3)(B)).....	8
	3. The District Has Abused Monopoly Power Based on Other Valuable Consideration Received Incident to the Contract (P.U.C. SUBST. R. 24.311(a)(3)(D))	9
	4. The District Has Abused Monopoly Power By Charging Rates That Disincentivize Water Conservation (P.U.C. SUBST. R. 24.311(a)(3)(E)).....	10
	5. The District Has Abused Monopoly Power Based on Comparing Its Rates to Rates Charged by Other Sellers of Water for Resale in Texas (P.U.C. SUBST. R. 24.311(a)(3)(G)).....	11
	C. The District's Rates Are Unreasonably Preferential, Prejudicial and Discriminatory (P.U.C. SUBST. R. 24.311(a)(4)).....	11
V.	Relief Requested.....	13

PUC DOCKET NO. _____

PETITION OF THE CITIES OF	§	BEFORE THE
GARLAND, MESQUITE, PLANO, AND	§	
RICHARDSON APPEALING THE	§	
DECISION BY NORTH TEXAS	§	PUBLIC UTILITY COMMISSION
MUNICIPAL WATER DISTRICT	§	
AFFECTING WHOLESALE WATER	§	
RATES	§	OF TEXAS

ORIGINAL PETITION APPEALING WHOLESALE WATER RATES

The Cities of Garland, Mesquite, Plano, and Richardson ("*Petitioning Cities*") file this petition under Chapters 12 and 13 of the Texas Water Code¹ and the implementing rules of the Public Utility Commission of Texas ("*Commission*" or "*PUC*")² to appeal wholesale water rates charged by the North Texas Municipal Water District ("*District*"). In support, the Petitioning Cities respectfully show as follows:

I. Parties

The Petitioning Cities are Texas home rule municipal corporations and retail public utilities³ in Collin, Dallas, Denton, Kaufman, and Rockwall Counties. The District is a political subdivision of the State of Texas headquartered in Collin County.⁴

¹ Tex. Water Code § 13.043(f) ("A retail public utility that receives water or sewer service from another retail public utility or political subdivision of the state, including an affected county, may appeal to the utility commission a decision of the provider of water or sewer service affecting the amount paid for water or sewer service."); Tex. Water Code § 12.013(a) ("The utility commission shall fix reasonable rates for the furnishing of raw or treated water for any purpose mentioned in Chapter 11 or 12 of this code.").

² 16 Tex. Admin. Code § 24.301 *et seq.* ("This subchapter sets forth substantive guidelines and procedural requirements concerning a petition to review rates charged for the sale of water for resale filed pursuant to TWC, Chapter 12; or an appeal pursuant to TWC § 13.043(f) . . .") (TAC).

³ A "retail public utility" means any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation. Tex. Water Code § 13.002(19); 16 TAC § 24.3(59).

⁴ The District is 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.

II. Background

The Petitioning Cities entered into wholesale water supply contracts with the District as early as 1953.⁵ In 1988, the Petitioning Cities and seven other cities (collectively, the “*Member Cities*”)⁶ executed a consolidated contract with the District (the “*Contract*”).⁷ The Contract still governs the Petitioning Cities’ relationship with the District. The District, which charges rates pursuant to the Contract, announced by letter dated September 28, 2018, that it was raising the Member Cities’ base water rate for the 2019 fiscal year from \$2.78 per thousand gallons to \$2.92 per thousand gallons and raising the excess water rate from \$0.40 per thousand gallons to \$0.42 per thousand gallons.⁸

The District’s decision to increase rates for the 2019 fiscal year continues a trend of steep, annual rate increases. Since the 2012 fiscal year, the District has nearly doubled its water rates. Further, the District charges these rates on a take-or-pay basis in accordance with volumetric “minimums” established in a bygone era,⁹ resulting in the Petitioning Cities paying the District hundreds of millions of dollars since 2001 for volumes of water that the District didn’t deliver. These inequities prompted the Petitioning Cities to appeal the District’s 2017 and 2018 fiscal year rates, and those appeals are pending at the State Office of Administrative Hearings (“*SOAH*”).¹⁰ Because these inequities will persist until the Commission sets just and reasonable rates, the Petitioning Cities are appealing the District’s 2019 fiscal year rates.

⁵ See Attachment A, Original Contracts between the Petitioning Cities and the District.

⁶ In 1988, the Member Cities were Farmersville, Forney, Garland, McKinney, Mesquite, Princeton, Plano, Richardson, Rockwall, Royse City, and Wylie. Allen joined as a Member City in 1998 and Frisco in 2001.

⁷ See Attachment B, North Texas Municipal Water District Regional Water Supply Facilities Amendatory Contract. Two other cities joined as Member Cities in later years.

⁸ See Attachment C.

⁹ See Attachment B, Section 9(c).

¹⁰ P.U.C. Docket No. 46662 and SOAH Docket No. 473-17-4964.WS (2017); P.U.C. Docket No. 47863 and SOAH Docket No. 473-18-1905.WS (2018).

For the reasons stated below, the Petitioning Cities ask the Commission to find that the District's rates adversely affect the public interest and to set new rates consistent with the ratemaking mandates of Chapters 12 and 13 of the Texas Water Code.¹¹

III. Jurisdiction

The PUC has jurisdiction over this appeal pursuant to Sections 12.013 and 13.043(f) of the Texas Water Code, as follows:

- The Petitioning Cities are retail public utilities under Sections 13.002(19) and 13.043(f) of the Texas Water Code and P.U.C. SUBST. R. 24.3(59) and 24.301.
- The District is a political subdivision of the State of Texas under Sections 12.013 and 13.043(f) of the Texas Water Code.¹²
- The District charges wholesale water rates pursuant to the Contract. The Petitioning Cities receive treated water from the District pursuant to the Contract, the District has water not contracted to others and available for the Petitioning Cities' use, and the Petitioning Cities are willing and able to pay a just and reasonable price for the water.¹³ However, the District is charging rates that are not just and reasonable and that adversely affect the public interest.¹⁴
- The Petitioning Cities timely filed this appeal within 90 days of receiving notice of the District's decision to change its rates.¹⁵
- The Petitioning Cities will prove that the District's rates adversely affect the public interest based on the public interest criteria listed in P.U.C. SUBST. R. 24.311, as further described herein.
- The Petitioning Cities are serving this petition and a copy of the Contract on the District and other appropriate parties.¹⁶

¹¹ 16 TAC § 24.313(e) ("The commission shall set a rate consistent with the ratemaking mandates of TWC, Chapters 12 and 13.").

¹² The District was established under Article 16, Section 59, of the Texas Constitution, pursuant to Chapter 62, Acts of the 52nd Legislature, Regular Session, 1951.

¹³ 16 TAC § 24.107(a)(4)-(5).

¹⁴ *Id.* §§ 24.107(a)(6), 24.311(a).

¹⁵ Tex. Water Code § 13.043(f); 16 TAC § 24.305(c).

¹⁶ 16 TAC § 24.305(a)-(b).

Petitions appealing wholesale water rates set pursuant to contract are referred to SOAH for an evidentiary hearing on public interest.¹⁷ Following the evidentiary hearing, the Commission determines whether the protested rate adversely affects the public interest and, if so, remands the matter to SOAH for a cost-of-service hearing before setting new rates.¹⁸

IV. The District's Rates Adversely Affect the Public Interest

A rate adversely affects the public interest if the Commission concludes that one or more of the criteria listed in P.U.C. SUBST. R. 24.311(a) has been violated.¹⁹ The District's rates adversely affect the public interest under a number of the criteria.

A. The District's Rates Impair the Petitioning Cities' Ability to Continue to Provide Service to Their Retail Customers, Based on the Petitioning Cities' Financial Integrity and Operational Capability (P.U.C. SUBST. R. 24.311(a)(2))

Citizens of the Petitioning Cities are successfully conserving water, causing the Petitioning Cities' retail revenues to decline. All the while, the District is increasing wholesale water rates and expecting the Petitioning Cities to pay a wholesale water bill based on "minimum" volumes of water set well over a decade ago that have no relation to how much water the Petitioning Cities' citizens actually consume or the District delivers during the year.

The Petitioning Cities have tried to absorb the District's wholesale rate increases without passing corresponding retail rate increases onto their citizens. The City of Plano, for example, has minimized the amount of debt sold to support its retail water delivery system and has drawn down reserves in some years to avoid raising retail rates. The City of Mesquite has postponed some necessary capital improvements to prevent raising retail rates. The City of Richardson has

¹⁷ *Id.* §§ 24.307(b), 24.309(a).

¹⁸ *Id.* § 24.313(b) ("If the commission determines the protested rate adversely affects the public interest, the commission will remand the matter to the State Office of Administrative Hearings for further evidentiary proceedings on the rate.").

¹⁹ *Id.* § 24.311(a).

deferred certain maintenance projects to help offset the District's wholesale rate increases. The District's rates tangibly impact the Petitioning Cities' financial integrity and operational capability, as stated by a bond rating agency with respect to the City of Garland: "The city's dependence on its wholesale water provider North Texas Municipal Water District (NTMWD) creates cost pressure outside of the utility's direct control. . . . System operations have been pressured by increasing debt service and purchased water costs resulting in financial metrics stressed against Fitch's 'AA' category medians. **Fitch downgraded the rating in 2015 as a result of this trend.** Since fiscal 2012 the city's purchased water rate has increased on average 11% annually and NTMWD rates are anticipated to continue to rise by 7% to 11% annually through fiscal 2021."²⁰

The bottom line is that the District's ever-increasing rates are impairing the Petitioning Cities' ability to serve their residents, and the District's decision to raise rates for the 2019 fiscal year will cause further impairment.

B. The District's Rates Evidence the District's Abuse of Monopoly Power (P.U.C. SUBST. R. 24.311(a)(3))

The District is a monopoly both because of the lack of competition in the regional wholesale water supply market and because of the nature of its Contract with the Petitioning Cities. For the reasons below, the District's rates evidence that it has abused monopoly power.

1. The District Has Abused Monopoly Power Based on its Disparate Bargaining Power (P.U.C. SUBST. R. 24.311(a)(3)(A))

The Petitioning Cities have no practical alternative to the District for acquiring treated water because other viable wholesale water supply and suppliers are unavailable in the region. Even if viable alternatives existed, the Contract obligates the Petitioning Cities to buy treated

²⁰ See Attachment D.

water exclusively from the District²¹ and the Contract's indefinite term—the Contract extends for the life of outstanding bonds and then for the useful life of the water system²²—precludes any opportunity for the Petitioning Cities to renegotiate the Contract's terms. Although the Petitioning Cities appoint directors to the District's governing board, the Attorney General has twice opined that such directors are officers of the District who the Petitioning Cities have no power to replace or otherwise control.²³ As such, the District can and does unilaterally raise retail rates without any input from the Petitioning Cities and can and does unilaterally extend the Contract's term simply by issuing new bonds without any input from the Petitioning Cities.

Without bargaining power, the Petitioning Cities have had to bear annual rate increases—the District has nearly doubled base rates since the 2012 fiscal year—unilaterally imposed by the District. Further, the District's practice of multiplying these rates by “minimum” volumes of water, even if the Petitioning Cities don't demand that much water, has caused the Petitioning Cities to collectively pay millions of dollars for water that the District never delivered. The District's 2019 fiscal year rates will increase this substantial total, and the Petitioning Cities simply lack the bargaining power to restrain the District's abuses.

2. The District Has Abused Monopoly Power By Failing to Reasonably Demonstrate the Changed Conditions that Are the Basis for the Change in Rates (P.U.C. SUBST. R. 24.311(a)(3)(B))

As population growth has levelled off in the Petitioning Cities and as the Petitioning Cities have successfully enacted water conservation measures, the volumes of water the Petitioning Cities annually demand from the District have substantially declined. Nevertheless,

²¹ See Attachment B, Sections 3(a) (“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.”) and 3(b) (“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.”).

²² See Attachment B, Section 13.

²³ Tex. Att’y Gen. Ops. JM-1239 (1990) and KP-0117 (2016).

the District continues to charge the Petitioning Cities for water that they do not need or consume, resulting in the Petitioning Cities paying millions of dollars for undelivered water. The District has not reasonably demonstrated why the Petitioning Cities' rates should continue to increase every year when, every year, they are paying millions of dollars for water that the District doesn't deliver. Simply put, the Petitioning Cities believe it is unreasonable for the District to have significantly raised the Petitioning Cities' rates for the 2019 fiscal year when the Petitioning Cities have significantly lowered their demands on the District's system.

3. The District Has Abused Monopoly Power Based on Other Valuable Consideration Received Incident to the Contract (P.U.C. SUBST. R. 24.311(a)(3)(D))

The District sells treated water to thirteen Member Cities, including the four Petitioning Cities, and over thirty other wholesale customers. But only the Member Cities are unconditionally liable for the District's outstanding bond debt. Although the District has raised base rates by nearly 1,000 percent since 1970, the District has not raised the nickel premium it charges its other wholesale customers. Thus, because the District has the certainty that revenues from the Member Cities will fully cover its revenue requirement, the District can offer its other wholesale customers terms, such as contract duration and price, that are more attractive than the terms that apply to the Member Cities. The financial security that has enabled the District to undercharge these other wholesale customers has resulted in it overcharging the Petitioning Cities.

Further, the District settled a legal challenge to one of its water supply projects by pledging that the Member Cities would charge their retail customers increasing block rates that incentivize conservation and by pledging to amend its water conservation plan to include a goal

of a minimum 1% reduction in total gallons per capita per day.²⁴ That the District could pledge to reduce the Member Cities' water consumption without their participation in the settlement suggests a power conferred by the Contract that is not simply a consequence of the Petitioning Cities' payments to the District. Moreover, the District committed to these water consumption reductions without reducing the revenues due from the Petitioning Cities.

4. The District Has Abused Monopoly Power By Charging Rates That Disincentivize Water Conservation (P.U.C. SUBST. R. 24.311(a)(3)(E))

For the 2019 fiscal year, the District is charging a base water rate of \$2.92 per thousand gallons and an excess water rate of \$0.42 per thousand gallons. Collectively, this rate is structured as a decreasing block rate, which the Texas Commission on Environmental Quality classifies as dis-incentivizing conservation,²⁵ in part because the District's substantially reduced excess water rate (relative to the higher base rate) promotes excess consumption. Further, the District's practice of charging minimum take-or-pay rates has caused the Petitioning Cities to pay lower effective rates—the rate per thousand gallons for water actually consumed—as their consumption increases, which simply does not incentivize water conservation.

In short, the District requires the Petitioning Cities to conserve water in part by charging their retail customers increasing block rates, yet the District's decreasing block wholesale rates dis-incentivize conservation and result in the Petitioning Cities, who take far below their minimums, paying higher effective rates as a consequence of their successful efforts to promote conservation among their retail customers. The Commission should be given the opportunity to rectify these abuses.

²⁴ See Attachment E, Section 4.

²⁵ 30 TAC § 288.5(2)(A) ("The commission may require by commission order that any of the following strategies be implemented by the water supplier if the commission determines that the strategies are necessary in order for the conservation plan to be achieved: conservation-oriented water rates and water rate structures such as uniform or increasing block rate schedules, and/or seasonal rates, but not flat or decreasing block rates . . .").

5. The District Has Abused Monopoly Power Based on Comparing Its Rates to Rates Charged by Other Sellers of Water for Resale in Texas (P.U.C. SUBST. R. 24.311(a)(3)(G))

The Petitioning Cities believe that the District's rates evidence abuse of monopoly power when compared to rates charged by other Texas wholesale providers. Specifically, other wholesale providers appear to use a "demand charge" rate design that promotes more equitable cost allocation among customers, allow for "minimums" to periodically reset to reflect actual water consumption among customers to ensure that cost-causers are paying cost-based rates, and charge more realistic "premiums" to non-member customers. In the end, the Petitioning Cities' retail customers—their citizens—bear the brunt of the District's abusive rates, and it is meaningful for purposes of the public interest test that other Texas providers charge more reasonable rates.

C. The District's Rates Are Unreasonably Preferential, Prejudicial and Discriminatory (P.U.C. SUBST. R. 24.311(a)(4))

The rates charged by the District, as evidenced by the total compensation and effective rates (the cost per thousand gallons actually consumed) paid by the Petitioning Cities to the District, are unreasonably discriminatory. In the 2019 fiscal year, the District is nominally charging the Petitioning Cities a base rate of \$2.92 per thousand gallons and an excess rate of \$0.42 per thousand gallons. Because the District bases its water bills on volumetric minimums that never reset, however, that will not be the true cost per thousand gallons actually consumed by the Petitioning Cities or delivered by the District. The Petitioning Cities' minimums, for example, were set between 2001 and 2006, but the Petitioning Cities' water consumption has dropped consistently and dramatically since then. As such, the effective rates paid by the Petitioning Cities are and have been for a number of years significantly higher than the effective rates paid by the other Member Cities and the District's other wholesale customers, whose


minimums for the most part were set more recently. For example, in the 2017 fiscal year, when the District's base rates were \$2.53 per thousand gallons, the Petitioning Cities' effective rates ranged from \$2.99 per thousand gallons (Plano) to \$3.54 per thousand gallons (Mesquite), whereas the effective rate for the other Member Cities averaged at \$2.69 per thousand gallons and the effective rate for the other Member Cities and other wholesale customers collectively averaged at \$2.78 per thousand gallons. Thus, the rates that the District charges the Petitioning Cities are out of line with patterns of actual water consumption among its customers and distort the Petitioning Cities' share of water demands on the District. This trend will continue in the 2019 fiscal year.

The rates the District charges the Petitioning Cities are also unreasonably prejudicial when compared to the rates it charges its other non-Member City wholesale customers. Generally speaking, the District charges its other wholesale customers only a nickel premium per thousand gallons over the base rate charged to the Member Cities. For the 2019 fiscal year, for example, the District is charging these customers a base rate of \$2.97 per thousand gallons, representing a less than 2% premium over the \$2.92 per thousand gallons base rate charged to the Petitioning Cities. But this is the same nickel premium that the District assessed in 1970, when the nickel represented a 21% premium over the \$0.235 per thousand gallons base rate charged to the Member Cities. Revenues received from these other wholesale customers offset the Petitioning Cities' share of system costs and thereby affect the rates the District charge the Petitioning Cities. As such, the District's decision to hold this nickel premium constant over the last half century has reduced revenues from its other wholesale customers and financially prejudiced the Petitioning Cities in the form of higher water rates.

V. Relief Requested

The Petitioning Cities respectfully ask the Commission to find that the District's rates adversely affect the public interest, convene a cost-of-service hearing, and then set new rates consistent with the ratemaking mandates of Chapters 12 and 13 of the Texas Water Code. After the cost-of-service phase of the proceedings, the Petitioning Cities request that the Commission also order the District to refund the difference between the rate charged by the District and the rate fixed by the Commission, plus interest at the statutory rate, from the date of this petition.²⁶ Finally, the Petitioning Cities request any other relief to which they may be entitled.

Respectfully submitted,



Michael J. Tomsu
State Bar No. 20125875
Taylor Holcomb
State Bar No. 24074429
VINSON & ELKINS LLP
2801 Via Fortuna, Suite 100
Austin, Texas 78746
512-542-8527
512-236-3211 (Fax)

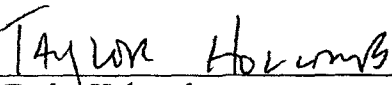
Barry Smitherman
State Bar No. 18770600
BARRY SMITHERMAN, P.C.
P.O. Box 163805
Austin, Texas 78716
512-652-8949
512-330-0182 (Fax)

Attorneys for the Petitioning Cities

²⁶ Tex. Water Code § 12.013(f).

CERTIFICATE OF SERVICE

I certify that a copy of this petition was hand-delivered, sent via overnight mail, sent via certified mail return receipt requested, sent via U.S. first class mail, or sent via fax to the following on December 20, 2018.


Taylor Holcomb

Tom Kula
Executive Director, General Manager
North Texas Municipal Water District
Administration Building
501 East Brown Street
P.O. Box 2408
Wylie, Texas 75098

Margaret Pemberton
Legal Division Director, Public Utility Commission of Texas
1701 North Congress
P.O. Box 13326
Austin, Texas 78711-3326

Tonya Baer
Office of Public Utility Counsel
1701 N. Congress Avenue, Suite 9-180
P.O. Box 12397
Austin, Texas 78711-2397

City Secretary
City of Allen
305 Century Parkway
Allen, Texas 75013

City Secretary
City of Farmersville
205 S. Main
Farmersville, Texas 75442

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

City Secretary
City of Frisco

6101 Frisco Square Blvd
Frisco, Texas 75034

City Secretary
City of McKinney
222 N. Tennessee St.
McKinney, Texas 75069

City Secretary
City of Princeton
123 West Princeton Drive
Princeton, Texas 75407

City Secretary
City of Rockwall
385 S. Goliad
Rockwall, Texas 75087

City Secretary
City of Royse City
P.O. Box 638
305 N. Arch Street
Royse City, Texas 75189

City Secretary
City of Wylie
300 Country Club Rd., Building 100
Wylie, Texas 75098

ATTACHMENT A

Original Contracts between the Petitioning Cities and the District

THE STATE OF TEXAS :
:
COUNTY OF DALLAS :

THIS CONTRACT (hereinafter called the "Contract") made and entered into as of this the 12th day of December, 1953, by and between North Texas Municipal Water District (hereinafter called "District") a water conservation district, created by Chapter 62 Acts of the Regular Session of the 52nd Legislature (hereinafter called "Chapter 62") pursuant to Article 16, Section 59 of the Constitution, and the City of Garland, Texas, a municipal corporation in Dallas County, Texas, acting under the laws of the State of Texas, and acting under its Home Rule Charter, (hereinafter called the "City"):

W I T N E S S E T H:

WHEREAS, the City owns its water distribution system and its water supply facilities; and

WHEREAS, City is desirous of obtaining a more adequate and dependable water supply; and

WHEREAS, District is acquiring from the United States Government (hereinafter called the "Government") the right to store water in Lavon Reservoir which has been constructed by the Government on the East Fork of the Trinity River in Collin County (hereinafter called "Lavon"); and

WHEREAS, the Contract between District and Government will provide that District will have the storage rights in 100,000 acre feet of storage space in Lavon, for a period of 50 years with the privilege of negotiating with the Government for a renewal of such storage rights; and

WHEREAS, District's engineers, taking into consideration the rainfall and run-off records of the watershed estimate that the safe annual yield of water from the operation of said 100,000 acre feet of storage will be a minimum of 35,000,000 gallons of water per day; and

WHEREAS, District is contracting to pay Government an amount of approximately \$53,000.00 per year for a period of 50 years and District's agreed share of the expense of maintaining and operating

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100	101	102	103	104	105	106	107	108	109	110	111	112	113	114	115	116	117	118	119	120	121	122	123	124	125	126	127	128	129	130	131	132	133	134	135	136	137	138	139	140	141	142	143	144	145	146	147	148	149	150	151	152	153	154	155	156	157	158	159	160	161	162	163	164	165	166	167	168	169	170	171	172	173	174	175	176	177	178	179	180	181	182	183	184	185	186	187	188	189	190	191	192	193	194	195	196	197	198	199	200	201	202	203	204	205	206	207	208	209	210	211	212	213	214	215	216	217	218	219	220	221	222	223	224	225	226	227	228	229	230	231	232	233	234	235	236	237	238	239	240	241	242	243	244	245	246	247	248	249	250	251	252	253	254	255	256	257	258	259	260	261	262	263	264	265	266	267	268	269	270	271	272	273	274	275	276	277	278	279	280	281	282	283	284	285	286	287	288	289	290	291	292	293	294	295	296	297	298	299	300	301	302	303	304	305	306	307	308	309	310	311	312	313	314	315	316	317	318	319	320	321	322	323	324	325	326	327	328	329	330	331	332	333	334	335	336	337	338	339	340	341	342	343	344	345	346	347	348	349	350	351	352	353	354	355	356	357	358	359	360	361	362	363	364	365	366	367	368	369	370	371	372	373	374	375	376	377	378	379	380	381	382	383	384	385	386	387	388	389	390	391	392	393	394	395	396	397	398	399	400	401	402	403	404	405	406	407	408	409	410	411	412	413	414	415	416	417	418	419	420	421	422	423	424	425	426	427	428	429	430	431	432	433	434	435	436	437	438	439	440	441	442	443	444	445	446	447	448	449	450	451	452	453	454	455	456	457	458	459	460	461	462	463	464	465	466	467	468	469	470	471	472	473	474	475	476	477	478	479	480	481	482	483	484	485	486	487	488	489	490	491	492	493	494	495	496	497	498	499	500	501	502	503	504	505	506	507	508	509	510	511	512	513	514	515	516	517	518	519	520	521	522	523	52
--	---	---	---	---	---	---	---	---	---	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	----

Year	1950	1951	1952	1953	1954	1955	1956	1957	1958	1959	1960	1961	1962	1963	1964	1965	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047	2048	2049	2050	2051	2052	2053	2054	2055	2056	2057	2058	2059	2060	2061	2062	2063	2064	2065	2066	2067	2068	2069	2070	2071	2072	2073	2074	2075	2076	2077	2078	2079	2080	2081	2082	2083	2084	2085	2086	2087	2088	2089	2090	2091	2092	2093	2094	2095	2096	2097	2098	2099	2100
1950	1951	1952	1953	1954	1955	1956	1957	1958	1959	1960	1961	1962	1963	1964	1965	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047	2048	2049	2050	2051	2052	2053	2054	2055	2056	2057	2058	2059	2060	2061	2062	2063	2064	2065	2066	2067	2068	2069	2070	2071	2072	2073	2074	2075	2076	2077	2078	2079	2080	2081	2082	2083	2084	2085	2086	2087	2088	2089	2090	2091	2092	2093	2094	2095	2096	2097	2098	2099	2100	

4
 3
 4
 2
 2
 3
 4
 4
 2
 3

4

on District's Bonds and the establishment and maintenance of reserves for such purposes; and

WHEREAS, the City recognizes the fact that the District must of necessity make similar contracts with one or more additional cities;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, District agrees to furnish and City agrees to pay for water supply services upon the terms and conditions and for the consideration hereinafter set forth, to-wit;

1. QUANTITY. Subject only to the provisions of this Section and Section 8 hereof, District agrees, during the period of this Contract to tender and make available to the City, for its own use and at the delivery point as hereinafter specified, treated water in the volume required by the City, provided that the maximum rate of delivery of such water shall not exceed 7,500,000 gallons per day, and City agrees to pay the District for such service in accordance with the provisions of Section 6 hereof.

Should City desire to increase the maximum rate of delivery as hereinabove fixed, a formal request stating the desired rate of increased delivery shall be addressed to the Board of Directors of the District and shall then become a matter of negotiation between City and District.

District will use its best efforts to remain in a position to furnish water as herein contracted to be sold to City, but its obligation shall be limited to the amount of water available in Lavon.

In the event that it should become necessary for District to limit its delivery of water to City because of low storage in Lavon, City shall be entitled to receive during such period of scarcity its pro rata share of water available in the reservoir as determined by the proportion which the volume of Lavon water used by it during the last preceding calendar year in which rationing was not necessary bears to the total volume of Lavon water used by all users served by the District during such calendar year.

2. QUALITY. District is obligated to treat the water to be delivered by District and received by City hereunder so as to meet the standards of the State Health Department of the State of Texas.

3. POINT OF DELIVERY. The point for delivery of water to City under District's Water Supply System shall be to a ground storage terminal to be located by District's engineer. Such location will be selected with due

regard to any storage facilities City may own, if in the opinion of such engineer such City-owned facilities may be used economically (hereinafter called "Point of Delivery").

City agrees to construct, maintain and operate at its own cost and expense at such delivery points all equipment and facilities necessary to receive and take such water from District's storage terminal or from City's storage terminal if it should be used as the terminal, which equipment and facilities will be operated by the City in accordance with the terms of this Contract.

4. MEASURING EQUIPMENT. District shall furnish, install, operate and maintain at its own expense at said delivery points the necessary equipment and devices of standard type for measuring properly the quantity of water delivered under this agreement. Such meter or meters and other equipment so installed shall remain the property of District. City 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 City, District will give City a copy of such journal or record book, or permit City 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 City to do so, in the presence of a representative of City, 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 City in the presence of a representative of District and the parties shall jointly observe any adjustment in case any adjustment is necessary. If City shall in writing request District to calibrate its meters and District shall give City notice of the time when any such calibration is to be made and a representative of the City is not present at the time set, District may proceed with the calibration and adjustment in the absence of any representative of City.

If either party at any time observes a variation between the delivery meter or meters and the check meter or meters, if any such check

meter or meters shall be installed, such party will promptly notify the other party, and the parties hereto shall then cooperate to procure an immediate calibration test and joint observation of any adjustment and the said meter or meters shall then be adjusted to accuracy. Each party shall give the other party forty-eight (48) hours' notice of the time of all tests of meters so that the other party may conveniently have a representative present.

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 (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 service or out of repair so that the amount of water delivered 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 parties hereto upon the basis of the best data available. For such purpose, the best data available shall be deemed to be the registration of any check meter or meters if the same have been installed and are accurately registering. Otherwise, the amount of 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.

City 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. The reading, calibration and adjustment thereof shall be made only by District except during any period when a check meter may be used under the provisions of this agreement, the amount of water delivered, in which case the 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.

5. UNIT OF MEASUREMENT. The unit of measurement for water delivered hereunder shall be 1000 gallons of water, U. S. Standard Liquid Measure.

6. PRICE AND TERMS (a) The service to be performed under this Contract by District consists of the readiness of the District to deliver to City, upon its demand, water in accordance with the provisions of Section 1, hereof.

In return for such service City agrees to compensate District by payment of certain minimum annual sums of money, for each of which said sums District agrees, if required by City, to deliver all, or so much thereof as City may desire, of a certain corresponding volume of water as set forth below. The amount of the minimum annual payment to be made by City for a given calendar year is determined by multiplying eighteen (18¢) cents by the number of thousand gallons of water "Allowed for Minimum Payment" applicable to such year. The allowed amounts of water respectively for such minimum payments during the first six (6) full calendar years are:

Full Calendar Year of Service	Gallons of Water Allowed for Minimum Payment
1st	825,000,000
2nd	865,000,000
3rd	905,000,000
4th	945,000,000
5th	995,000,000
6th	1,040,000,000

(For service performed by District prior to the first full calendar year, the minimum annual payment shall be for such fractional portion of the calendar year as the rate prescribed for the first full calendar year.)

In any one year, water in excess of the volume allowed above for that year may be purchased by City from District at a cost of seven cents (7¢) per 1000 gallons for such excess water, subject however to the limitations of Section 1 hereof.

Payment of the minimum annual service charges listed above shall be made each year by the City to the District in twelve equal monthly installments, each of which shall be due and payable on or before the 10th day of the month following the service. Payment for water delivered in any year in excess of the volume allowed for the minimum annual payment effective for that year shall be made by the City to the District at the rate of seven cents (7¢) per 1000 gallons on or before the 10th day of January following the end of such year.

Liability for making payments as herein set forth shall commence on the date of the first tender of delivery of water to the City by the District at the Point of Delivery.

The minimum annual payments hereinabove listed shall not be reduced except as provided hereinafter in sub-section (c) of this Section.

(b) In the event that City shall fail to make any such monthly payment or annual payment within the time herein in this section specified, interest on such amount shall accrue at the rate of Five Per Cent (5%) per annum from the date such payment becomes due until paid in full with interest as herein specified. In the event such payment is not made within sixty (60) days from the date such payment becomes due District may at its option discontinue delivery of water to the City until the amount due District is paid in full with interest as herein specified.

(c) On or before February 10 next following the first six full calendar years of tendered water service the Board of Directors of District shall analyze finally the finances of District, including the condition of all funds required to be established and maintained under the resolution authorizing the issuance of the Bonds or in the indenture securing the Bonds, or in both such instruments. At that time the Board shall redetermine the rates to be charged for water and shall fix such rates as will provide fully for maintenance and operating expenses and for the maintenance of all funds and the performance of all covenants prescribed by the resolution authorizing the Bonds and the indenture securing the Bonds. Such rates shall remain effective throughout the the calendar year. Similar action shall be taken on or before February 10 of each year thereafter while any of the Bonds or interest thereon are outstanding and unpaid; provided that it shall be the duty of the Board at all times to fix, alter and maintain rates for service under this Contract and under other contracts for similar service which will be sufficient for operation and maintenance of District's Water Supply System, to establish and maintain such rates which are required under the bond resolution or under the indenture securing the Bonds and at all events to prevent any default in the payment of interest on or principal of the Bonds.

(d) After all Bonds and interest thereon are paid and the Board of District shall in like manner on or before February 10 fix rates which shall be applicable for the then current

calendar year and which shall be sufficient to assure payment of maintenance and operation expenses of District and to pay for such improvements and extensions as may in the opinion of the Board be deemed advisable.

(c) After the close of the Six Year Period District shall send a bill to the City monthly showing the amount of water delivered to City during the preceding billing month, which bill shall disclose the quantity of water delivered during such month and the charge therefor. Such bills shall be rendered to the City on or before the 5th day after the end of such month and each such bill shall be paid by the City on or before the 10th day of the month in which the bill is received. Provided, however, that the bill for services rendered during the month of January next following the close of the Six Year Period and the bill for each January thereafter shall be rendered to the City on or before February 15 following and shall be paid on or before the 20th day of such month.

7. SPECIAL CONDITIONS. (a) District agrees to proceed promptly with the construction of the facilities necessary to the performance of its obligations hereunder. It is not in position to guarantee the date on which it will be able to make the first delivery of water to City. But District is making a diligent effort to have its facilities completed to Point of Delivery so as to furnish water to the City thirty (30) months after the sale and delivery of District's Bonds. District shall not be liable to the City for any damages occasioned by delay in the commencement of such service to City. After water is first tendered for delivery to City at Point of Delivery, District shall, subject to other terms and conditions of this Contract, continually hold itself ready, willing and able to supply water to City to the extent of the maximum amount herein contracted to be furnished to City. Liability of the District under this contract shall be subject to the provisions of Section 8 of this Contract.

(b) Title to all water supplied hereunder shall remain in District until it reaches Point of Delivery, and upon passing through District's Point of Delivery title to the water shall pass to City. The City hereto shall agree to save and hold the other party harmless from all claims, demands, and causes of action which may be asserted by any third party on account of the transportation, delivery and disposal of said water while title remains in such party. This covenant is not made for the benefit of any third party.

(c) It is expressly understood and agreed that any obligation on the part of the District to complete and operate the said facilities shall be conditioned upon the following:

(1) The final execution of a contract with Government vesting in District the rights to 100,000 acre feet of storage space in Lavon;

(2) The issuance of a Permit by the Board of Water Engineers of the State of Texas covering the right to appropriate the water to be stored in the 100,000 acre feet of such storage space in Lavon;

(3) The execution of contracts with other cities in number and producing revenues which in the judgment of District will permit the financing and construction and operation of District's Water Supply System;

(4) Sale of Bonds in an amount to assure construction of District's Water Supply System;

(5) District's ability to obtain all necessary materials, labor and equipment necessary for completion of District's Water Supply System.

(d) District shall never have the right to demand payment by City of any obligation assumed or imposed on it under and by virtue of this Contract from funds raised or to be raised by taxation. City's obligation under this Contract shall never be construed to be a debt of City of such kind as to require it under the Constitution and laws of this State to levy and collect a tax to discharge such obligation, it being expressly understood by the parties hereto that all payments due by the City hereunder are to be paid from water revenues received by City.

(e) City represents and covenants that all payments to be made hereunder by it shall constitute "Operating Expenses" of its waterworks system as authorized in Chapter 342 and as defined in Article 1113 of the Revised Civil Statutes of Texas as amended, and that such payments shall constitute operating expenses of any and all revenue bonds of the City which are supported in whole or in part by a pledge of the revenues of the waterworks system, with the effect that the City's obligation to make payments from its water revenues under this Contract has priority over

its obligation to make payments of the principal of and interest on any such bonds which are or will be supported in whole or in part by a pledge of the City's waterworks system revenue.

(f) City agrees to fix and collect such rates and charges for water and services to be supplied by its waterworks system as will make possible the prompt payment of all expenses of operating and maintaining its waterworks system including all payments contracted hereunder, and the prompt payment of the principal of and interest on its obligations payable from the revenues of its waterworks system.

8. FORCE MAJEURE. In case by reason of "Force Majeure" either party hereto shall be rendered unable wholly or in part to carry out its obligations under this agreement, other than the obligation of City to make the payments required under the terms hereof, then if such party shall give notice and full particulars of such "Force Majeure" in writing to the other party 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, epidemics, or other industrial disturbances, acts of public enemy, wars, or any kind of the Government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, famines, lightning, earthquake, fires, hurricanes, storms, floods, wash-outs, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipe lines or canals, partial or entire failure of water supply, and inability on part of District to deliver water hereunder, or of City to receive water hereunder, on account of any of the causes not reasonably within the control of the party claiming the excuse. It is understood and agreed that the settlement of strikes and losses shall be entirely within the discretion of the party having the responsibility, and that the above requirement that any Force Majeure shall be removed with all reasonable dispatch shall not require the settlement of strikes or losses by according to the demands of the opposing party or that the settlement is unfavorable to it in the judgment of the party

in a 5th difficulty. Force Majeure shall not relieve City of its obligation to make payments to District as required under Section 6.

9. INSURANCE. The indenture which will secure the Bonds will contain appropriate provisions requiring District to carry insurance on its insurable properties for purposes and in amounts which would ordinarily be carried by a privately owned utility company under contract to perform services similar to those undertaken by District in this Contract. Such provisions will be so designed as to afford protection not only for the holders of the Bonds but to assure and facilitate, to the extent feasible and practicable, the restoration of damaged or destroyed properties and to minimize the interruption of service to City and others.

10. TERM OF CONTRACT. This Contract shall continue in force and effect for a period of fifty years from the date of the first tender of delivery by the District of water to City, and for the period of time in addition thereto while any of the Bonds are outstanding and unpaid. City shall have the right to an extension of the term of this Contract beyond the initial fifty year term in like manner and to the extent that District's contract with Government may be extended beyond the initial fifty year term.

11. MODIFICATION. This Contract may be changed or modified only with the consent of the governing bodies of both District and City. Such modification may be requested by either party, in which event a joint meeting of such governing bodies shall be held not less than ninety days after the receipt of such notice, at which joint meeting the requested changes or modifications shall be considered and discussed. No such change or modification shall be made which will affect adversely the prompt payment when due of any amount required to be paid by City under the terms of this Contract and no change shall be effective which would cause a violation of any provision of the Resolution authorizing or the indenture securing the Bonds.

12. REGULATORY COMPLIANCE. This Contract shall be subject to rules, regulations and orders applicable hereto passed or promulgated by the State of Texas or any governmental agency or any authorized representative of any of them.

13. NOTICES. All notices or communications provided for hereon shall be in writing and shall be either delivered to City or District, or if mailed, shall be sent by registered mail, postage prepaid, addressed to City at Garland, Texas, or until otherwise specified by the District in writing, to District at Wylie, 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 written above.

NORTH TEXAS MUNICIPAL WATER DISTRICT

BY J. C. Carter
President

ATTEST:

J. C. Carter
Secretary

CITY OF GARLAND, TEXAS

BY H. W. Walker
Mayor

ATTEST:

L. M. W. W. W.
City Secretary

APPROVED:

J. C. Carter
City Manager

APPROVED AS TO LEGAL FORM:

H. W. Walker
City Attorney

THE STATE OF TEXAS :
:
COUNTY OF COLLIN :

BEFORE ME the undersigned Notary Public in and for Collin County, Texas, on this day personally appeared J. C. Cantrell and C. Hansford Ray, known to me to be the persons whose names are subscribed to the foregoing instrument and known to me to be, respectively, the president and secretary of the North Texas Municipal Water District, and each acknowledged to me that he executed said instrument for the purposes and considerations therein expressed and in the capacity therein stated and as the act and deed of North Texas Municipal Water District.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 10th day of May, 1954.

Notary Public, Collin County,
Texas

(SEAL)

THE STATE OF TEXAS :
:
COUNTY OF DALLAS :

BEFORE ME the undersigned Notary Public in and for Dallas County, Texas, on this day personally appeared H. A. Walker and Dollie Morris, each known to me to be the person whose name is subscribed to the foregoing instrument and each acknowledged to me that he had executed the same for the purposes and considerations therein expressed and in the capacity therein stated as the act and deed of the City of Garland, Texas.

EXECUTED under my hand and seal of office this the 10th day of May, 1954.

Notary Public, Dallas County,
Texas

CITY SECRETARY FILE

THE STATE OF TEXAS :
:
COUNTY OF DALLAS :

THIS CONTRACT (hereinafter called the "Contract") made and entered into as of this the 12th day of December, 1953, by and between North Texas Municipal Water District (hereinafter called "District") a water conservation district, created by Chapter 62 Acts of the Regular Session of the 52nd Legislature (hereinafter called "Chapter 62") pursuant to Article 16, Section 59 of the Constitution, and the City of Mesquite, Texas, a municipal corporation in Dallas County, Texas, acting under the laws of the State of Texas, and acting under its Home Rule Charter, (hereinafter called the "City"):

W I T N E S S E T H:

WHEREAS, the City owns its water distribution system and its water supply facilities; and

WHEREAS, City is desirous of obtaining a more adequate and dependable water supply; and

WHEREAS, District is acquiring from the United States Government (hereinafter called the "Government") the right to store water in Lavon Reservoir which has been constructed by the Government on the East Fork of the Trinity River in Collin County (hereinafter called "Lavon"); and

WHEREAS, the Contract between District and Government will provide: that District will have the storage rights in 100,000 acre feet of storage space in Lavon, for a period of 50 years with the privilege of negotiating with the Government for a renewal of such storage rights; and

WHEREAS, District's engineers, taking into consideration the rainfall and run-off records of the watershed estimate that the safe annual yield of water from the operation of said 100,000 acre feet of storage space will be a minimum of 35,000,000 gallons of water per day; and

WHEREAS, District is contracting to pay Government an annual consideration of approximately \$53,000.00 per year for a period of 50 years plus District's agreed share of the expense of maintaining and operating

Lavon, which annual payments will be a continuing charge against District's operating expenses; and

WHEREAS, District is preparing to issue and sell bonds in the approximate amount of Nine Million (\$9,000,000.00) Dollars (whether issued in an amount more or less than such figure, together with any additional bonds to be issued by District, and refunding bonds issued in lieu of such bonds (hereinafter called the "Bonds") for the purpose of: the acquisition of necessary lands, the erection and construction of purification, pumping and local storage facilities and the installation of pipelines, all for the purpose of providing and transmitting treated water for certain cities; which storage space at Lavon, intake facilities, pipelines, purification plant, pumps, local storage and related facilities will constitute District's water supply system (hereinafter called "District's Water Supply System"); and

WHEREAS, heretofore District has filed with the State Board of Water Engineers of the State of Texas Application No. 1820 for a permit, authorizing the appropriation of 60,000 acre feet of water per annum from Lavon Reservoir, hereinabove mentioned, and the diversion therefrom by means of gravity and pumping of such water for domestic, municipal and industrial purposes, including especially the right to deliver such water to any or all of certain cities, including "City"; and

WHEREAS under Chapter 342 Acts of the Regular Session of the 51st Legislature (hereinafter called "Chapter 342"), and pursuant to an election held in City on December 5, 1953 in accordance with Chapter 342, City is authorized to enter into this Contract; and

WHEREAS, by the execution of this Contract, the City is surrendering none of its right to the ownership and operation of its present water supply or its water distribution system, but is expressly asserting its continued right to operate such water supply and distribution system; and

WHEREAS District will have available water in the quantities hereinafter contracted to be sold by it to the City; and

WHEREAS, it is known to both parties that the District will use this Contract as the basis for the obtaining of credit through the issuance of District's Bonds and as the means for the payment of its maintenance and operating expenses and payment of the principal of and interest

on District's Bonds and the establishment and maintenance of reserves for such purposes; and

WHEREAS, the City recognizes the fact that the District must of necessity make similar contracts with one or more additional cities;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, District agrees to furnish and City agrees to pay for water supply services upon the terms and conditions and for the consideration hereinafter set forth, to-wit;

1. QUANTITY. Subject only to the provisions of this Section and Section 8 hereof, District agrees, during the period of this Contract to tender and make available to the City, for its own use and at the delivery point as hereinafter specified, treated water in the volume required by the City, provided that the maximum rate of delivery of such water shall not exceed 2,000,000 gallons per day, and City agrees to pay the District for such service in accordance with the provisions of Section 6 hereof.

Should City desire to increase the maximum rate of delivery as hereinabove fixed, a formal request stating the desired rate of increased delivery shall be addressed to the Board of Directors of the District and shall then become a matter of negotiation between City and District.

District will use its best efforts to remain in a position to furnish water as herein contracted to be sold to City, but its obligation shall be limited to the amount of water available in Lavon.

In the event that it should become necessary for District to limit its delivery of water to City because of low storage in Lavon, City shall be entitled to receive during such period of scarcity its pro rata share of water available in the reservoir as determined by the proportion which the volume of Lavon water used by it during the last preceding calendar year in which rationing was not necessary bears to the total volume of Lavon water used by all cities served by the District during such calendar year.

2. QUALITY. District is obligated to treat the water to be delivered by District and received by City hereunder so as to meet the standards of the State Health Department of the State of Texas.

3. POINT OF DELIVERY. The point for delivery of water to City from District's Water Supply System shall be to a ground storage terminal to be located by District's engineer. Such location will be selected with due

regard to any storage facilities City may own, if in the opinion of such engineer such City-owned facilities may be used economically (hereinafter called "Point of Delivery").

City agrees to construct, maintain and operate at its own cost and expense at such delivery points all equipment and facilities necessary to receive and take such water from District's storage terminal or from City's storage terminal if it should be used as the terminal, which equipment and facilities will be operated by the City in accordance with the terms of this Contract.

4. MEASURING EQUIPMENT. District shall furnish, install, operate and maintain at its own expense at said delivery points the necessary equipment and devices of standard type for measuring properly the quantity of water delivered under this agreement. Such meter or meters and other equipment so installed shall remain the property of District. City 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 City, District will give City a copy of such journal or record book, or permit City 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 City to do so, in the presence of a representative of City, 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 City in the presence of a representative of District and the parties shall jointly observe any adjustment in case any adjustment is necessary. If City shall in writing request District to calibrate its meters and District shall give City notice of the time when any such calibration is to be made and a representative of the City is not present at the time set, District may proceed with calibration and adjustment in the absence of any representative of City.

If either party at any time observes a variation between the delivery meter or meters and the check meter or meters, if any such check

meter or meters shall be installed, such party will promptly notify the other party, and the parties hereto shall then cooperate to procure an immediate calibration test and joint observation of any adjustment and the said meter or meters shall then be adjusted to accuracy. Each party shall give the other party forty-eight (48) hours' notice of the time of all tests of meters so that the other party may conveniently have a representative present.

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 (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 service or out of repair so that the amount of water delivered 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 parties hereto upon the basis of the best data available. For such purpose, the best data available shall be deemed to be the registration of any check meter or meters if the same have been installed and are accurately registering. Otherwise, the amount of 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.

City 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 City, 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.

5. UNIT OF MEASUREMENT. The unit of measurement for water delivered hereunder shall be 1000 gallons of water, U. S. Standard Liquid Measure.

6. PRICE AND TERMS (a) The service to be performed under this Contract by District consists of the readiness of the District to deliver to City, upon its demand, water in accordance with the provisions of Section 1, hereof.

In return for such service City agrees to compensate District by payment of certain minimum annual sums of money, for each of which said sums District agrees, if required by City, to deliver all, or so much thereof as City may desire, of a certain corresponding volume of water as set forth below. The amount of the minimum annual payment to be made by City for a given calendar year is determined by multiplying eighteen (18¢) cents by the number of thousand gallons of water "Allowed for Minimum Payment" applicable to such year. The allowed amounts of water respectively for such minimum payments during the first six (6) full calendar years are:

Full Calendar Year of Service	Gallons of Water Allowed for Minimum Payment
1st	130,000,000
2nd	141,000,000
3rd	151,000,000
4th	161,000,000
5th	172,000,000
6th	183,000,000

(For service performed by District prior to the first full calendar year, the minimum monthly payment shall be for such fractional portion of the calendar year at the rate prescribed for the first full calendar year.)

In any one year, water in excess of the volume allowed above for that year may be purchased by City from District at a cost of seven cents (7¢) per 1000 gallons for such excess water, subject however to the limitations of Section 1 hereof.

Payment of the minimum annual service charges listed above shall be made each year by the City to the District in twelve equal monthly installments, each of which shall be due and payable on or before the 10th day of the month following the service. Payment for water delivered in any year in excess of the volume allowed for the minimum annual payment effective for that year, shall be made by the City to the District at the rate of seven cents (7¢) per 1000 gallons on or before the 10th day of January following the end of such year.

Liability for making payments as herein set forth shall commence on the date of the first tender of delivery of water to the City by the District at the Point of Delivery.

The minimum annual payments hereinabove listed shall not be reduced except as provided hereinafter in sub-section (c) of this Section.

(b) In the event that City shall fail to make any such monthly payment or annual payment within the time herein in this section specified, interest on such amount shall accrue at the rate of Five Per Cent (5%) per annum from the date such payment becomes due until paid in full with interest as herein specified. In the event such payment is not made within sixty (60) days from the date such payment becomes due District may at its option discontinue delivery of water to the City until the amount due District is paid in full with interest as herein specified.

(c) On or before February 10 next following the first six full calendar years of tendered water service the Board of Directors of District shall analyze finally the finances of District, including the condition of all funds required to be established and maintained under the resolution authorizing the issuance of the Bonds or in the indenture securing the Bonds, or in both such instruments. At that time the Board shall redetermine the rates to be charged for water and shall fix such rates as will provide fully for maintenance and operating expenses and for the maintenance of all funds and the performance of all covenants prescribed by the resolution authorizing the Bonds and the indenture securing the Bonds. Such rates shall remain effective throughout the then calendar year. Similar action shall be taken on or before February 10 of each year thereafter while any of the Bonds or interest thereon are outstanding and unpaid; provided that it shall be the duty of the Board at all times to fix, alter and maintain rates for service under this Contract and under other contracts for similar service which will be sufficient for operation and maintenance of District's Water Supply System, to establish and maintain all funds which are required under the bond resolution or under the indenture securing the Bonds and at all events to prevent any default in the payment of interest on or principal of the Bonds.

(d) After all Bonds and interest thereon are paid the Board of Directors of District shall in like manner on or before February 10 of each year fix rates which shall be applicable for the then current

calendar year and which shall be sufficient to assure payment of maintenance and operation expenses of District and to pay for such improvements and extensions as may in the opinion of the Board be deemed advisable.

(e) After the close of the Six Year Period District shall send a bill to the City monthly showing the amount of water delivered to City during the preceding billing month, which bill shall disclose the quantity of water delivered during such month and the charge therefor. Such bills shall be rendered to the City on or before the 5th day after the end of such month and each such bill shall be paid by the City on or before the 10th day of the month in which the bill is received. Provided, however, that the bill for services rendered during the month of January next following the close of the Six Year Period and the bill for each January thereafter shall be rendered to the City on or before February 15 following and shall be paid on or before the 20th day of such month.

7. SPECIAL CONDITIONS. (a) District agrees to proceed promptly with the construction of the facilities necessary to the performance of its obligations hereunder. It is not in position to guarantee the date on which it will be able to make the first delivery of water to City. But District is making a diligent effort to have its facilities completed to Point of Delivery so as to furnish water to the City thirty (30) months after the sale and delivery of District's Bonds. District shall not be liable to the City for any damages occasioned by delay in the commencement of such service to City. After water is first tendered for delivery to City at Point of Delivery, District shall, subject to other terms and conditions of this Contract, continually hold itself ready, willing and able to supply water to City to the extent of the maximum amount herein contracted to be furnished to City. Liability of the District under this covenant shall be subject to the provisions of Section 8 of this Contract.

(b) Title to all water supplied hereunder shall remain in the District to Point of Delivery, and upon passing through District's meter installed at Point of Delivery title to the water shall pass to City. Each such party hereto shall agree to save and hold the other party harmless from all claims, demands, and causes of action which may be asserted by anyone on account of the transportation, delivery and disposal of said water while title remains in such party. This covenant is not made for the benefit of any third party.

(c) It is expressly understood and agreed that any obligation on the part of the District to complete and operate the said facilities shall be conditioned upon the following:

(1) The final execution of a contract with Government vesting in District the rights to 100,000 acre feet of storage space in Lavon;

(2) The issuance of a Permit by the Board of Water Engineers of the State of Texas covering the right to appropriate the water to be stored in the 100,000 acre feet of such storage space in Lavon;

(3) The execution of contracts with other cities in number and producing revenues which in the judgment of District will permit the financing and construction and operation of District's Water Supply System;

(4) Sale of Bonds in an amount to assure construction of District's Water Supply System;

(5) District's ability to obtain all necessary material, labor and equipment necessary for completion of District's Water Supply System.

(d) District shall never have the right to demand payment by City of any obligation assumed or imposed on it under and by virtue of this Contract from funds raised or to be raised by taxation. City's obligation under this Contract shall never be construed to be a debt of City of such kind as to require it under the Constitution and laws of this State to levy and collect a tax to discharge such obligation, it being expressly understood by the parties hereto that all payments due by the City hereunder are to be made from water revenues received by City.

(e) City represents and covenants that all payments to be made hereunder by it shall constitute "Operating Expenses" of its waterworks system as authorized in Chapter 342 and as defined in Article 1113 of the Revised Civil Statutes of Texas as amended, and that such payments will constitute operating expenses as to any and all revenue bonds of the City which are supported in whole or in part by a pledge of the revenues of the City's waterworks system, with the effect that the City's obligation to make payments from its water revenues under this Contract has priority over

its obligation to make payments of the principal of and interest on any such bonds which are or will be supported in whole or in part by a pledge of the City's waterworks system revenues.

(f) City agrees to fix and collect such rates and charges for water and services to be supplied by its waterworks system as will make possible the prompt payment of all expenses of operating and maintaining its waterworks system including all payments contracted hereunder, and the prompt payment of the principal of and interest on its obligations payable from the revenues of its waterworks system.

8. FORCE MAJEURE. In case by reason of "Force Majeure" either party hereto shall be rendered unable wholly or in part to carry out its obligations under this agreement, other than the obligation of City to make the payments required under the terms hereof, then if such party shall give notice and full particulars of such "Force Majeure" in writing to the other party 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, insurrections, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, wash-outs, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipe lines or canals, partial or entire failure of water supply, and inability on part of District to deliver water hereunder, or of City to receive water hereunder, on account of any other causes not reasonably within the control of the party claiming such inability. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable to it in the judgment of the party

having the difficulty. Force Majeure shall not relieve City of its obligation to make payments to District as required under Section 6.

9. INSURANCE. The indenture which will secure the Bonds will contain appropriate provisions requiring District to carry insurance on its insurable properties for purposes and in amounts which would ordinarily be carried by a privately owned utility company under contract to perform services similar to those undertaken by District in this Contract. Such provisions will be so designed as to afford protection not only for the holders of the Bonds but to assure and facilitate, to the extent feasible and practicable, the restoration of damaged or destroyed properties and to minimize the interruption of service to City and others.

10. TERM OF CONTRACT. This Contract shall continue in force and effect for a period of fifty years from the date of the first tender of delivery by the District of water to City, and for the period of time in addition thereto while any of the Bonds are outstanding and unpaid. City shall have the right to an extension of the term of this Contract beyond the initial fifty year term in like manner and to the extent that District's contract with Government may be extended beyond the initial fifty year term.

11. MODIFICATION. This Contract may be changed or modified only with the consent of the governing bodies of both District and City. Such modification may be requested by either party, in which event a joint meeting of such governing bodies shall be held not less than ninety days after the giving of such notice, at which joint meeting the requested changes or modifications shall be considered and discussed. No such change or modification may be made which will affect adversely the prompt payment when due of all moneys required to be paid by City under the terms of this Contract and no such change shall be effective which would cause a violation of any provision of the Resolution authorizing or the indenture securing the Bonds.

12. REGULATORY BODIES. This Contract shall be subject to all valid rules, regulations and laws applicable hereto passed or promulgated by the United States of America, the State of Texas or any governmental body or agency having lawful jurisdiction or any authorized representative or agency of any of them.

13. NOTICES. All notices or communications provided for herein shall be in writing and shall be either delivered to City or District, or if mailed, shall be sent by registered mail, postage prepaid, addressed to City at Mesquite, Texas, or until otherwise specified by the District in writing, to District at Wylie, 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 written above.

ATTEST:

C. H. Langford Ray
Secretary

NORTH TEXAS MUNICIPAL WATER DISTRICT

BY J. I. Cantrell
President

CITY OF MESQUITE, TEXAS

BY J. O. Williams
Mayor

ATTEST:

(Mrs) Norma Gene McLaughlin
City Secretary

THE STATE OF TEXAS :
:
COUNTY OF COLLIN :

BEFORE ME the undersigned Notary Public in and for Collin County, Texas, on this day personally appeared J. C. Cantrell and G. Hansford Ray, known to me to be the persons whose names are subscribed to the foregoing instrument and known to me to be, respectively, the President and Secretary of the North Texas Municipal Water District, and each acknowledged to me that he executed said instrument for the purposes and considerations therein expressed and in the capacity therein stated and as the act and deed of North Texas Municipal Water District.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 6 day of May, 1954.

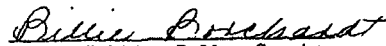

Notary Public, Collin County,
Texas

(SEAL)

THE STATE OF TEXAS :
:
COUNTY OF DALLAS :

BEFORE ME the undersigned Notary Public in and for Dallas County, Texas, on this day personally appeared T. O. Williams and Norma Gene McGaughy, each known to me to be the person whose name is subscribed to the foregoing instrument and each acknowledged to me that he had executed the same for the purposes and considerations therein expressed and in the capacity therein stated as the act and deed of the City of Mesquite, Texas.

EXECUTED under my hand and seal of office this the 11 day of May, 1954.


Notary Public, Dallas County,
Texas

(SEAL)

THE STATE OF TEXAS }
 COUNTY OF COLLIN }

THIS CONTRACT (hereinafter called the "Contract") made and entered into as of this the 12th day of December, 1953, by and between North Texas Municipal Water District (hereinafter called "District") a water conservation district, created by Chapter 62 Acts of the Regular Session of the 52nd Legislature (hereinafter called "Chapter 62") pursuant to Article 16, Section 59 of the Constitution, and the City of Plano, Texas, a municipal corporation in Collin County, Texas, acting under the laws of the State of Texas, (hereinafter called the "City"):

W I T N E S S E T H :

WHEREAS, the City owns its water distribution system and its water supply facilities; and

WHEREAS, City is desirous of obtaining a more adequate and dependable water supply; and

WHEREAS, District is acquiring from the United States Government (hereinafter called the "Government") the right to store water in Lavon Reservoir which has been constructed by the Government on the East Fork of the Trinity River in Collin County (hereinafter called "Lavon"); and

WHEREAS, the Contract between District and Government will provide: that District will have the storage rights in 100,000 acre feet of storage space in Lavon, for a period of 50 years with the privilege of negotiating with the Government for a renewal of such storage rights; and

WHEREAS, District's engineers, taking into consideration the rainfall and run-off records of the watershed estimate that the safe annual yield of water from the operation of said 100,000 acre feet

of storage space will be a minimum of 35,000,000 gallons of water per day; and

WHEREAS, District is contracting to pay Government an annual consideration of approximately \$53,000.00 per year for a period of 50 years plus District's agreed share of the expense of maintaining and operating Lavon, which annual payments will be a continuing charge against District's operating expenses; and

WHEREAS, District is preparing to issue and sell bonds in the approximate amount of Nine Million (\$9,000,000.00) Dollars (whether issued in an amount more or less than such figure, together with any additional bonds to be issued by District, and refunding bonds issued in lieu of such bonds (hereinafter called the "Bonds") for the purpose of: the acquisition of necessary lands, the erection and construction of purification, pumping and local storage facilities and the installation of pipelines, all for the purpose of providing and transmitting treated water for certain cities; which storage space at Lavon, intake facilities, pipelines, purification plant, pumps, local storage and related facilities will constitute District's water supply system (hereinafter called "District's Water Supply System"); and

WHEREAS, heretofore District has filed with the State Board of Water Engineers of the State of Texas Application No. 1820 for a permit, authorizing the appropriation of 60,000 acre feet of water per annum from Lavon Reservoir, hereinabove mentioned, and the diversion therefrom by means of gravity and pumping of such water for domestic, municipal and industrial purposes, including especially the right to deliver such water to any or all of certain cities, including "City"; and

WHEREAS under Chapter 342 Acts of the Regular Session of the 51st Legislature (hereinafter called "Chapter 342"), and pursuant to an election held in City on December 5, 1953 in accordance with Chapter 342, City is authorized to enter into this Contract; and

WHEREAS, by the execution of this Contract, the City is surrendering none of its right to the ownership and operation of its present water supply or its water distribution system, but is expressly asserting its continued right to operate such water supply and distribution system; and

WHEREAS District will have available water in the quantities hereinafter contracted to be sold by it to the City; and

WHEREAS, it is known to both parties that the District will use this Contract as the basis for the obtaining of credit through the issuance of District's Bonds and as the means for the payment of its maintenance and operating expenses and payment of the principal of and interest on District's Bonds and the establishment and maintenance of reserves for such purposes; and

WHEREAS, the City recognizes the fact that the District must of necessity make similar contracts with one or more additional cities;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, District agrees to furnish and City agrees to pay for water supply services upon the terms and conditions and for the consideration hereinafter set forth, to-wit;

1. Quantity. Subject only to the provisions of this Section and Section 8 hereof, District agrees, during the period of this Contract to tender and make available to the City, for its own use and at the delivery point as hereinafter specified, treated water in the volume required by the City, provided that the maximum rate of delivery of such water shall not exceed 2,000,000 gallons per day, and City agrees to pay the District for such service in accordance with the provisions of Section 6 hereof.

Should City desire to increase the maximum rate of delivery as hereinabove fixed, a formal request stating the desired rate of increased delivery shall be addressed to the Board of Directors of the

District and shall then become a matter of negotiation between City and District.

District will use its best efforts to remain in a position to furnish water as herein contracted to be sold to City, but its obligations shall be limited to the amount of water available in Lavon.

In the event that it should become necessary for District to limit its delivery of water to City because of low storage in Lavon, City shall be entitled to receive during such period of scarcity its pro rata share of water available in the reservoir as determined by the proportion which the volume of Lavon water used by it during the last preceding calendar year in which rationing was not necessary bears to the total volume of Lavon water used by all cities served by the District during such calendar year.

2. **Quality.** District is obligated to treat the water to be delivered by District and received by City hereunder so as to meet the standards of the State Health Department of the State of Texas.

3. **Point of Delivery.** The point for delivery of water to City from District's Water Supply System shall be to a ground storage terminal to be located by District's engineer. Such location will be selected with due regard to any storage facilities City may own, if in the opinion of such engineer such City-owned facilities may be used economically (hereinafter called "Point of Delivery").

City agrees to construct, maintain and operate at its own cost and expense at such delivery points all equipment and facilities necessary to receive and take such water from District's storage terminal or from City's storage terminal if it should be used as the terminal, which equipment and facilities will be operated by the City in accordance with the terms of this Contract.

4. **Measuring Equipment.** District shall furnish, install, operate and maintain at its own expense at said delivery points the necessary

equipment and devices of standard type for measuring properly the quantity of water delivered under this agreement. Such meter or meters and other equipment so installed shall remain the property of District. City 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 City, District will give City a copy of such journal or record book, or permit City 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 City to do so, in the presence of a representative of City, 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 City in the presence of a representative of District and the parties shall jointly observe any adjustment in case any adjustment is necessary. If City shall in writing request District to calibrate its meters and District shall give City notice of the time when any such calibration is to be made and a representative of the City is not present at the time set, District may proceed with calibration and adjustment in the absence of any representative of City.

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

and the said meter or meters shall then be adjusted to accuracy. Each party shall give the other party forty-eight (48) hours' notice of the time of all tests of meters so that the other party may conveniently have a representative present.

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 service or out of repair so that the amount of water delivered 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 parties hereto upon the basis of the best data available. For such purpose, the best data available shall be deemed to be the registration of any check meter or meters if the same have been installed and are accurately registering. Otherwise, the amount of 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.

City 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 City, 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.

5. **Unit of Measurement.** The unit of measurement for water delivered hereunder shall be 1000 gallons of water, U. S. Standard Liquid Measure.

6. **Price and Terms.** (a) The service to be performed under this Contract by District consists of the readiness of the District to deliver to City, upon its demand, water in accordance with the provisions of Section 1, hereof.

In return for such service City agrees to compensate District by payment of certain minimum annual sums of money, for each of which said sums District agrees, if required by City, to deliver all, or so much thereof as City may desire, of a certain corresponding volume of water as set forth below. The amount of the minimum annual payment to be made by City for a given calendar year is determined by multiplying eighteen (18¢) cents by the number of thousand gallons of water "Allowed for Minimum Payment" applicable to such year. The allowed amounts of water respectively for such minimum payments during the first six (6) full calendar years are:

<i>Full Calendar Year of Service</i>	<i>Gallons of Water Allowed for Minimum Payment</i>
1st	111,000,000
2nd	116,000,000
3rd	122,000,000
4th	128,000,000
5th	135,000,000
6th	142,000,000

(For service performed by District prior to the first full calendar year, the minimum monthly payment shall be for such fractional portion of the calendar year at the rate prescribed for the first full calendar year.)

In any one year, water in excess of the volume allowed above for that year may be purchased by City from District at a cost of seven cents (7¢) per 1000 gallons for such excess water, subject however to the limitations of Section 1 hereof.

Payment of the minimum annual service charges listed above shall be made each year by the City to the District in twelve equal monthly installments, each of which shall be due and payable on or before the 10th day of the month following the service. Payment for water delivered in any year in excess of the volume allowed for the minimum annual payment effective for that year, shall be made by the City to the District at the rate of seven cents (7¢) per 1000 gallons on or before the 10th day of January following the end of such year.

Liability for making payments as herein set forth shall commence on the date of the first tender of delivery of water to the City by the District at the Point of Delivery.

The minimum annual payments hereinabove listed shall not be reduced except as provided hereinafter in sub-section (c) of this Section.

(b) In the event that City shall fail to make any such monthly payment or annual payment within the time herein in this section specified, interest on such amount shall accrue at the rate of Five Per Cent (5%) per annum from the date such payment becomes due until paid in full with interest as herein specified. In the event such payment is not made within sixty (60) days from the date such payment becomes due District may at its option discontinue delivery of water to the City until the amount due District is paid in full with interest as herein specified.

(c) On or before February 10 next following the first six full calendar years of tendered water service the Board of Directors of District shall analyze finally the finances of District, including the

condition of all funds required to be established and maintained under the resolution authorizing the issuance of the Bonds or in the indenture securing the Bonds, or in both such instruments. At that time the Board shall redetermine the rates to be charged for water and shall fix such rates as will provide fully for maintenance and operating expenses and for the maintenance of all funds and the performance of all covenants prescribed by the resolution authorizing the Bonds and the indenture securing the Bonds. Such rates shall remain effective throughout the then calendar year. Similar action shall be taken on or before February 10 of each year thereafter while any of the Bonds or interest thereon are outstanding and unpaid; provided that it shall be the duty of the Board at all times to fix, alter and maintain rates for service under this Contract and under other contracts for similar service which will be sufficient for operation and maintenance of District's Water Supply System, to establish and maintain all funds which are required under the bond resolution or under the indenture securing the Bonds and at all events to prevent any default in the payment of interest on or principal of the Bonds.

(d) After all Bonds and interest thereon are paid the Board of Directors of District shall in like manner on or before February 10 of each year fix rates which shall be applicable for the then current calendar year and which shall be sufficient to assure payment of maintenance and operation expenses of District and to pay for such improvements and extensions as may in the opinion of the Board be deemed advisable.

(e) After the close of the Six Year Period District shall send a bill to the City monthly showing the amount of water delivered to City during the preceding billing month, which bill shall disclose the quantity of water delivered during such month and the charge therefor. Such bills shall be rendered to the City on or before the 5th day after the end of such month and each such bill shall be paid by the City on

or before the 10th day of the month in which the bill is received. Provided, however, that the bill for services rendered during the month of January next following the close of the Six Year Period and the bill for each January thereafter shall be rendered to the City on or before February 15 following and shall be paid on or before the 20th day of such month.

7. Special Conditions. (a) District agrees to proceed promptly with the construction of the facilities necessary to the performance of its obligations hereunder. It is not in position to guarantee the date on which it will be able to make the first delivery of water to City. But District is making a diligent effort to have its facilities completed to Point of Delivery so as to furnish water to the City thirty (30) months after the sale and delivery of District's Bonds. District shall not be liable to the City for any damages occasioned by delay in the commencement of such service to City. After water is first tendered for delivery to City at Point of Delivery, District shall, subject to other terms and conditions of this Contract, continually hold itself ready, willing and able to supply water to City to the extent of the maximum amount herein contracted to be furnished to City. Liability of the District under this covenant shall be subject to the provisions of Section 8 of this Contract.

(b) Title to all water supplied hereunder shall remain in the District to Point of Delivery, and upon passing through District's meter installed at Point of Delivery title to the water shall pass to City. Each such party hereto shall agree to save and hold the other party harmless from all claims, demands, and causes of action which may be asserted by anyone on account of the transportation, delivery and disposal of said water while title remains in such party. This covenant is not made for the benefit of any third party.

(c) It is expressly understood and agreed that any obligation on the part of the District to complete and operate the said facilities shall be conditioned upon the following:

(1) The final execution of a contract with Government vesting in District the rights to 100,000 acre feet of storage space in Lavon;

(2) The issuance of a Permit by the Board of Water Engineers of the State of Texas covering the right to appropriate the water to be stored in the 100,000 acre feet of such storage space in Lavon;

(3) The execution of contracts with other cities in number and producing revenues which in the judgment of District will permit the financing and construction and operation of District's Water Supply System;

(4) Sale of Bonds in an amount to assure construction of District's Water Supply System;

(5) District's ability to obtain all necessary material, labor and equipment necessary for completion of District's Water Supply System.

(d) District shall never have the right to demand payment by City of any obligation assumed or imposed on it under and by virtue of this Contract from funds raised or to be raised by taxation. City's obligation under this Contract shall never be construed to be a debt of City of such kind as to require it under the Constitution and laws of this State to levy and collect a tax to discharge such obligation, it being expressly understood by the parties hereto that all payments due by the City hereunder are to be made from water revenues received by City.

(e) City represents and covenants that all payments to be made hereunder by it shall constitute "Operating Expenses" of its waterworks system as authorized in Chapter 342 and as defined in Article 1113 of the Revised Civil Statutes of Texas as amended, and that such payments will constitute operating expenses as to any and all revenue bonds of the City which are supported in whole or in part by a pledge of the revenues of the City's waterworks system, with the effect that the City's obligation to make payments from its water revenues under this Contract has priority over its obligation to make payments of the principal of and interest on any such bonds which are or will be

supported in whole or in part by a pledge of the City's waterworks system revenues.

(f) City agrees to fix and collect such rates and charges for water and services to be supplied by its waterworks system as will make possible the prompt payment of all expenses of operating and maintaining its waterworks system including all payments contracted hereunder, and the prompt payment of the principal of and interest on its obligations payable from the revenues of its waterworks system.

8. **Force Majeure.** In case by reason of "Force Majeure" either party hereto shall be rendered unable wholly or in part to carry out its obligations under this agreement, other than the obligation of City to make the payments required under the terms hereof, then if such party shall give notice and full particulars of such "Force Majeure" in writing to the other party 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, insurrections, 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, pipe lines or canals, partial or entire failure of water supply, and inability on part of District to deliver water hereunder, or of City to receive water hereunder, on account of any other causes not reasonably within the control of the party claiming such inability. It is understood and agreed that the settlement of strikes and lockouts shall be entirely

within the discretion of the party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable to it in the judgment of the party having the difficulty. Force Majeure shall not relieve City of its obligation to make payments to District as required under Section 6.

9. **Insurance.** The indenture which will secure the Bonds will contain appropriate provisions requiring District to carry insurance on its insurable properties for purposes and in amounts which would ordinarily be carried by a privately owned utility company under contract to perform services similar to those undertaken by District in this Contract. Such provisions will be so designed as to afford protection not only for the holders of the Bonds but to assure and facilitate, to the extent feasible and practicable, the restoration of damaged or destroyed properties and to minimize the interruption of service to City and others.

10. **Term of Contract.** This Contract shall continue in force and effect for a period of fifty years from the date of the first tender of delivery by the District of water to City, and for the period of time in addition thereto while any of the Bonds are outstanding and unpaid. City shall have the right to an extension of the term of this Contract beyond the initial fifty year term in like manner and to the extent that District's contract with Government may be extended beyond the initial fifty year term.

11. **Modification.** This Contract may be changed or modified only with the consent of the governing bodies of both District and City. Such modification may be requested by either party, in which event a joint meeting of such governing bodies shall be held not less than ninety days after the giving of such notice, at which joint meeting the requested changes or modifications shall be considered and discussed.

No such change or modification may be made which will affect adversely the prompt payment when due of all moneys required to be paid by City under the terms of this Contract and no such change shall be effective which would cause a violation of any provision of the Resolution authorizing or the indenture securing the Bonds.

12. **Regulatory Bodies.** This Contract shall be subject to all valid rules, regulations and laws applicable hereto passed or promulgated by the United States of America, the State of Texas or any governmental body or agency having lawful jurisdiction or any authorized representative or agency of any of them.

13. **Notices.** All notices or communications provided for herein shall be in writing and shall be either delivered to City or District, or if mailed, shall be sent by registered mail, postage prepaid, addressed to City at Plano, Texas, or until otherwise specified by the District in writing, to District at Wylie, 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 written above.

NORTH TEXAS MUNICIPAL WATER DISTRICT
(Signed) By J. C. CANTRELL
President

ATTEST:
C. HANSFORD RAY
Secretary
(SEAL)

CITY OF PLANO, TEXAS
(Signed) By FRED H. MIERS
Mayor

ATTEST:
W. P. YARBROUGH
City Secretary
(SEAL)

THE STATE OF TEXAS }
COUNTY OF COLLIN }

BEFORE ME the undersigned Notary Public in and for Collin County, Texas, on this day personally appeared J. C. Cantrell and C. Hansford Ray, known to me to be the persons whose names are subscribed to the foregoing instrument and known to me to be, respectively, the president and secretary of the North Texas Municipal Water District, and each acknowledged to me that he executed said instrument for the purposes and considerations therein expressed and in the capacity therein stated and as the act and deed of North Texas Municipal Water District.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 6th day of May, 1954.

RUTH E. THURSTON
*Notary Public, Collin
County, Texas*

(SEAL)

THE STATE OF TEXAS }
COUNTY OF COLLIN }

BEFORE ME the undersigned Notary Public in and for Collin County, Texas, on this day personally appeared Fred Miers and W. P. Yarbrough, each known to me to be the person whose name is subscribed to the foregoing instrument and each acknowledged to me that he had executed the same for the purposes and considerations therein expressed and in the capacity therein stated as the act and deed of the City of Plano, Texas.

EXECUTED under my hand and seal of office this the 7th day of May, 1954.

A. R. SCHELL III
*Notary Public, Collin
County, Texas*

(SEAL)

THE STATE OF TEXAS

1

COUNTY OF COLLIN

1

THIS CONTRACT (hereinafter called the "Contract") made and entered into as of this the 7th day of April, 1965 by and between North Texas Municipal Water District (hereinafter called "District"), a water conservation district, created by Chapter 62 Acts of the Regular Session of the 52nd Legislature (hereinafter called "Chapter 62") pursuant to Article 16, Section 59 of the Constitution, and the City of Richardson, ^{Collin and} Dallas Counties, Texas, (hereinafter called the "City"):

W I T N E S S E T H:

WHEREAS, the City owns its water distribution system; and

WHEREAS, the City is desirous of obtaining an adequate and dependable supplemental water supply; and

WHEREAS, by the execution of this contract, the City is surrendering none of its right to the ownership and operation of its present water system, but is expressly asserting its continued right to operate such present water system; and

WHEREAS, the District has a contract with the United States to utilize the storage space between elevations 453 feet above mean sea level and 472 feet above mean sea level in the Lavon Reservoir;

WHEREAS, the Congress of the United States has authorized the modification of the Lavon Reservoir so as to enlarge the storage capacity available to the District; and

WHEREAS, the District is in the process of filing its application with the Texas Water Commission for a permit which will permit an increased annual withdrawal from said reservoir; and

WHEREAS, the District will have available water in the quantities hereinafter contracted to be sold by it to the City; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, District agrees to furnish and City agrees to pay for water supply services upon the terms and conditions and for the consideration hereinafter set forth, to-wit:

1. QUANTITY. Subject only to the provisions of this section and Section 8 hereof, District agrees, during the period of this Contract to tender and make available to the City, for its own use

and at the delivery point as hereinafter specified, treated water in the volume required by the City. The minimum amount of water to be purchased annually and the maximum rate of delivery shall be determined as follows: for the first calendar year beginning with the next first day of January after the first delivery of water to City, the City will take or pay for 365 million gallons of water at the base rate. The City will be entitled to a maximum rate of delivery which will be determined in the same manner as the maximum rate of delivery is determined for member cities. The minimum amount of water the City will be required to purchase shall be readjusted annually for the ensuing year and such amount shall be determined in the same manner as this amount is determined for the member cities. The amount to be purchased during the ensuing year shall not be less than the total amount of water withdrawn from the District's system during the previous year nor 365,000,000 gallons, whichever is greater. The District's obligation under this contract shall be limited to a maximum average daily amount of 10.3 million gallons. The City agrees to pay the District for such service in accordance with the provisions of Section 6 hereof.

District will use its best efforts to remain in a position to furnish water as herein contracted to be sold to City, but its obligations shall be limited to the amount of water available in Lavon, and shall be subordinate to the rights of the member Cities and the City of Dallas, until the present Lavon Reservoir has been enlarged and in operation as has been authorized by the Congress of the United States.

2. QUALITY. District is obligated to treat the water to be delivered by District and received by City hereunder so as to meet the standards of the State Health Department of the State of Texas.

3. POINT OF DELIVERY. The point of delivery shall be in the vicinity of the Annapolis Road and Jupiter Road intersection, (hereinafter called "Point of Delivery").

City agrees to construct, maintain and operate at its own cost and expense at such delivery point all equipment and facilities

necessary to receive and take such water from District's line. The equipment and facilities will be operated by the City in accordance with the terms of the Contract.

4. MEASURING EQUIPMENT. District shall furnish, install, operate and maintain at its own expense at said delivery point the necessary equipment and devices of standard type for measuring properly the quantity of water delivered under this agreement. Such meter or meters and other equipment so installed shall remain the property of District. City 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 readings are or may be transcribed. Upon written request of City, District will give City a copy of such journal or record book, or permit City 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 City to do so, in the presence of a representative of City, and the parties shall jointly observe any adjustments which are made to the meters in case any adjustments shall be necessary, and if check meters have been installed by City, the same shall also be calibrated by City in the presence of a representative of District and the parties shall jointly observe any adjustment in case any adjustment is necessary. If City shall in writing request District to calibrate its meters and District shall give City notice of the time when any such calibration is to be made and a representative of the City is not present at the time set, District may proceed with calibration and adjustment in the absence of any representative of City.

If either party at any time observes a variation between the delivery meter or meters and the check meter or meters, if any such check meter or meters shall be installed, such party will promptly

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

If upon any test, the percentage of inaccuracy of any metering equipment is found to be in excess of two per cent (2%), re-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 (1/2) of the time elapsed since the last date of calibration, but in no event further back than six (6) months. If for any reason any meters are out of service or out of repair so that the amount of water delivered 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 parties hereto upon the basis of the best data available. For such purpose, the best data available shall be deemed to be the registration of any check meter or meters if the same have been installed and are accurately registering. Otherwise, the amount of 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.

5. UNIT OF MEASUREMENT. The unit of measurement for water delivered hereunder shall be 1000 gallons of water, U. S. Standard Liquid Measure.

6. PRICE AND TERMS. (a) The service to be performed under this Contract by District consists of the readiness of the District to deliver to City, upon its demand, water in accordance with the provisions of Section 1, hereof.

In return for such service City agrees to compensate District by payment of certain minimum annual sum of money, for each of which said sum District agrees, if required by City, to deliver all, or so much thereof as City may desire, of a certain corresponding volume of water as set forth in Section 1 above. The amount of the minimum annual payment to be made to City for a given calendar year is determined by multiplying the base rate determined each year for the member cities by the number of thousand gallons of water specified in Section 1 above applicable to such year.

(For such service performed by District prior to the first full calendar year, the minimum monthly payment shall be for such fractional portion of the calendar year at the rate prescribed for the first full calendar year.)

Beginning with the first delivery and continuing until the end of the sixth complete calendar year thereafter the City shall pay at the base rate determined each year for the member cities with no water at a lesser rate during said period irrespective of the amount taken. After the close of the six year period the City's rates for both minimum and excess amounts of water shall be the same as those for member cities.

Payment of the minimum annual service charges listed above shall be made each year by the City to the District in twelve equal monthly installments, each of which shall be due and payable on or before the 10th day of the month following the service.

Liability for making payments as herein set forth shall commence on the date of the first tender of delivery of water to the City by the District at the Point of Delivery.

The quantities and rates set out in Section 1 and Section 6 hereof shall be reviewed at the end of the first full calendar year after the first delivery of water and the rate shall be redetermined by the Board of Directors of the District in the same manner as it is determined for member cities.

7. SPECIAL CONDITIONS. (a) District and City each agrees to proceed promptly with the construction of the facilities necessary to the performance of its obligations hereunder. It is not in position to guarantee the date on which it will be able to make the first delivery of water to City, but District is making diligent effort to have its facilities completed to Point of Delivery so as

to furnish water to the City by June 1, 1966. District shall not be liable to the City for any damages occasioned by delay in the commencement of such service to City. After water is first tendered for delivery to City at Point of Delivery, District shall, subject to other terms and conditions of this Contract, continually hold itself ready, willing and able to supply water to City to the extent of the maximum amount herein contracted to be furnished to City. Liability of the District under this covenant shall be subject to the provisions of Section 8 of this contract.

(b) Title to all water supplied hereunder shall remain in the District to Point of Delivery, and upon passing through District's meter installed at Point of Delivery title to the water shall pass to City. Each such party hereto shall agree to save and hold the other party harmless from all claims, demands, and causes of action which may be asserted by anyone on account of the transportation, delivery and disposal of said water while title remains in such party. This covenant is not made for the benefit of any third party.

(c) City represents and covenants that all payments to be made hereunder by it shall constitute "Operating Expenses" of its waterworks system as authorized in Chapter 342 and as defined in Article 1113 of the Revised Civil Statutes of Texas as amended, and that such payments will constitute operating expenses as to any and all revenue bonds of the City which are supported in whole or in part by a pledge of the revenues of the City's waterworks system, with the effect that the City's obligation to make payments from its water revenues under this Contract has priority over its obligation to make payments of the principal of and interest on any such bonds which are or will be supported in whole or in part by a pledge of the City's waterworks system revenues.

(d) City agrees to fix and collect such rates and charges for water and services to be supplied by its waterworks system as will make possible the prompt payment of all expenses of operation and maintaining its waterworks system including all payments contracted hereunder, and the prompt payment of the principal of and interest on its obligations payable from the revenues of its waterworks system.

8. FORCE MAJEURE. In case of reason of "Force Majeure" either party hereto shall be rendered unable wholly or in part to carry out its obligations under this agreement, other than the obligation of City to make the payments required under the terms hereof, then if such party shall give notice and full particulars of such "Force Majeure" in writing to the other party 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, insurrections, 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, pipe lines or canals, partial or entire failure of water supply, and inability on part of District to deliver water hereunder, or of City to receive water hereunder, on account of any other causes not reasonable within the control of the party claiming such inability. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable to it in the judgment of the party having difficulty. Force Majeure shall not relieve City of its obligation to make payments to District as required under Section 6.

9. TERM OF CONTRACT. This Contract shall continue in force and effect to the year 2006 A.D. with the right to extension for so long as the District has a contract with the United States Government to secure water from the Lower Rio and Reservoir Project as is now constructed or may hereafter be modified.

10. MODIFICATION. This Contract may be changed or modified only with the consent of the governing bodies of both District and City. Such modification may be requested by either party, in which event a joint meeting of such governing bodies shall be held not less than ninety days after the giving of such notice, at which joint meeting the requested changes or modifications shall be considered and discussed. No such change or modification may be made which will affect adversely the prompt payment when due of all moneys required to be paid by City under the terms of this Contract.

11. REGULATORY BODIES. This Contract shall be subject to all valid rules, regulations and laws applicable hereto passed or promulgated by the United States of America, the State of Texas or any governmental body or agency having lawful jurisdiction or any authorized representative or agency of any of them.

12. NOTICES. All notices or communications provided for herein shall be in writing and shall be either delivered to City or District, or if mailed, shall be sent by registered mail, postage prepaid, addressed to City of Richardson, Richardson, Texas, or until otherwise specified by the District in writing, to District at Wylie, 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 written above.

NORTH TEXAS MUNICIPAL WATER DISTRICT
By [Signature]
President

ATTEST:

[Signature]
Secretary

CITY OF RICHARDSON, TEXAS

By [Signature]
Mayor

ATTEST:

[Signature]
City Secretary

1. The first of these is the fact that the
2. The second is the fact that the
3. The third is the fact that the
4. The fourth is the fact that the
5. The fifth is the fact that the
6. The sixth is the fact that the
7. The seventh is the fact that the
8. The eighth is the fact that the
9. The ninth is the fact that the
10. The tenth is the fact that the

11. The eleventh is the fact that the
12. The twelfth is the fact that the
13. The thirteenth is the fact that the
14. The fourteenth is the fact that the
15. The fifteenth is the fact that the
16. The sixteenth is the fact that the
17. The seventeenth is the fact that the
18. The eighteenth is the fact that the
19. The nineteenth is the fact that the
20. The twentieth is the fact that the

April

John E. Gay (John E. Gay)
1. The first of these is the fact that the
2. The second is the fact that the
3. The third is the fact that the
4. The fourth is the fact that the
5. The fifth is the fact that the
6. The sixth is the fact that the
7. The seventh is the fact that the
8. The eighth is the fact that the
9. The ninth is the fact that the
10. The tenth is the fact that the

11. The eleventh is the fact that the
12. The twelfth is the fact that the
13. The thirteenth is the fact that the
14. The fourteenth is the fact that the
15. The fifteenth is the fact that the
16. The sixteenth is the fact that the
17. The seventeenth is the fact that the
18. The eighteenth is the fact that the
19. The nineteenth is the fact that the
20. The twentieth is the fact that the

Harbert N. Ryan

Kerry R. Sweatt

1. The first of these is the fact that the
2. The second is the fact that the
3. The third is the fact that the
4. The fourth is the fact that the
5. The fifth is the fact that the
6. The sixth is the fact that the
7. The seventh is the fact that the
8. The eighth is the fact that the
9. The ninth is the fact that the
10. The tenth is the fact that the
11. The eleventh is the fact that the
12. The twelfth is the fact that the
13. The thirteenth is the fact that the
14. The fourteenth is the fact that the
15. The fifteenth is the fact that the
16. The sixteenth is the fact that the
17. The seventeenth is the fact that the
18. The eighteenth is the fact that the
19. The nineteenth is the fact that the
20. The twentieth is the fact that the

Kerry R. Sweatt (Kerry R. Sweatt)
1. The first of these is the fact that the
2. The second is the fact that the
3. The third is the fact that the
4. The fourth is the fact that the
5. The fifth is the fact that the
6. The sixth is the fact that the
7. The seventh is the fact that the
8. The eighth is the fact that the
9. The ninth is the fact that the
10. The tenth is the fact that the

ATTACHMENT B

North Texas Municipal Water District Regional Water Supply Facilities Amendatory Contract

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