

necessary. For such additional testing requests, Midlothian shall give Sardis notice forty-eight (48) hours in advance of the time when any such testing shall occur. Sardis shall pay the cost of any such additional testing request for any Meter if the test shows that such Meter is accurate (within five percent (5%) registration), but Midlothian shall pay the costs of such additional test if the results indicate that such Meter is not accurate (in excess of five percent (5%) registration).

ARTICLE 5

Fees, Billing, and Payment

5.1 Charges for Water.

- (a) **Untreated Water.** In accordance with Article 3.1(a)(2), herein, within five (5) years from the Effective Date of this Agreement, Sardis, with Midlothian's cooperation, shall secure and pay or cause others to pay (i) Midlothian the TRWD Buy-In cost for all quantities of Raw Water, and (ii) the portion of the "take-or-pay" rates attributable to Sardis, if any, that is charged to Midlothian by TRWD through the TRA. All Raw Water treated by Midlothian shall be considered TRWD Raw Water, regardless of the source and/or treatment facility providing the treatment, and shall be subject to the TRWD through the TRA Raw Water Rate.
- (b) **Treated Water.** Except as otherwise provided in this Agreement, Sardis shall pay to Midlothian the following fees and charges for the Treated Water delivered by Midlothian to Sardis at each Point of Delivery: Volume Charge and Raw Water Charge. Such fees and charges may include Late Fees.

5.2 Water Rates.

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

Volume Rate - \$2.41 per 1,000 gallons

The Initial Minimum Day Demand, taken over a 24 hour period, is 0.25 MGD.

After five (5) years from the Effective Date of this Agreement and the provisions of Article 5.1(a) are satisfied, the Minimum Day Demand, taken over a 24 hour period, will be increased to 0.50 MGD.

The Maximum Day Demand, taken over a 24 hour period, is 1.0 MGD.

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

Raw Water Rate - \$1.08883 per 1,000 gallons.

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

5.3 Billing and Payment.

- (a) **Volume Charge.** Each month during the term of this Agreement, Midlothian shall read each Meter measuring the amount of Treated Water provided to Sardis. The number of gallons of Treated Water measured by each Meter shall be multiplied by the Volume Rate to determine the Volume Charge. Midlothian shall prepare and deliver to Sardis a statement showing the Volume Charge for all Treated Water delivered to Sardis. Payment shall be made no later than the 30th day after receipt of the statement.
- (b) **Raw Water Charge.** Each month during the term of this Agreement, Midlothian shall read each Meter measuring the amount of Treated Water provided to Sardis. The numbers of gallons of Treated Water measured by each Meter plus an amount equal to five percent (5%) of the total number of gallons treated shall be multiplied by the Raw Water Rate as charged to Midlothian by TRWD to calculate the Raw Water Charge. The billing and payment for the Raw Water Charge shall be made in accordance with the billing and payment for the Volume Charge in Article 5.3(a).
- (c) **Late Fees.** If Sardis is late in the payment of any charge or fee due and payable to Midlothian under this Agreement, late payments shall bear per annum interest at a rate equal to the lesser of two percentage points (2%) above the Prime Interest Rate as published in the Wall Street Journal on the day said statement becomes delinquent, or the maximum allowed by law to be charged to Sardis. If any charges remain unpaid at the expiration of thirty (30) days after receipt of the statement, Sardis shall be in default under this Agreement, and Midlothian may invoke the remedies specified herein or otherwise available by law.
- (d) **Settle-Up.** A "settle-up" shall be made no less than sixty (60) days after the end of Midlothian's fiscal year, whereupon any under or over payment shall be paid or remitted to the appropriate Party.

5.4 Billing Questions and Disputes.

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

The Parties agree to negotiate in good faith to resolve the dispute. The Parties shall agree to submit the dispute to non-binding mediation as provided in Article 11.1 of this Agreement.

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

ARTICLE 6 Restrictions and Conditions

- 6.1 **Resale of Treated Water.** Sardis and Midlothian agree that the Treated Water supplied to Sardis by Midlothian shall be used solely by Sardis to meet the reasonable water supply needs of Sardis' potable retail and wholesale water customers located within Sardis' service area as defined by their water CCN, as currently authorized or as may be amended in the future. Sardis shall not sell Treated Water to customers of Midlothian.

6.2 Water Conservation and Demand Management.

- (a) **Water Conservation.** Sardis shall cooperate with and assist Midlothian and TRWD through the TRA in their efforts to promote water conservation, so long as the water conservation measures placed on Sardis by Midlothian or TRWD through the TRA are not more restrictive than the measures Midlothian or TRWD through the TRA places on its other Municipal Customers. This may include the development of any conservation or rationing plans by either Midlothian, TRWD through the TRA, or Sardis that may be necessary or appropriate to address operational constraints, whether or not the same are required by any state or federal regulatory agency. Additionally, upon the development and distribution of model drought contingency or water conservation plans by TRWD through the TRA, Sardis agrees to implement any such drought contingency or water conservation plan, or substitute plan

approved by TRWD through the TRA, within a reasonable amount of time from receipt of the model plan. Sardis agrees to notify TRWD through the TRA in writing of any deviation from the model plan and obtain TRWD's consent to such proposed deviation. Furthermore, Sardis agrees to include the foregoing provision in all future contracts for resale of Treated Water on a wholesale basis. Sardis shall provide a copy of any drought contingency or water conservation plan adopted by Sardis to Midlothian and TRWD through the TRA within thirty (30) days from the Effective Date.

- (b) **Demand Management.** When Midlothian or TRWD through the TRA shall manage water demand through rationing the use of water to its Municipal Customers, then a proportional rationing of Treated Water supplied to Sardis by Midlothian shall be instituted, at Midlothian's option; provided, however, the rationing measures placed on Sardis shall not be more restrictive than the measures placed on the other Municipal Customers of Midlothian or TRWD through the TRA. Rationing does not relieve Sardis from its obligation to pay, its take-or-pay obligations, and the Raw Water Charge unless such rationing extends for a continuous period exceeding fifteen (15) days. At such time rationing exceeds a continuous fifteen (15) day period, Sardis' take-or-pay obligations, and the Raw Water Charge will be proportionally adjusted to reflect its reduced demand instituted through rationing measures. Upon Midlothian's removal of such rationing measures, the take-or-pay obligations, and the Raw Water Charge will be adjusted to reflect the removal of the rationing measures.
- (c) **Temporary Rationing.** Where an Emergency may dictate temporary conservation or rationing requirements for either Midlothian or Sardis, either Party may implement any measures considered appropriate by it to alleviate the Emergency. If either Party implements measures to alleviate an Emergency, such Party shall notify the other Party in writing within five (5) days of implementing such measures.

6.3 Federal and State Laws. This Agreement is subject to all applicable federal and state laws and any applicable permits, amendments, orders, or regulations of any state or federal governmental authority having or asserting jurisdiction, but nothing contained herein shall be construed as a waiver of any right to question or contest any such law, order, rule or regulation in any forum having jurisdiction. Sardis agrees to abide by any changes in this Agreement made necessary by any new, amended, or revised state or federal regulation.

6.4 Support of Midlothian on Permits and Governmental Agency Approvals. Sardis shall use all reasonable efforts to support and assist Midlothian in obtaining permits and approvals from governmental agencies in order to protect, repair, maintain, replace, add to, supplement and/or enlarge the Midlothian Raw Water System and/or the Midlothian Treated Water System. Such support and assistance shall include, but is not limited to: providing information to Midlothian when requested by Midlothian in order to facilitate any permit or approval; providing written and oral statements of support and assistance or testimony, information, and evidence if appropriate and if requested by Midlothian in order to obtain any permit or approval; and taking all such

other action as may be appropriate to support and assist Midlothian in obtaining any permit or approval.

ARTICLE 7

Term of Agreement and Extension

- 7.1 Term of Agreement.** Unless terminated as provided in this Agreement, this Agreement shall commence upon the Effective Date and shall remain in effect for a term of five (5) years. In the event that Sardis secures Raw Water for treatment by Midlothian, as specified in Article 5.1(a), this Agreement shall remain in effect for a total term of twenty (20) years from the Effective Date.

If Sardis is unable to secure Raw Water for treatment by Midlothian, as specified in Article 5.1(a), Midlothian may nonetheless continue to provide Treated Water to Sardis on a year-by-year basis or terminate this Agreement at Midlothian's sole discretion.

- 7.2 Renewal of Agreement.** *This provision only applies if the Term of Agreement in Article 7.1 is in effect for twenty (20) years.* At the end of the term of this Agreement, this Agreement shall automatically renew for an additional twenty (20) year term, unless either party notifies the other in writing that it does not want to renew this Agreement. Such written notification shall be delivered to the parties at least five (5) years prior to the Expiration Date. Sardis expressly acknowledges that it has no right or entitlement to Raw Water or Treated Water from Midlothian after the expiration of this Agreement except to the extent that this Agreement is renewed as provided herein.

- 7.3 Payments After Non-Renewal.** If this Agreement is not renewed, after expiration of this Agreement, Sardis shall nonetheless pay Midlothian for all Raw Water Charges and Volume Charges for Treated Water delivered prior to the expiration of this Agreement, as well as penalties such as Late Fees, under the terms of this Agreement.

ARTICLE 8

Termination and Default

- 8.1 Termination by Mutual Consent.** This Agreement may be terminated in whole or in part by the mutual written consent of Sardis and Midlothian. In the event of termination of this Agreement by such mutual consent, all rights, powers, and privileges of the Parties hereunder shall cease and terminate without necessity of further action. Neither Party shall make any claim of any kind whatsoever against the other Party, its agents or representatives, by reason of such termination or any act incident thereto. If the Parties agree to terminate this Agreement, Sardis shall nonetheless pay Midlothian for all Raw Water Charges and Volume Charges for Treated Water delivered prior to the termination of this Agreement, as well as penalties such as Late Fees under the terms of this Agreement. The provisions of this section survive termination of this Agreement.
- 8.2 Default by Sardis.** In the event Sardis is in default under the terms of this Agreement, other than default by failing to timely pay the amount due Midlothian, Midlothian shall give Sardis written notice of such default. If Sardis' default is not

cured after the expiration of thirty (30) days after the receipt of such written notification, then Midlothian may temporarily suspend the delivery of Treated Water to Sardis.

- 8.3 Default by Midlothian.** In the event Midlothian is in default under the terms of this Agreement, Sardis shall give Midlothian written notice of such default. If Midlothian's default is not cured after the expiration of thirty (30) days after such written notification is given to Midlothian, Sardis may seek remedies, other than termination, in accordance with this Agreement.
- 8.4 Damages.** In no event shall either Party be liable to the other Party for any special, indirect, incidental, consequential, or punitive damages for any dispute arising under this Agreement. In the event either Party is awarded damages in a final, non-appellable judgment, then such damages shall be offset against all sums due or to become due to the other Party hereunder until the awarded Party's damages are fully compensated.
- 8.5 Other Charges.** In the event any sales or use taxes, or taxes, assessments, production fees or charges of any similar nature are imposed by a federal, state, or local authority (other than a Party to this Agreement) on production, storing, delivering, gathering, impounding, taking, selling, using, or consuming the water received by a Party to this Agreement, the amount of tax, assessment, or charge shall be borne by that Party, in addition to all other charges, and whenever a Party shall be required to pay, collect, or remit any tax, assessment, or charge on water received by such Party, then the other Party shall promptly pay or reimburse such Party for the tax, assessment, or charge in the manner directed by such Party.
- 8.6 Default in Payments.** All amounts due and owing to a Party to this Agreement by the other Party to this Agreement shall, if not paid when due, bear interest at the Texas post-judgment interest rate under Texas law from the date when due until paid, provided that such rate shall never be usurious or exceed the maximum rate as permitted by law as set forth in Chapter 1204, as amended, Texas Government Code. If any amount due and owing by one Party to the other Party is placed with an attorney for collection, the Party owing the amount shall pay to the other Party, in addition to all other payments provided by this Agreement, including interest, the other Party's collection expenses, including court costs and attorneys' fees as may be the order of the court or tribunal. The Party who is owed the money may, to the extent permitted by law, suspend delivery of water to the other Party if the other Party remains delinquent in any payments due hereunder for a period of sixty (60) days, and is not required to resume delivery of water while the Party is so delinquent. Either Party may pursue all legal remedies against the other Party to enforce and protect the rights of the Party under this Agreement.
- 8.7 Pledge of Gross Revenue.** Each Party to this Agreement represents and covenants to the other Party that all payments to be made by it under this Agreement shall constitute reasonable and necessary "operating expenses" of its utility system, and that all such payments will be made from the gross revenues of its utility system. Each Party represents and has determined that the water supply to be obtained from

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

- 8.8** A PARTY TO THIS AGREEMENT SHALL NEVER HAVE THE RIGHT TO DEMAND PAYMENT BY ANOTHER PARTY OF ANY OBLIGATIONS ASSUMED BY OR IMPOSED UPON THAT PARTY UNDER OR BY VIRTUE OF THIS AGREEMENT FROM ANY FUNDS RAISED OR TO BE RAISED BY TAXATION AND A PARTY'S OBLIGATION UNDER THIS AGREEMENT SHALL NEVER BE CONSTRUED TO BE A DEBT OF THE PARTY OF SUCH KIND AS TO REQUIRE IT UNDER THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS TO LEVY AND COLLECT A TAX TO DISCHARGE SUCH OBLIGATION.
- 8.9** **Payment under Protest.** If a Party at any time disputes the amount to be paid by it to the other Party, the Party shall nevertheless promptly make the disputed payment or payments, but if it is subsequently determined by agreement or court decision that the disputed amount paid by the Party should have been less, or more, the other Party shall promptly revise the monthly payment in a manner that the Party, will recover the amount due within six (6) months.
- 8.10** **Stipulations.** By signing this Agreement, each Party stipulates and agrees that the other Party will be prejudiced if a Party avoids the obligation to furnish water while accepting the benefits of payments, or avoids the obligation to pay the rates for water specified in this Agreement while accepting the benefits of obtaining water, from the other Party. Nothing in this Agreement shall be construed as constituting an undertaking by a Party to furnish water to the other Party except pursuant to the terms of this Agreement.
- 8.11** **Remedies.** Recognizing that failure in the performance of any Party's obligations hereunder could not be adequately compensated in money damages alone, each Party agrees in the event of any default on its part that each Party shall have available to it the equitable remedy of mandamus and/or specific performance, but not termination. It is the intent of the Parties that any default shall be subject to the remedy of specific performance and/or mandamus to the extent that specific performance and/or mandamus is possible under the existing circumstances. The remedy of specific

performance and/or mandamus shall be first requested by either Party in the event of default by the other Party. However, if, despite a Party's request for specific performance or mandamus, a court determines that the other Party has breached this Agreement, but the court declines to order specific performance as a remedy, the Party shall then be entitled to seek damages. In either event, the prevailing Party may recover court costs, attorneys' fees, and witness fees.

ARTICLE 9

Force Majeure

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

ARTICLE 10

Ownership, Liability, Indemnification, and Insurance

- 10.1 Responsibility for Damages for Water.** Midlothian shall be the owner of and responsible for the Treated Water only to each Delivery Point. After the Treated Water has passed through each Delivery Point, it becomes the property and responsibility of Sardis. Unless otherwise provided in this Agreement, responsibility for damages arising from the improper treatment, transportation, and delivery of all Treated Water provided under this Agreement shall remain with Midlothian to each Delivery Point. Upon passing through each Delivery Point, liability for all damages

arising from improper transportation and delivery of the Treated Water after it leaves the Midlothian system shall pass to Sardis. Midlothian's sole responsibility is to provide to Sardis at each Delivery Point potable water meeting the minimum quality requirements for human consumption as prescribed by the TCEQ or appropriate governing agency.

- 10.2 Immunities under State Law.** Nothing in this Agreement shall be construed as waiving sovereign immunity or any other immunity that Midlothian or Sardis may be entitled to under state or federal law.
- 10.3 Direct or Consequential Damages.** Neither Midlothian nor Sardis shall be liable to the other for loss, either direct or consequential, arising out of damage to or destruction of the rights-of-way or either Party's facilities thereon, when such loss is caused by an act of God or any of the perils that are included within or insured against by a form of property insurance. All such claims for any and all loss, however caused, hereby are waived. Said absence of liability shall exist whether or not the damage or destruction is caused by the negligence of either Party or by any of their respective agents, servants, or employees.
- 10.4 Indirect or Consequential Damages.** Sardis' or Midlothian's liability, if any, to the other Party in contract or in tort under this Agreement specifically excludes any and all indirect or consequential damages that may arise from providing Treated Water to Sardis or that may arise from the operation, maintenance, and management of the Midlothian Raw Water System and the Midlothian Treated Water System.
- 10.5 Waiver or Subrogation.** It is the intention and agreement of both Parties that any insurance carriers involved shall not be entitled to subrogation under any circumstances against any Party to this Agreement. Neither Party shall have any interest or claim in the other's insurance policy or policies, or in the proceeds thereof, unless specifically covered therein as an additional insured.

ARTICLE 11

Dispute Resolution

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

ARTICLE 12

Notice

- 12.1 Manner of Giving Notice.** Unless otherwise provided in this Agreement, any notice, communication, request, reply, advice, approval or consent herein provided or permitted to be given, made, or accepted by either Party to the other, must be in writing and may be given by personal delivery, electronic delivery, or be served by depositing the same in the United States Mail postpaid and registered or certified and addressed to the Party to be notified with return receipt requested, or by delivering the same to the Mayor/City Manager or Board President/General Manager. Any such matter deposited in the mail in the manner hereinabove described shall become exclusively deemed to be effective, unless otherwise stated in this Agreement, from

and after the earlier of actual receipt of notice or the expiration of four (4) days after it is so deposited. Any such notice given in any other manner shall be effective only if and when received by the Party to be notified.

Notice to Midlothian.

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

Notice to Sardis.

General Manager
Sardis-Lone Elm WSC
6681 West Highland Road
Midlothian, Texas 76065

The Parties shall have the right from time to time and at any time to change their respective addresses and each shall have the right to specify as its address any other address by at least five (5) days written notice to the other Party.

ARTICLE 13

Miscellaneous Provisions

- 13.1 Governing Law.** This Agreement shall be governed by the applicable law of the State of Texas and due performance by each Party or any action arising under this Agreement shall lie in Ellis County, Texas. Jurisdiction and venue shall be in Ellis County, Texas, and each of the Parties submits to personal jurisdiction in the state district courts in such county.
- 13.2 No Waiver.** Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to any of the Parties nor to create any legal rights or claim on behalf of any third Party. No Party waives, modifies, or alters to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas or the United States.
- 13.3 Entire Agreement.** This Agreement and any Exhibits hereto embody the entire agreement and understanding of the Parties hereto and supersede any and all prior agreements, arrangements and understandings relating to the matters provided for herein. No amendment, waiver of compliance with any provision or condition hereof or consent pursuant to this Agreement shall be effective unless evidenced by an instrument in writing signed by the Party against whom enforcement of any amendment, waiver or consent is sought. This Agreement may not be amended or modified except in writing executed by all Parties and authorized by their respective governing bodies.
- 13.4 Partial Invalidity.** If any provision of this Agreement is held to be invalid, illegal, or unenforceable in any judicial action, the remaining provisions shall be unaffected. In the event any provision of this Agreement is held to be invalid, illegal, or unenforceable in any judicial action, the Parties shall, upon the request of a Party,

promptly renegotiate in good faith a new provision to eliminate the invalidity and to restore this Agreement, as nearly as possible, to its original intent and effect.

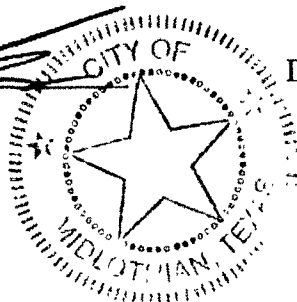
- 13.5 Duty to Review and Revise.** The Parties shall review and revise this Agreement to ensure compliance with the federal and state laws and rules and regulations as necessary.
- 13.6 Survival.** Any provision that by its terms survives the termination of this Agreement shall bind the Parties' legal representatives, heirs, and assigns as set forth herein.
- 13.7 Assignment.** This Agreement shall not be assignable by either Party without the prior written consent of the other Party nor in contravention of any other provisions contained herein.
- 13.8 Benefits.** This Agreement shall bind and the benefits thereof shall inure to the respective Parties hereto, their heirs, legal representatives, executors, administrators, successors, and assigns. This Agreement shall not be construed as creating any rights in any third Party or any duty to any third Party.
- 13.9 Multiple Copies.** This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall be considered fully executed as of the date when all Parties have executed an identical counterpart, notwithstanding that all signatures may not appear on the same counterpart.
- 13.10 Deadlines.** To the extent that the date for any payment or notice due hereunder by either Party shall fall on a Day that is not a Business Day, such deadline for payment or notice, as the case may be, shall be automatically extended to the next following Business Day.
- 13.11 Third Party Beneficiaries.** Except as otherwise expressly provided herein, nothing in this Agreement, express or implied, is intended to confer upon any person, other than the Parties hereto and their heirs, personal representatives, successors and assigns, any benefits, rights or remedies under or by reason of this Agreement.

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

Executed this 11th day of August 2015

City of Midlothian


City Manager



Date 8/11/15

ATTEST

Deputy By Mary McDonald
City Secretary, City of Midlothian

Sardis-Lone Elm Water Supply Corporation

3RT Brando
President

Date 7/21/15

ATTEST

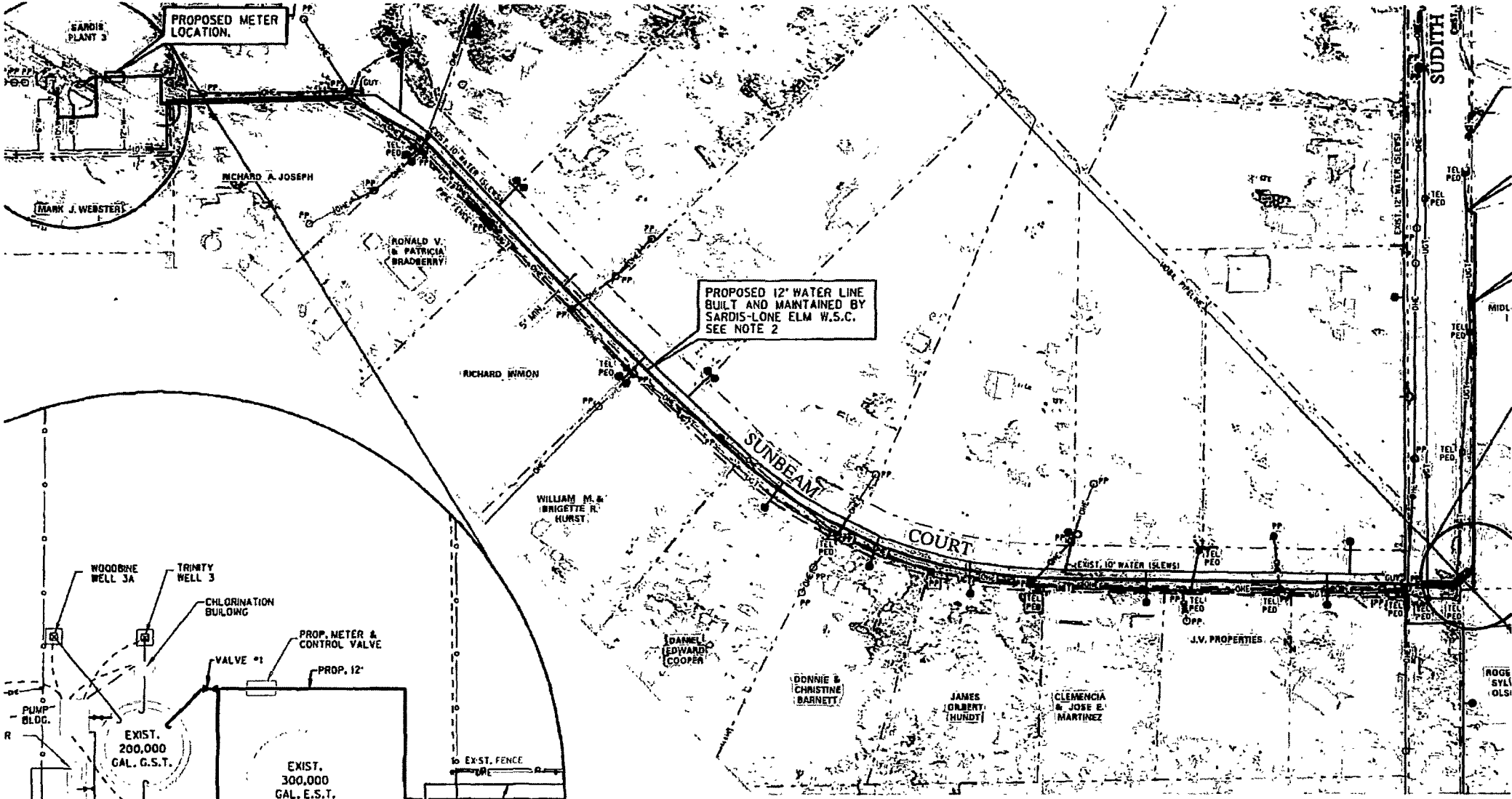
By Dan Rayford
Secretary, Sardis-Lone Elm Water Supply Corporation

APPROVED AS TO FORM:

By [Signature]
City Attorney, Midlothian

By [Signature]
Attorney, Sardis

Exhibit A
Delivery Point

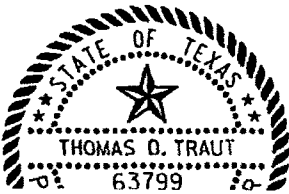


- NOTES:
1. THE WATER LINE EXTENSION ALONG SUDITH LANE SHALL BE C-900 PVC PIPE.
 2. THE WATER LINE INSTALLATION ALONG SUNBEAM COURT SHALL BE SDR 21 PVCO PIPE.

SARDIS PLANT NO. 3

| | | |
|--------------------------|----------|--------|
| NORMAL CONDITIONS: | VALVE #1 | OPEN |
| | VALVE #2 | CLOSED |
| | VALVE #3 | OPEN |
| REVERSE FLOW CONDITIONS: | VALVE #1 | CLOSED |
| | VALVE #2 | OPEN |

| LEGEND | |
|--------|--------------------------------------|
| | PROPOSED WATER LINE |
| | EXIST. WATER LINE TO REMAIN IN SERV. |
| | EXIST. WATER LINE TO BE ABANDONED |



| | |
|-----|----|
| 113 | V |
| | |
| | E) |

Exhibit B

Rate Methodology Policy

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

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

rate study test year, excluding raw water costs charged to Midlothian by TRWD through the TRA that are recovered through the Raw Water Rate.

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

be used until Midlothian has performed an independent lead-lag study to document the Working Capital factor.

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

APPENDIX A

Glossary of Terms

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

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

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

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

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

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

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

Interest Expense - Payments made for the use of borrowed funds

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

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

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

MGD - Million gallons per day flow rate

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

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

Rate Base - Total investment dedicated to providing utility service

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

Raw Water Costs - Costs incurred in acquiring untreated water supplies

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

APPENDIX A - CONTINUED GLOSSARY OF TERMS

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

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

Treated Water - Raw water that has passed the purification process

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

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

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

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

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

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

**FIRST AMENDMENT TO
AGREEMENT FOR THE SALE AND DELIVERY OF TREATED WATER
TO THE SARDIS-LONE ELM WATER SUPPLY CORPORATION
BY THE CITY OF MIDLOTHIAN**

THIS FIRST AMENDMENT is made by and between the City of Midlothian, a home rule municipality operating under and governed by the laws and Constitution of the State of Texas (“Midlothian”), and Sardis-Lone Elm Water Supply Corporation, a member-owned corporation established under Chapter 67 of the Texas Water Code (“Sardis”), hereinafter collectively referred to as the “Parties,” pursuant to the following considerations:

WHEREAS, Midlothian and Sardis entered into a treated water agreement (“Agreement for the Sale and Delivery of Treated Water to the Sardis-Lone Elm Water Supply Corporation by the City of Midlothian,” referred to as “Agreement”) with an effective date of August 11, 2015; and

WHEREAS, in accordance with Articles 3.1(a)(1) and 5.1(a) of the Agreement, within five (5) years of the effective date of the Agreement, Sardis is required to secure the Raw Water necessary for Midlothian to treat on their behalf and pay or cause others to pay the TRWD Buy-In cost for said Raw Water; and

WHEREAS, Articles 5.3(a) and (b) within the Agreement outline the billing procedures, which result in different monthly billing amounts throughout the term of the Agreement; and

WHEREAS, in order to address and better clarify the rights of the Parties relating to the Raw Water that is to be secured by Sardis and to simplify the monthly billing procedures to the mutual benefit of the Parties, the Parties wish to amend certain provisions contained within the Agreement.

NOW THEREFORE, the Parties, for good and valuable consideration, agree to amend the Agreement as follows:

That the entirety of **Article 5.3, Billing and Payment** shall be amended and replaced with the following language:

5.3 Billing and Payment

Midlothian shall prepare and deliver to Sardis monthly invoices during the fiscal year (October 1 to September 30) which will be based on the contracted minimum day demand volume as listed in Article 5.2(a) multiplied by the number of days in the fiscal year, divided by 12 for an average monthly volume and then multiplied by the current rate (comprised of the Volume and Raw Water Charges as detailed in Article 5.3(a) and (b)) per 1,000 gallons. Payment shall be made by Sardis no later than the 30th day after receipt of the invoice. The City will continue to read each meter in accordance with Article 5.3(a) and (b) and based upon these readings, any volumes in excess of the contracted minimum day demand for the fiscal year will be billed at the same rate per 1,000 gallons in accordance with Article 5.3(d).

- (a) **Volume Charge.** Each month during the term of this Agreement, Midlothian shall read each Meter measuring the amount of Treated Water provided to Sardis. The number of gallons of Treated Water measured by each Meter shall be multiplied by the Volume Rate to determine the Volume Charge.
- (b) **Raw Water Charge.** Each month during the term of this Agreement, Midlothian shall read each Meter measuring the amount of Treated Water provided to Sardis. The number of gallons of Treated Water measured by each Meter plus an amount equal to five percent (5%) of the total number of gallons treated shall be multiplied by the Raw Water Rate as charged to Midlothian by TRWD to calculate the Raw Water Charge.
- (c) **Late Fees.** If Sardis is late in the payment of any charge or fee due and payable to Midlothian under this Agreement, late payments shall bear per annum interest at a rate equal to the lesser of two percentage points (2%) above the Prime Interest Rate as published in the Wall Street Journal on the day said statement becomes delinquent, or the maximum allowed by law to be charged to Sardis. If any charges remain unpaid at the expiration of thirty (30) days after receipt of the statement, Sardis shall be in default under this Agreement, and Midlothian may invoke the remedies specified herein or otherwise available by law.
- (d) **Settle-Up.** A “settle-up” shall be made no less than sixty (60) days after the end of Midlothian’s fiscal year, whereupon any under or over payment shall be paid or remitted to the appropriate Party.

That the entirety of **Article 7.2, Renewal of Agreement** shall be amended and replaced with the following language:

7.2 Renewal of Agreement. *This provision only applies if the Term of Agreement in Article 7.1 is in effect for twenty (20) years.* At the end of the Term of this Agreement on August 11, 2035, this Agreement shall automatically renew for an additional twenty (20) year term, unless either Party notifies the other in writing that it does not want to renew this Agreement. Such written notification shall be delivered to the Parties on or before August 11, 2030, which is at least five (5) years prior to the Expiration Date. Sardis expressly acknowledges that it has no right or entitlement to Treated Water from Midlothian after the expiration of this Agreement except to the extent that this Agreement is renewed as provided herein. Midlothian expressly acknowledges that it has no right or entitlement to the Raw Water that Sardis secures for treatment by Midlothian as provided for in this Agreement after the expiration or termination of this Agreement except to the extent that this Agreement is renewed as provided herein.

This First Amendment shall become effective based upon the latter date that this Amendment is executed by the Parties.

THIS FIRST AMENDMENT SHALL IN NO WAY ALTER THE EFFECTIVE DATE OF THE AGREEMENT AND ALL OTHER PROVISIONS OF SAID AGREEMENT SHALL REMAIN IN FULL FORCE AND EFFECT.

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

Executed this _____ day of _____, 2017.

City of Midlothian

City Manager

ATTEST:

By: _____
City Secretary, City of Midlothian

Executed this _____ day of _____, 2017.

Sardis-Lone Elm Water Supply Corporation

President

ATTEST:

By: _____
Secretary, Sardis-Lone Elm Water Supply Corporation

APPROVED AS TO FORM:

By: _____
City Attorney, Midlothian

By: _____
Attorney, Sardis

**SECOND AMENDMENT TO
AGREEMENT FOR THE SALE AND DELIVERY OF TREATED WATER
TO THE SARDIS-LONE ELM WATER SUPPLY CORPORATION
BY THE CITY OF MIDLOTHIAN**

THIS SECOND AMENDMENT is made by and between the City of Midlothian, a home rule municipality operating under and governed by the laws and Constitution of the State of Texas (“Midlothian”), and Sardis-Lone Elm Water Supply Corporation, a member-owned corporation established under Chapter 67 of the Texas Water Code (“Sardis”), hereinafter collectively referred to as the “Parties,” pursuant to the following considerations:

WHEREAS, Midlothian and Sardis entered into a treated water agreement (“Agreement for the Sale and Delivery of Treated Water to the Sardis-Lone Elm Water Supply Corporation by the City of Midlothian,” referred to as “Agreement”) with an effective date of August 11, 2015; and

WHEREAS, in order to address and better clarify the rights of the Parties relating to the Raw Water that is to be secured by Sardis and to simplify the monthly billing procedures to the mutual benefit of the Parties, Midlothian and Sardis amended this Agreement (referred to as “First Amendment”) on June 27, 2017; and

WHEREAS, in order to address the sharing of information related to Sardis’ customers that receive sanitary sewer service from Midlothian and to further address the rights of the Parties relating to the Raw Water that is to be secured by Sardis, the Parties wish to amend certain provisions contained within the Agreement.

NOW THEREFORE, the Parties, for good and valuable consideration, agree to amend the Agreement as follows:

That **Article 3, Water Provided Under Agreement** shall be amended to include **Article 3.11, Sharing of Information** and the following language:

3.11 Sharing of Information

The Parties agree that Sardis currently serves and will continue to serve customers within its CCN that receive sanitary sewer service from Midlothian. Based on this and to the extent permitted by law, Sardis agrees to share information throughout the term of this Agreement, as requested by Midlothian, on their customers that receive sanitary sewer service from Midlothian. Such information shall include the customer’s name and address, the monthly meter readings and the monthly water consumption in gallons. Sardis agrees to provide this information at no cost to Midlothian and Midlothian agrees to receive the information in the standard format used by Sardis.

That the entirety of **Article 7.2, Renewal of Agreement** shall be amended and replaced with the following language:

7.2 Renewal of Agreement. *This provision only applies if the Term of Agreement in Article 7.1 is in effect for twenty (20) years.* At the end of the Term of this Agreement on August 11, 2035, this Agreement shall automatically renew for an additional twenty (20) year term, unless either Party notifies the other in writing that it does not want to renew this Agreement. Such written notification shall be delivered to the Parties on or before August 11, 2030, which is at least five (5) years prior to the Expiration Date. Sardis expressly acknowledges that it has no right or entitlement to Treated Water from Midlothian after the expiration of this Agreement except to the extent that this Agreement is renewed as provided herein. Midlothian expressly acknowledges that it has no right or entitlement to the Raw Water that Sardis secures for treatment by Midlothian as provided for in this Agreement after the expiration or termination of this Agreement except to the extent that this Agreement is renewed as provided herein. Midlothian further agrees to support the transfer of the Raw Water rights that Sardis secures for treatment by Midlothian as provided for in this Agreement from Midlothian to Sardis or their designee after the expiration or termination of this Agreement.

This Second Amendment shall become effective based upon the latter date that this Amendment is executed by the Parties.

THIS SECOND AMENDMENT SHALL IN NO WAY ALTER THE EFFECTIVE DATE OF THE AGREEMENT AND ALL OTHER PROVISIONS OF SAID AGREEMENT SHALL REMAIN IN FULL FORCE AND EFFECT.

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

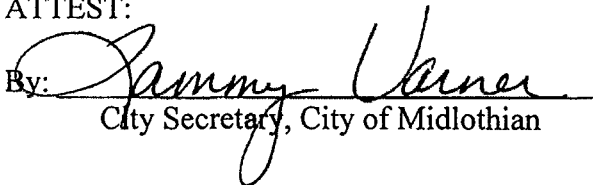
Executed this 12th day of September, 2017.

City of Midlothian



City Manager

ATTEST:

By: 
City Secretary, City of Midlothian



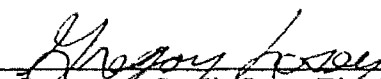
Executed this 25 day of Sept., 2017.

Sardis-Lone Elm Water Supply Corporation



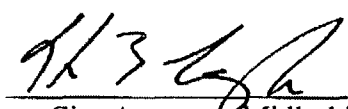
President

ATTEST:


By: 

Secretary, Sardis-Lone Elm Water Supply Corporation

APPROVED AS TO FORM:

By: 

City Attorney, Midlothian

By: 

Attorney, Sardis

**THIRD AMENDMENT TO
AGREEMENT FOR THE SALE AND DELIVERY OF TREATED WATER
TO THE SARDIS-LONE ELM WATER SUPPLY CORPORATION
BY THE CITY OF MIDLOTHIAN**

THIS THIRD AMENDMENT is made by and between the City of Midlothian, a home rule municipality operating under and governed by the laws and Constitution of the State of Texas ("Midlothian"), and Sardis-Lone Elm Water Supply Corporation, a member-owned corporation established under Chapter 67 of the Texas Water Code ("Sardis"), hereinafter collectively referred to as the "Parties," pursuant to the following considerations:

WHEREAS, Midlothian and Sardis entered into a treated water agreement ("Agreement for the Sale and Delivery of Treated Water to the Sardis-Lone Elm Water Supply Corporation by the City of Midlothian," referred to as "Agreement") with an effective date of August 11, 2015; and

WHEREAS, in order to address and better clarify the rights of the Parties relating to the Raw Water that is to be secured by Sardis and to simplify the monthly billing procedures to the mutual benefit of the Parties, Midlothian and Sardis amended this Agreement (referred to as "First Amendment") on June 27, 2017; and

WHEREAS, in order to address the sharing of information related to Sardis' customers that receive sanitary sewer service from Midlothian and to further address the rights of the Parties relating to the Raw Water that is to be secured by Sardis, Midlothian and Sardis amended this Agreement (referred to as "Second Amendment") on September 12, 2017 and September 25, 2017, respectively; and

WHEREAS, the Agreement specifies the location of the initial delivery point as shown on Exhibit A, which is attached to and made a part of the Agreement and includes provisions for the addition of future delivery points; and

WHEREAS, Sardis desires to add a second delivery point from which to receive treated water from Midlothian and therefore in order to include this second point, the Parties wish to amend certain provisions contained within the Agreement.

NOW THEREFORE, the Parties, for good and valuable consideration, agree to amend the Agreement as follows:

That **Article 3.3, Delivery Points** shall be amended and replaced with the following language:

- 3.3 Delivery Points.** Subject to the conditions set forth herein, Midlothian agrees to divert, transport, treat and deliver Treated Water to Sardis at each Delivery Point. The location of Delivery Points shall be mutually agreed upon by and between Sardis and Midlothian. Delivery Points shall not be moved or relocated except by mutual consent of the Parties in writing. The initial Delivery Point shall be as shown on Exhibit A and the second Delivery Point shall be as shown on Exhibit C, attached hereto and incorporated herein for all

purposes. Any future Delivery Points shall require an amendment to this Agreement, with the location of said Delivery Points depicted on a separate exhibit and included as part of this Agreement. Said exhibit(s) shall show the water mains, meters, vaults, valves and other associated appurtenances and clearly identify the limits of the Parties responsibilities and ownership.

That **Article 3.10, Maximum Delivery Rate** shall be amended and replaced with the following language:

3.10 Maximum Delivery Rate. The Parties agree that Midlothian's obligation under this Agreement to deliver Treated Water to Sardis is subject to the Maximum Rate of Flow as set forth below:

| | |
|-------------------------|--------------------|
| Initial Delivery Point: | 694 gpm (1.0 MGD)* |
| Second Delivery Point: | 694 gpm (1.0 MGD)* |

* maximum combined Rate of Flow between Initial and Second Delivery Points shall not exceed 694 gpm (1.0 MGD)

The maximum Rate of Flow at each additional Delivery Point, which is mutually agreed to under this Agreement, shall be agreed upon by the Parties in accordance with Article 4.2 at the time the Parties agree upon each additional Delivery Point.

This Third Amendment shall become effective based upon the latter date that this Amendment is executed by the Parties.

THIS THIRD AMENDMENT SHALL IN NO WAY ALTER THE EFFECTIVE DATE OF THE AGREEMENT AND ALL OTHER PROVISIONS OF SAID AGREEMENT SHALL REMAIN IN FULL FORCE AND EFFECT.

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

Executed this 11th day of September, 2018.

City of Midlothian

[Signature]
City Manager



ATTEST:

By: [Signature]
City Secretary, City of Midlothian

Executed this 28th day of August, 2018.

Sardis-Lone Elm Water Supply Corporation

[Signature]
President

ATTEST:

By: [Signature]
Secretary, Sardis-Lone Elm Water Supply Corporation

APPROVED AS TO FORM:

By: [Signature]
City Attorney, Midlothian

By: _____
Attorney, Sardis

**FOURTH AMENDMENT TO
AGREEMENT FOR THE SALE AND DELIVERY OF TREATED WATER
TO THE SARDIS-LONE ELM WATER SUPPLY CORPORATION
BY THE CITY OF MIDLOTHIAN**

THIS FOURTH AMENDMENT is made by and between the City of Midlothian, a home rule municipality operating under and governed by the laws and Constitution of the State of Texas (“Midlothian”), and Sardis-Lone Elm Water Supply Corporation, a member-owned corporation established under Chapter 67 of the Texas Water Code (“Sardis”), hereinafter collectively referred to as the “Parties,” pursuant to the following considerations:

WHEREAS, Midlothian and Sardis entered into a treated water agreement (“Agreement for the Sale and Delivery of Treated Water to the Sardis-Lone Elm Water Supply Corporation by the City of Midlothian,” referred to as “Agreement”) with an effective date of August 11, 2015; and

WHEREAS, as a condition of this Agreement, Sardis was to secure rights to Raw Water at their sole expense for treatment by Midlothian within five (5) years of the effective date of this Agreement, with said condition having been satisfied by Sardis; and

WHEREAS, in order to address and better clarify the rights of the Parties relating to the Raw Water that is to be secured by Sardis and to simplify the monthly billing procedures to the mutual benefit of the Parties, Midlothian and Sardis amended this Agreement (referred to as “First Amendment”) on June 27, 2017; and

WHEREAS, in order to address the sharing of information related to Sardis’ customers that receive sanitary sewer service from Midlothian and to further address the rights of the Parties relating to the Raw Water that is to be secured by Sardis, Midlothian and Sardis amended this Agreement (referred to as “Second Amendment”) on September 12, 2017 and September 25, 2017, respectively; and

WHEREAS, in order to add a second delivery point from which Sardis could receive treated water from Midlothian, Midlothian and Sardis amended this Agreement (referred to as “Third Amendment”) on September 11, 2018 and August 28, 2018, respectively; and

WHEREAS, Sardis desires to secure an additional one million eight-hundred sixty thousand gallons per day (1.86 MGD) of raw water from Tarrant Regional Water District (TRWD) through Midlothian’s existing Raw Water Supply Contract with TRWD, thereby enabling Sardis to receive an additional equivalent volume of treated water from Midlothian; and

WHEREAS, in order to satisfy this request for additional raw and treated water, the Parties wish to amend certain provisions contained within the Agreement.

NOW THEREFORE, the Parties, for good and valuable consideration, agree to amend the Agreement as follows:

That **Article 2.1, Definitions and Interpretation – Definitions** shall be amended as follows:

Day means a 24-hour period beginning at 12:01 a.m.

All references to *TRA*, as defined within this Article, shall be eliminated throughout the entirety of the Agreement.

That **Article 3.1 (a)(1), Treated Water – Delivery and Acceptance** shall be amended and replaced with the following language:

3.1 (a) Delivery and Acceptance.

- (1) Midlothian acknowledges that Sardis has satisfied the condition contained in Article 5.1(a) relating to the securing of Raw Water from TRWD and therefore, Midlothian agrees to furnish and sell to Sardis up to 2.86 MGD (to be taken over a 24 hour period) of Treated Water and shall deliver any and all portions of such 2.86 MGD supply of Treated Water at Delivery Points that are mutually agreed upon by the Parties.

Midlothian's obligation to deliver the requested portion of the 2.86 MGD of Treated Water specified under this Subsection that is over and above the volume stipulated in Article 5.2(a), is triggered upon Sardis providing Midlothian with one hundred twenty (120) days' notice prior to the start of the next Rate Year of the increased amount of Treated Water to be delivered; provided, however, that increase(s) in the Minimum Day Demand, taken over a 24 hour period, shall be in increments of no less than 0.05 MGD and no more than 0.10 MGD unless agreed to by Midlothian, with a corresponding Maximum Day Demand, taken over a 24 hour period, of either (i) two (2) times the Minimum Day Demand or (ii) the Maximum Delivery Rate specified in Article 3.10, whichever is less.

That **Article 3.10, Maximum Delivery Rate** shall be amended and replaced with the following language:

3.10 Maximum Delivery Rate. The Parties agree that Midlothian's obligation under this Agreement to deliver Treated Water to Sardis is subject to the Maximum Rate of Flow as set forth below:

| | |
|-------------------------|-----------------------|
| Initial Delivery Point: | 1,986 gpm (2.86 MGD)* |
| Second Delivery Point: | 1,986 gpm (2.86 MGD)* |

* maximum combined Rate of Flow between Initial and Second Delivery Points shall not exceed 1,986 gpm (2.86 MGD)

The maximum Rate of Flow at each additional Delivery Point, which is mutually agreed to under this Agreement, shall be agreed upon by the Parties in accordance with Article 4.2 at the time the Parties agree upon each additional Delivery Point.

That **Article 5.1 (a), Charges for Water – Untreated Water** shall be amended and replaced with the following language:

5.1 (a) Untreated Water. In accordance with Article 3.1(a)(2), herein, Midlothian acknowledges that Sardis has secured and paid or caused others to pay (i) the TRWD Buy-In cost for all quantities of Raw Water directly to TRWD, and (ii) the portion of the “take-or-pay” rates attributable to Sardis, if any, that is charged to Midlothian by TRWD. All Raw Water treated by Midlothian shall be considered TRWD Raw Water, regardless of the source and/or treatment facility providing the treatment, and shall be subject to the TRWD Raw Water Rate.

That **Article 7.1, Term of Agreement** shall be amended and replaced with the following language:

7.1 Term of Agreement. Unless terminated as provided in this Agreement, this Agreement shall commence upon the Effective Date and shall remain in effect for a term of twenty (20) years from the Effective Date.

That **Article 7.2, Renewal of Agreement** shall be amended and replaced with the following language:

7.2 Renewal of Agreement. At the end of the term of this Agreement on August 11, 2035 (the Expiration Date), this Agreement shall automatically renew for a five (5) year term, unless either Party notifies the other in writing that it does not wish to renew this Agreement to the new term of August 11, 2040. Such written notification shall be delivered to the Parties on or before August 11, 2030, which is at least five (5) years prior to the Expiration Date. In the event that both Parties wish to renew this Agreement past the August 11, 2040 term, this Agreement can be renewed to August 11, 2055 upon written notification by both Parties, with such written notification being delivered to each Party on or before August 11, 2035.

Sardis expressly acknowledges that it has no right or entitlement to Treated Water from Midlothian after the expiration of this Agreement except to the extent that this Agreement is renewed as provided herein. Midlothian expressly acknowledges that it has no right or entitlement to the Raw Water that Sardis secures for treatment by Midlothian as provided for in this Agreement after the expiration or termination of this Agreement except to the extent that this Agreement is renewed as provided herein. Midlothian further agrees to support the transfer of the Raw Water rights that Sardis secures for treatment by Midlothian as provided for in this Agreement from Midlothian to Sardis or their designee after the expiration or termination of this Agreement.

This Fourth Amendment shall become effective based upon the latter date that this Amendment is executed by the Parties.

THIS FOURTH AMENDMENT SHALL IN NO WAY ALTER THE EFFECTIVE DATE OF THE AGREEMENT AND ALL OTHER PROVISIONS OF SAID AGREEMENT AND PREVIOUS AMENDMENTS SHALL REMAIN IN FULL FORCE AND EFFECT.

(Signature Page to Follow)

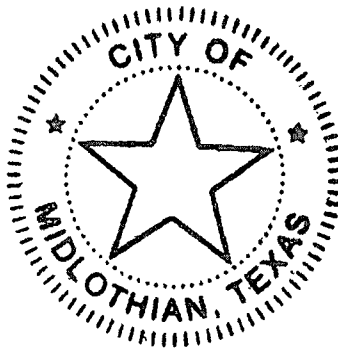
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IN WITNESS WHEREOF, the Parties have executed and attested this Fourth Amendment to the Agreement by their officers thereunto duly authorized as of the date signed.

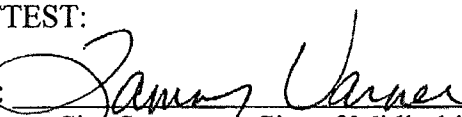
Executed this 31st day of May, 2019.

City of Midlothian


 City Manager
CHRIS DICK, CITY MANAGER




ATTEST:


By: 
 City Secretary, City of Midlothian

Executed this 31 day of May, 2019.

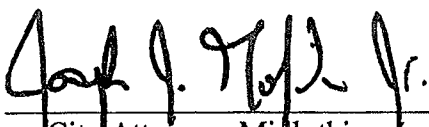
Sardis-Lone Elm Water Supply Corporation


 General Manager

ATTEST:

By: 
 Secretary, Sardis-Lone Elm Water Supply Corporation

APPROVED AS TO FORM:

By: 
 City Attorney, Midlothian

By: _____
 Attorney, Sardis

**Tarrant Regional Water District
Amendment to
Additional Party Raw Water Supply Contract
Municipal**

Midlothian First Amendment

Cedar Creek and Richland-Chambers Reservoirs and Pipelines

**TARRANT REGIONAL WATER DISTRICT
ADDITIONAL PARTY CONTRACT- MUNICIPAL**

| | | |
|---------------------------|----------|---------------------------|
| THE STATE OF TEXAS | § | ADDITIONAL PARTY |
| | § | MUNICIPAL |
| COUNTY OF TARRANT | § | RAW WATER SUPPLY |
| | | CONTRACT AMENDMENT |

**FIRST AMENDMENT TO THE 2018 MIDLOTHIAN ADDITIONAL PARTY
CONTRACT**

Between **TARRANT REGIONAL WATER DISTRICT** ("District") and the **CITY OF MIDLOTHIAN TEXAS** ("Purchaser"), a municipality of the State of Texas.

RECITALS

1. Purchaser and District entered into an Additional Party Raw Water Supply Contract ("2018 Midlothian Additional Party Contract") that was executed on December 11, 2018.
2. Subsequent to the execution of 2018 Midlothian Additional Party Contract, Purchaser requested on behalf of Sardis Lone Elm Water Supply Corporation an additional 1.86 million gallons per day ("MGD") of water from District. By this First Amendment to the 2018 Midlothian Addition Party Contract ("First Amendment"), the annual volume of water supply available to Purchaser from the District pursuant to the 2018 Midlothian Additional Party Contract and is now 12.19 MGD.

AGREEMENT

For and in consideration of the mutual promises, covenants, obligations, and benefits described in this the 2018 Midlothian Additional Party Contract, and the First Amendment, District and Purchaser agree to amend the 2018 Midlothian Additional Party Contract as follows:

1. Delete Section 4 of the 2018 Midlothian Additional Party Contract regarding Volume and replace with the following:

SECTION 4. VOLUME

Subject to the limitations and conditions described in this Agreement, the Amendatory Contract, and Certificates of Adjudication Nos. 08-4976 and 08-5035, District agrees to sell Purchaser raw water from the Project at the Point(s) of Delivery described in this Agreement. The volume of water actually purchased depends upon Purchaser's demand, but the average volume to be furnished during the first year in which Purchaser takes water is estimated to be 300 acre-feet (0.27 million gallons per day ("MGD")). Based upon past usage and future projections, the average quantity of water to be furnished in succeeding years is estimated to range from 672.08 acre-feet to 13,654.55 acre-feet (0.6 to 12.19 MGD). The Maximum Annual Quantity is defined as 13,654.55 acre-feet. Purchaser may not divert more than the Maximum Annual Quantity in an Annual Payment Period, as defined in Section 14, without prior written approval of District.

2. Add a new Section 13A to the 2018 Contract and reorder Section 13 accordingly:

A. Buy-in Premium

In addition to buy-in premiums previously paid by Purchaser, Purchaser shall cause Sardis Lone Elm Water Supply Corporation to pay directly to District an additional \$2,256,620.82 within sixty (60) days after the execution of this First Amendment for additional supply of 1.86 MGD to serve Sardis Lone Elm Water Supply Corporation.

3. Delete Section 13B of the 2018 Contract regarding Minimum Amount and replace with a new and reordered Section 13 C:

C. Minimum Amount

For the purpose of calculating the minimum amount of each Annual Requirement for which Purchaser is unconditionally liable, without offset or counterclaim, Purchaser during each Annual Payment Period shall be deemed to have taken and used the minimum annual

average daily amount of Project water (regardless of whether or not such amount is or was actually taken or used) specified for Purchaser as follows:

- I. Beginning on Effective Date of the Agreement, and during each Annual Payment Period thereafter, an amount for Purchaser, expressed in MGD, equal to the greater of:
 - a. 0.75 MGD, or
 - b. the average annual MGD use actually taken from the Project by Purchaser during the period of the immediately preceding five (5) consecutive Annual Payment Periods.

II. Beginning October 1, 2021, the District, at intervals of not less than three years, may review and increase the minimum amount of each Annual Requirement in Section 13 C I. a. However, any increase under 13 C II shall not increase the minimum amount to an amount greater than 2.25 MGD while the maximum annual quantity remains 12.19 MGD. District agrees to notify purchaser at least 120 days in advance of any increase under this Section.

IN WITNESS WHEREOF, the undersigned District and Purchaser execute this First Amendment to the 2018 Contract in duplicate originals on the dates hereunder, each of which is deemed to be an original.

EFFECTIVE as of the date signed by the authorized representative of District.

TARRANT REGIONAL WATER DISTRICT,

A Water Control and Improvement District
P.O. Box 4508
Fort Worth, TX 76164-0508
Attn.: General Manager

BY:_____

TITLE:_____

DATE:_____

Tarrant Regional Water District
Additional Party Contract- Municipal
Midlothian 1st Amendment

City of Midlothian Texas

Attn: City Manager

BY: [Signature]

TITLE: **CHRIS DICK, CITY MANAGER**

DATE: May 28, 2019

ATTEST:

[Signature: Sammy Varner]

APPROVED AS TO FORM AND LEGALITY:

BY: [Signature: Jeff P. Hylton Jr.]

ATTORNEY FOR PURCHASER

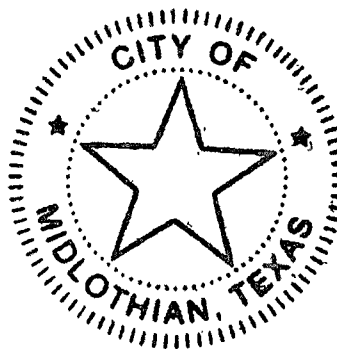


Exhibit 2 Location Map of Service Area

Created By: Freese and Nichols, Inc.
 Job No.: 09910041
 Location: WSC of Midlothian/Wholesale, Rural, Service Area 1117.mxd
 Update: Tuesday, November 13, 2017 5:32 AM
 User Name: G219

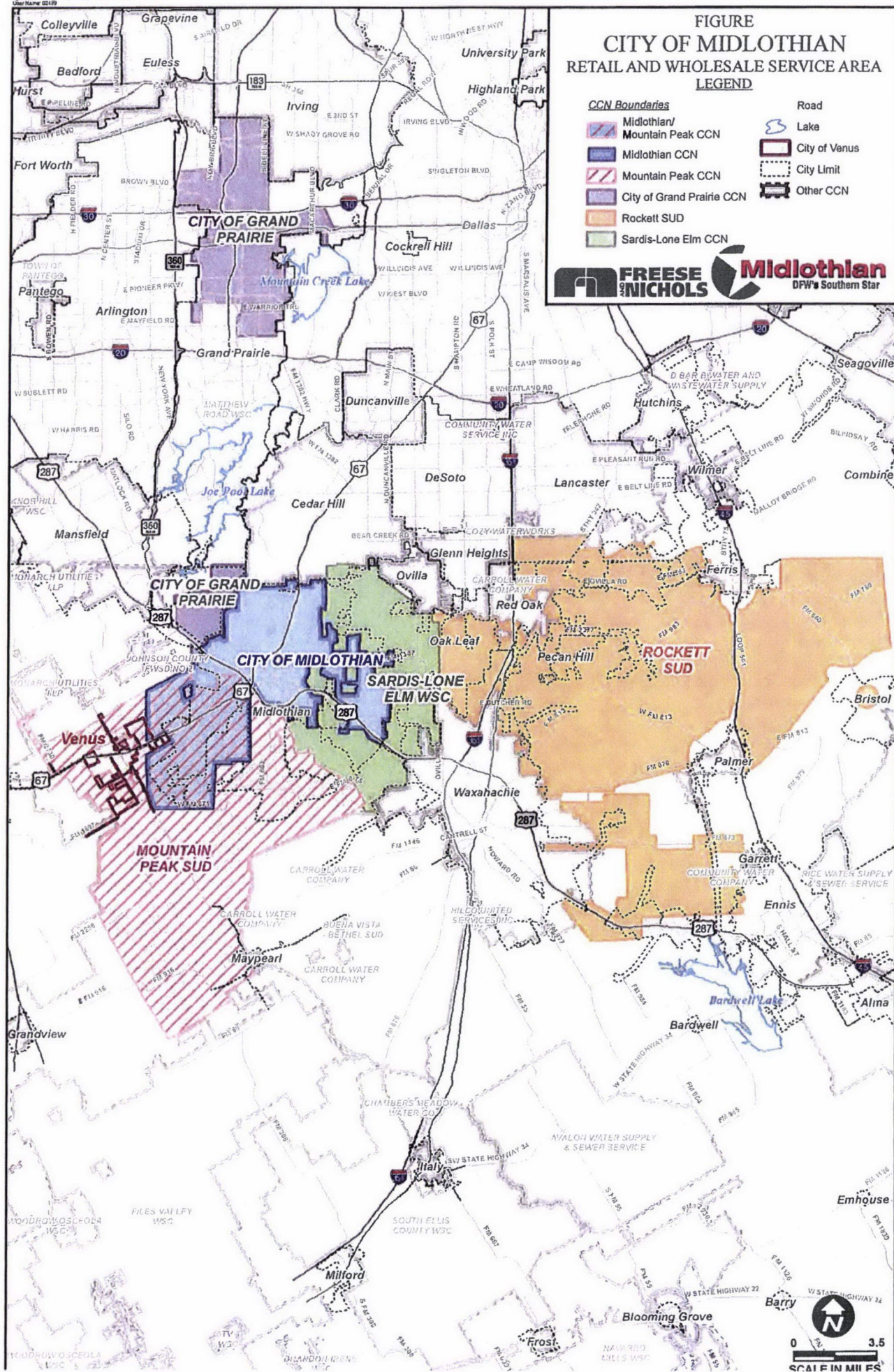


Exhibit 3 Authorization to Execute on Behalf of Purchaser

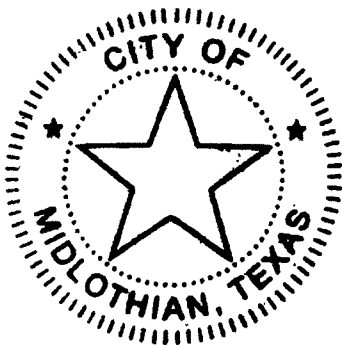
THE STATE OF TEXAS §

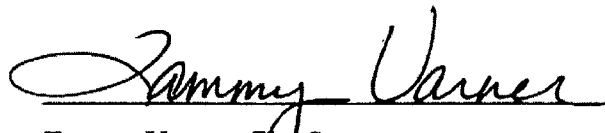
COUNTY OF ELLIS §

CERTIFICATION

I, Tammy Varner, City Secretary of the City of Midlothian, Texas, do hereby certify that I am custodian of the records of the City of Midlothian, Texas, and that the attached is a true and correct copy of the First Amendment to Additional Party Raw Water Supply Contract Municipal between Tarrant Regional Water District and the City of Midlothian, adopted by the City Council of the City of Midlothian on May 28, 2019. The amendment is for the purchase of additional water from the Cedar Creek and Richland-Chambers Reservoirs and Pipelines.

Witness My Hand and Official Seal of the City of Midlothian, Texas, this the 29 day of May, 2019.



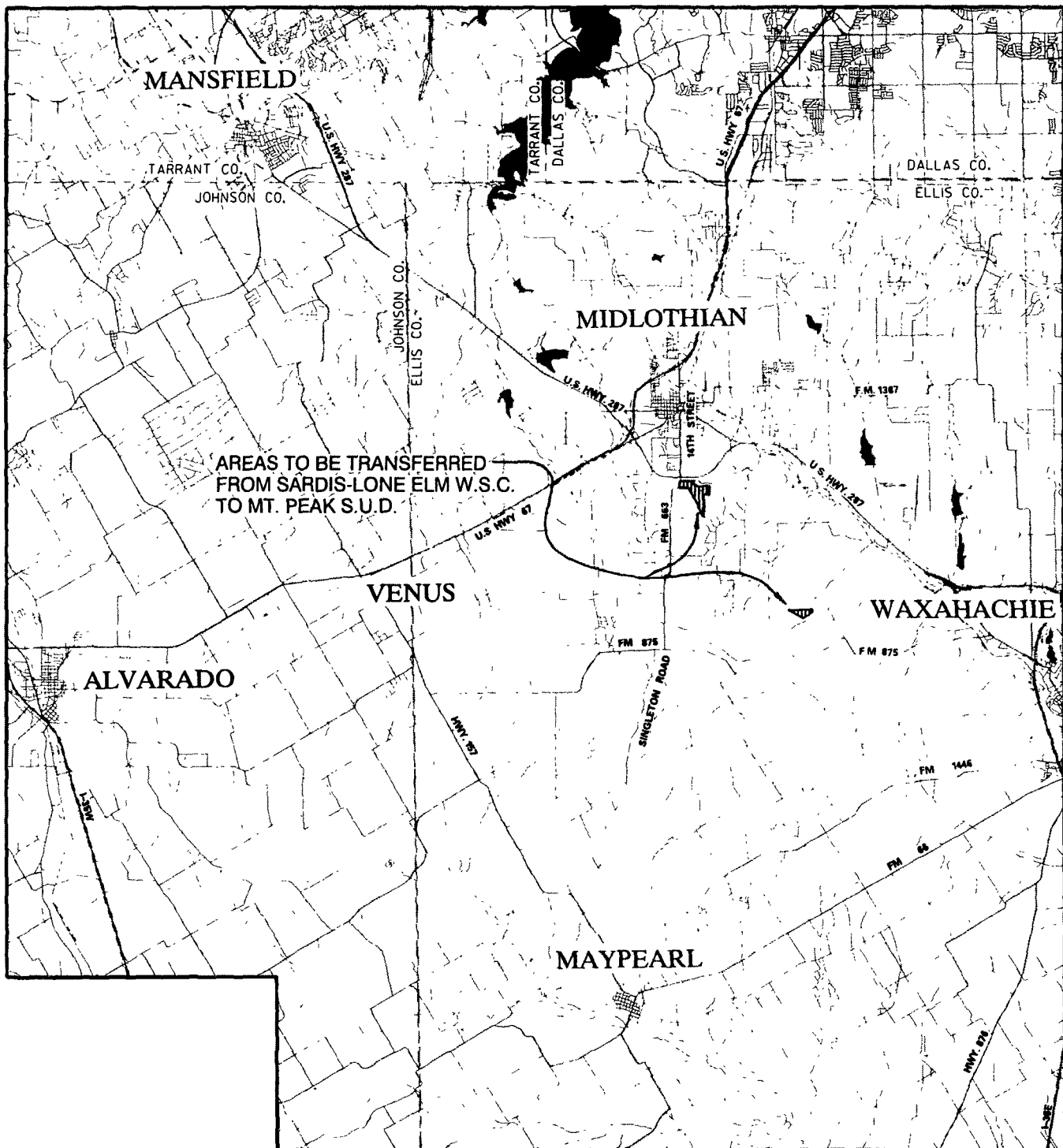

 Tammy Varner, City Secretary
 City of Midlothian

ATTACHMENT 6
Mountain Peak S.U.D.
Operators

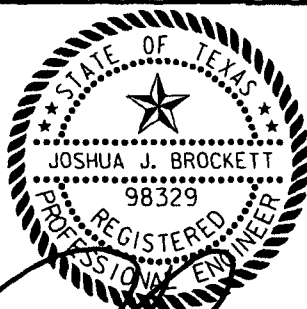
Mountain Peak S.U.D. Operators

| Name | Class | License # |
|-------------------|--------------|------------------|
| Randel Kirk | B-CSI-CWP | WG0003779 |
| Ruben Garza | C-CSI | WG0011423 |
| Randall Scott | D | WO0038078 |
| Scott Brundige | D | WO0041413 |
| Paul Newcomb | C-BPAT | WD0004056 |
| Rickey Lee Reeder | C | WG0008722 |

EXHIBITS



0 4000 8000 12000 16000 24000
SCALE IN FEET



[Signature]
5/21/19

MT. PEAK
SPECIAL UTILITY DISTRICT

C.C.N. BOUNDARY REVISIONS

EXHIBIT-1
LOCATION MAP

CE CHILDRESS ENGINEERS
ENGINEERS & CONSULTANTS
2111 N. RIDGEWAY DRIVE
CLEBURNE, TEXAS 76033
TEX. REG. NO. 67981

DESIGNED BY: JJB

DRAWN BY: JSD

CHECKED BY: RTC

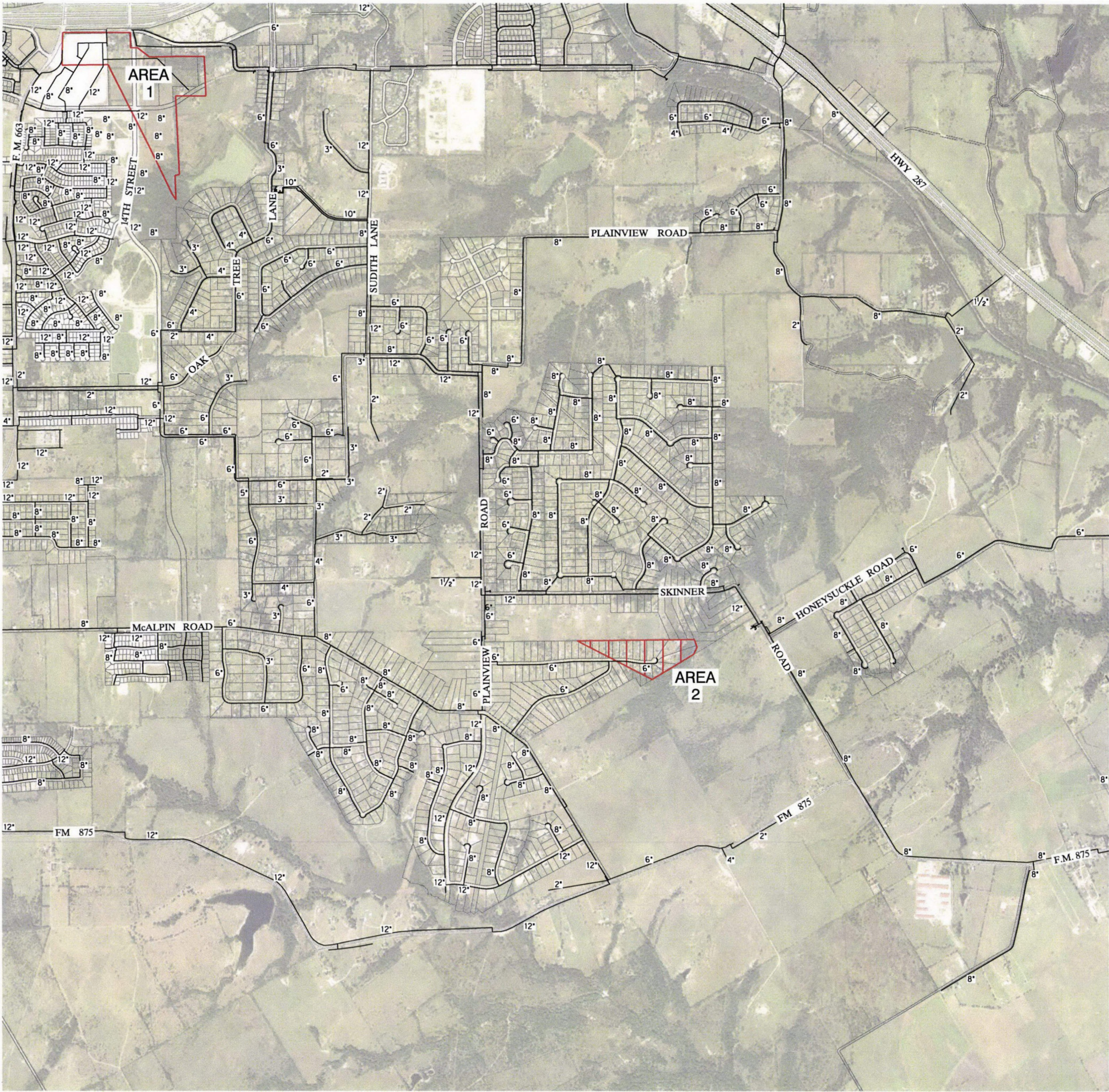
REV. BY DATE SYMBOL

DATE: MARCH 2018

JOB NO: 17040


SHEET NO. 1 OF 3

17040 CCN TRANSFER TO MT. PEAK 01.0gn




| | |
|---------|--------------|
| AREA 1: | 96.38 ACRES |
| AREA 2: | 29.64 ACRES |
| TOTAL: | 126.02 ACRES |

LEGEND:

 PROPOSED SARDIS TO MT. PEAK




N



0 400 800 1200 1600 2000 2400 2800 3200 3600

SCALE IN FEET

17040 CCN TRANSFER to MT PK 03.dgn

| | | |
|---|---------------------|------------------|
| MT. PEAK SPECIAL UTILITY DISTRICT | | |
| C.C.N. BOUNDARY REVISIONS | | |
| EXHIBIT-3 AREAS TO BE TRANSFERRED | | |
|  CHILDRESS ENGINEERS ENGINEERS & CONSULTANTS 211 N. RIDGEWAY DRIVE CLEBURNE, TEXAS 76033 TEX. REG. NO. F-702 | | |
| DESIGNED BY: JJB | REV. BY DATE SYMBOL | DATE: JULY 2018 |
| DRAWN BY: JSD | | JOB NO: 17040 |
| CHECKED BY: RTC | | SHEET NO. 3 OF 3 |

CD ('S)

ATTACHED

PLEASE CONTACT CENTRAL RECORDS

512-936-7180