

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 7. MEASURING EQUIPMENT.

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

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

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

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

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

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

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

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

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

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

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

(A) An "Operation and Maintenance Component" equal to the amount paid or payable for all Operation and Maintenance Expenses of the System; and

(B) A "Bond Service Component" equal to:

(1) the principal of, redemption premium, if any, and interest on, its Bonds, as such principal, redemption premium, if any, and interest become due, less interest to be paid out of Bond proceeds or from other sources if permitted by any Bond Resolution, and all amounts required to redeem any Bonds prior to maturity when and as provided in

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

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

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

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

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

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

(1) .898 MGD for the City of Farmersville

1.159 MGD for the City of Forney

32.476 MGD for the City of Garland

4.433 MGD for the City of McKinney

15.806 MGD for the City of Mesquite

28.688 MGD for the City of Plano

.634 MGD for the City of Princeton

19.760 MGD for the City of Richardson

2.633 MGD for the City of Rockwall

.523 MGD for the City of Royse City

1.186 MGD for the City of Wylie, or

(2) the maximum number of MGD actually taken from the System by such Initial Contracting Party during any previous Water Year (as hereinbefore defined) during the term of this Contract; it being agreed and understood that any use of System water in any Water Year by any Initial Contracting Party in excess of (i) the minimum amount specified for it in clause (1), above, or (ii) as determined in accordance with this clause (2), will establish a new minimum amount to be effective for the next following Annual Payment Period and thereafter until any previously increased minimum amount is further

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Operating Expenses of Initial Contracting Parties.

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

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

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

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

offset or deduction, its proportionate share of each Annual Requirement, as provided and determined by this Contract

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

If to the District, to:

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

If to the Initial Contracting Parties, as follows:

City of Farmersville
303 S. Main
Farmersville, Texas 75031

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

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

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

City of Mesquite
711 N. Galloway
Mesquite, Texas 75149

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

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

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

City of Rockwall
205 W. Rusk
Rockwall, Texas 75087

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

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

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

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

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

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

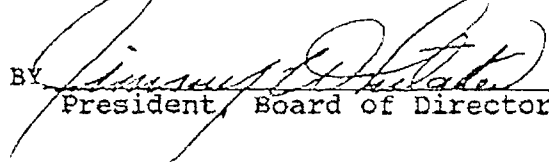
other legal or equitable remedies (other than termination) which may also be available. Recognizing that failure in the performance of any Initial Contracting Party's obligations hereunder could not be adequately compensated in money damages alone, each Initial Contracting Party agrees in the event of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

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

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

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

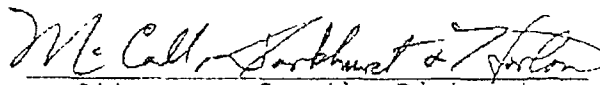
NORTH TEXAS MUNICIPAL WATER DISTRICT

BY 
President, Board of Directors

ATTEST:

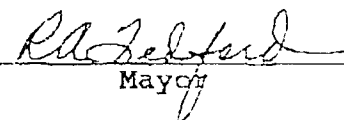

Secretary, Board of Directors

APPROVED AS TO FORM AND LEGALITY:


Attorneys for the District

(DISTRICT SEAL)

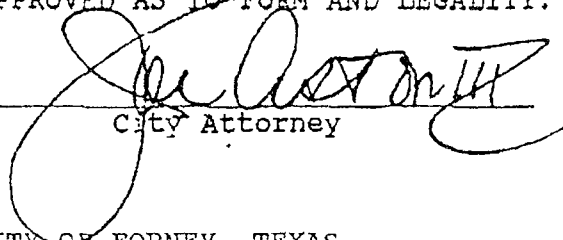
CITY OF FARMERSVILLE, TEXAS

BY 
Mayor

ATTEST:


City Secretary

APPROVED AS TO FORM AND LEGALITY:


City Attorney

(CITY SEAL)

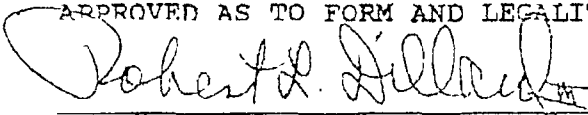
CITY OF FORNEY, TEXAS


Mayor

ATTEST:

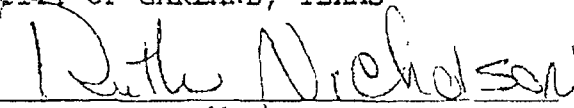

City Secretary

APPROVED AS TO FORM AND LEGALITY:

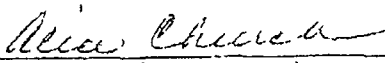

City Attorney

(CITY SEAL)

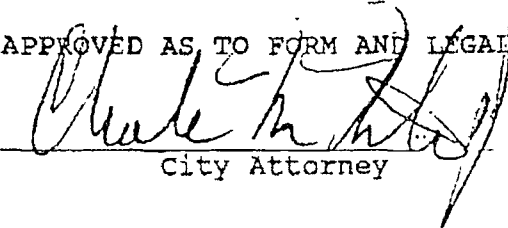
CITY OF GARLAND, TEXAS


Mayor

ATTEST:



City Secretary

APPROVED AS TO FORM AND LEGALITY:

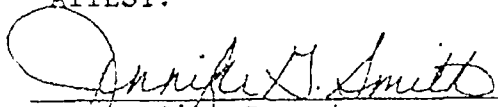

City Attorney

(CITY SEAL)

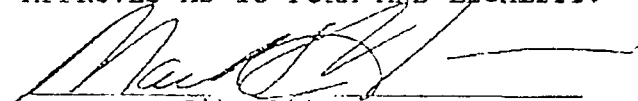
CITY OF MCKINNEY, TEXAS

BY 
Mayor

ATTEST:

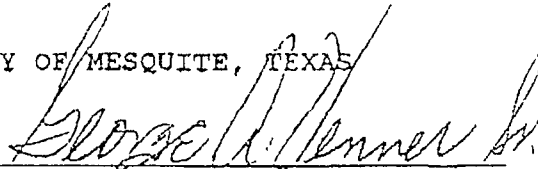

City Secretary

APPROVED AS TO FORM AND LEGALITY:


City Attorney

(CITY SEAL)

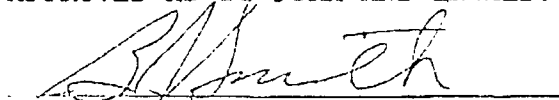
CITY OF MESQUITE, TEXAS

BY 
Mayor

ATTEST:



City Secretary

APPROVED AS TO FORM AND LEGALITY:


City Attorney

(CITY SEAL)

CITY OF PLANO, TEXAS

BY 
Mayor

ATTEST:

Jackie Blakely
City Secretary

APPROVED AS TO FORM AND LEGALITY:

Larry Walton
City Attorney

(CITY SEAL)

CITY OF PRINCETON, TEXAS

BY Mary K. Edwards
Mayor

ATTEST:

Alvin Price
City Secretary

APPROVED AS TO FORM AND LEGALITY:

Mark H. [Signature]
City Attorney

(CITY SEAL)

CITY OF RICHARDSON, TEXAS

BY Charles Spann
Mayor

ATTEST:

Paula Miller
City Secretary

APPROVED AS TO FORM AND LEGALITY

Peter J. Smith
City Attorney

(CITY SEAL)

CITY OF ROCKWALL, TEXAS

BY *J. E. Miller*
Mayor

ATTEST:

Mary A. Nichols
City Secretary

APPROVED AS TO FORM AND LEGALITY

P. E. L.
City Attorney

(CITY SEAL)

CITY OF ROYSE CITY, TEXAS

W. J. Dickerson
Mayor

ATTEST:

Doris Williams
City Secretary

APPROVED AS TO FORM AND LEGALITY:

P. E. L.
City Attorney

(CITY SEAL)

CITY OF WYLIE, TEXAS

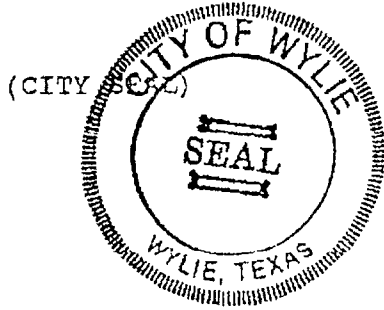
[Signature]
Mayor

ATTEST:

Carolyn Jones
City Secretary

APPROVED AS TO FORM AND LEGALITY

Robert L. Dillard III
City Attorney



FIRST AMENDMENT TO
NORTH TEXAS MUNICIPAL WATER DISTRICT
REGIONAL WATER SUPPLY FACILITIES AMENDATORY CONTRACT

THE STATE OF TEXAS :
NORTH TEXAS MUNICIPAL WATER DISTRICT:

THIS FIRST AMENDMENT TO NORTH TEXAS MUNICIPAL UTILITY DISTRICT REGIONAL WATER SUPPLY FACILITIES AMENDATORY CONTRACT (this "Amendment") made and entered into 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 and the following municipalities under the Constitution and laws of the State of Texas: City of Allen, City of Farmersville, City of Forney, City of Frisco, City of Garland, City of McKinney, City of Mesquite, City of Plano, City of Princeton, City of Richardson, City of Rockwall, City of Royse City, and City of Wylie (collectively, the "Contracting Parties").

WITNESSETH:

WHEREAS, the District has entered into a "North Texas Municipal Water District Regional Water Supply Facilities Amendatory Contract," dated as of August 1, 1988, a "North Texas Municipal Water District – City of Allen Regional Water Supply Facilities Agreement", dated October 1, 1998, and a "North Texas Municipal Water District – City of Frisco Regional Water Supply Facilities Agreement", dated October 1, 2001 (collectively, the "Contracts") with the Contracting Parties;

WHEREAS, as permitted by Section 14 of the Contracts and Section 24(m) of the Bond Resolutions authorizing the issuance of the District's outstanding bonds, the District and the Contracting Parties desire to amend the Contracts to change the allocation of the Annual Requirement (as defined in the Contracts) among the Contracting Parties by changing the basis for determination of each Contracting Party's minimum amount for purposes of calculating such Contracting Party's proportionate share of each Annual Requirement;

WHEREAS, the District and the Contracting Parties have agreed to amend the Contracts to accomplish such change of allocation together with certain updating changes pursuant to the terms of this Amendment; and

WHEREAS, capitalized terms used in this Amendment and not otherwise defined herein shall have the meanings assigned to them in the Contracts.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the District and the Contracting Parties agree that the Contracts shall be amended and modified as follows:

Section 1. Amend Subsection 1(f) of the Contracts to read as follows:

(f) "Bonds" means the Outstanding Bonds listed in the preamble to this Contract, and all bonds, notes, or other obligations 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, notes or other obligations issued to refund any Bonds or to refund any such refunding bonds, notes, or other obligations.

Section 2. Amend Subsection 9(c) of the Contracts by adding a new Clause (3) after Clause (2), as follows:

(3) Updated Calculation Methods. Notwithstanding any provisions of this Contract to the contrary, other than reduction of minimum amounts related to sales by Contracting Parties to other entities as set out in Section 9(c), commencing October 1, 2020, and ending on September 30, 2028 (the "Natural Drawdown Period"), a Contracting Party's minimum amount (for purposes of calculating its proportionate share of the Annual Requirement), shall be calculated on the basis of the Natural Drawdown Method (hereinafter defined) and commencing October 1, 2028, and thereafter, such minimum amount will be calculated on the basis of the 5[5]1 Process (hereinafter defined).

(i) Natural Drawdown Method. For the purpose of calculating the minimum dollar amount of each Annual Requirement for which each Contracting Party is unconditionally liable during the Natural Drawdown Period, for each Annual Payment Period each Contracting Party's proportionate share of the Annual Requirement shall be calculated in accordance with the method described below, (the "Natural Drawdown Method").

(A) For the Annual Payment Period beginning October 1, 2020, each Contracting Party's annual minimum amount (in thousands of gallons) will be:

i.	City of Allen:	6,011,208
ii.	City of Farmersville:	280,467
iii.	City of Forney:	2,345,109
iv.	City of Frisco:	11,910,250
v.	City of Garland:	13,721,955

vi.	City of McKinney:	11,963,029
vii.	City of Mesquite:	8,297,666
viii.	City of Plano:	26,719,809
ix.	City of Princeton:	660,682
x.	City of Richardson:	11,019,311
xi.	City of Rockwall:	4,190,133
xii.	City of Royse City:	565,932
xiii.	City of Wylie:	1,877,558

- (B) For each subsequent Annual Payment Period through the end of the Natural Drawdown Period, and where a Contracting Party's volume of water actually delivered by the District during the most recent Water Year is less than the Contracting Party's then-current minimum amount (such under-usage of water referred to as the Contracting Party's "Under-Usage Water"), that Contracting Party's minimum amount (for purposes of calculating its proportionate share of the Annual Requirement) will be reduced for purposes of payment in subsequent payment periods by that Contracting Party's proportionate share of one-third (1/3) of the total Excess Water Usage (hereinafter defined) used by all Contracting Parties and parties to other Contracts (as described in Section 4(c) hereof) who are not Contracting Parties (such Contracting Parties and other parties, collectively, "System Customers"); provided, however, that in no event shall a Contracting Party's minimum amount be reduced to an amount that is less than the gallons actually delivered to that Contracting Party during the prior Water Year. For these purposes "Excess Water Usage" means gallons of water delivered to any System Customer that exceed its then-current minimum amount.
- (C) A Contracting Party's proportionate share of the Excess Water Usage is calculated as the ratio of that Contracting Party's Under-Usage Water, to the sum of that Water Year's Under-Usage Water by all System Customers eligible for reduction in their minimum amount.
- (D) The minimum amount of a Contracting Party that has Under-Usage Water shall be drawn down at a 3:1 ratio such that for every three (3) gallons of Excess Water used by all System Customers with Excess Water Usage, one (1) gallon of water is drawn down, on a proportionate share basis, as determined in (C) above, thereby reducing the respective minimum amounts for those Contracting Parties.
- (E) For a Contracting Party that has Excess Water Usage in a Water Year during

the Natural Drawdown Period, that Contracting Party's minimum amount for the next Annual Payment Period will be determined based on that Contracting Party's usage in the immediately preceding Water Year.

An example of the calculations of the reduction minimum amounts under the Natural Drawdown Method described in this Subsection 9(c)(3)(i) is found on Attachment I hereto and incorporated herein for all purposes.

(ii) 5|5|1 Process. Starting October 1, 2028, each Contracting Party's minimum amount (for purposes of determining its proportionate share of the Annual Requirement) shall be calculated based on a five-year rolling average of water usage, phased-in over five (5) years (the "5|5|1 Process") to be implemented as follows:

- (A) In the first year of the 5|5|1 Process, a Contracting Party's minimum amount shall be calculated by taking the sum of a Contracting Party's actual usage in the preceding Water Year and four (4) years of that Contracting Party's then-current minimum amount as adjusted at the end of the Natural Drawdown Period (the "Base Minimum"), and dividing that sum by 5.
- (B) In the second year of the 5|5|1 Process, a Contracting Party's minimum amount shall be calculated by taking the sum of a Contracting Party's actual usage in the immediately preceding two (2) Water Years and three (3) years of that Member City's Base Minimum, and dividing that sum by 5.
- (C) In the third year of the 5|5|1 Process, a Contracting Party's minimum amount shall be calculated by taking the sum of a Contracting Party's actual usage in the preceding three (3) Water Years and two (2) years of that Member City's Base Minimum, and dividing that sum by 5.
- (D) In the fourth year of the 5|5|1 Process, a Contracting Party's minimum amount shall be calculated by taking the sum of a Contracting Party's actual usage in the preceding four (4) Water Years and one (1) year of that Member City's Base Minimum, and dividing that sum by 5.
- (E) Finally, in the fifth year of the 5|5|1 Process (that is, the rate year commencing October 1, 2032), and each year thereafter, a Contracting Party's minimum amount shall be calculated by taking the sum of a Contracting Party's actual usage in the immediately preceding five (5) Water Years and dividing that sum by 5.

Section 3. Amend the last sentence of Section 9(d) and amend Section 9(f) of the Contracts to read as follows:

(d) ... Such Excess Water Charges, after payment of any rebates pursuant to policies of the District, shall be distributed to the Contracting Parties in the same manner as surplus budgeted funds as provided in Subsection 9(g).

(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 subsections (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. To the extent the District collects such other revenues in an amount in excess of the estimated credits, such excess amount shall be distributed to the Contracting Parties in the same manner as surplus budgeted funds as provided in Subsection 9(g).

Section 4. Amend Subsection 9(g) of the Contracts in its entirety to read as follows:

(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 payment 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 in excess of amounts necessary to pay the Annual Requirement, including, to the extent reasonable, any operation and maintenance fund balances and other reserves established by the District, shall be distributed no later than May 1 of the following Annual Payment Period to the Contracting Parties proportionately based upon the respective amounts of treated water actually

delivered to the Contracting Parties for the preceding Water Year. Nothing in Subsection 9(g) shall be construed to limit the budgeting and rate-making authority of the District. Each Contracting Party hereby agrees that it will make payments to the District on or before the 10th day of each month of the 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.

Section 5. Amend Section 15 of the Contracts by adding a second paragraph as follows:

In particular, but not by way of limitation, in accordance with 30 Tex. Admin. Code Section 288.5(1)(f), as amended, the Contracting Parties agree and the District shall require each party to an Other Contract, as described in Section 4 of this Contract to agree to develop and implement a water conservation plan or water conservation measures using the applicable elements of Chapter 288, Subchapter A of Title 30 of the Texas Administrative Code, to the extent that it has not already done so. Any contract for resale of water provided hereunder or resale of such resold water by a Contracting Party or a party to an Other Contract shall contain provisions requiring water conservation measures using the applicable elements of such Administrative Code Section. In accordance with Rule 15c2-12 of the United States Securities and Exchange Commission, as it may be amended from time to time, the Contracting Parties agree to file, or provide to the District for filing, all information required by such Rule 15c2-12.

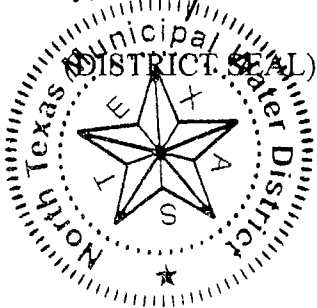
Section 6. This Amendment shall become effective as of the date that an order(s) adopted by the Public Utility Commission of Texas dismissing or allowing withdrawal of PUC Docket Nos. 46662, 47863, 49043, and 50382 become(s) final and non-appealable.

IN WITNESS WHEREOF, the parties hereto acting under authority of their respective governing bodies have caused this Amendment to be duly executed in several counterparts, each of which shall constitute an original.

NORTH TEXAS MUNICIPAL WATER DISTRICT

By: *Larry Parker*
President, Board of Directors

ATTEST:
[Signature]
Secretary, Board of Directors



CITY OF ALLEN, TEXAS

By: _____
Mayor

ATTEST:

City Secretary

(CITY SEAL)

NORTH TEXAS MUNICIPAL WATER DISTRICT

By: _____
President, Board of Directors

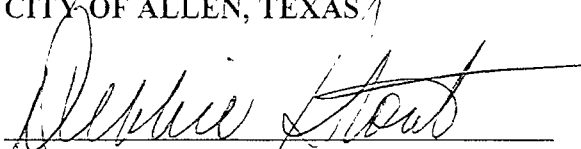
ATTEST:

Secretary, Board of Directors

(DISTRICT SEAL)

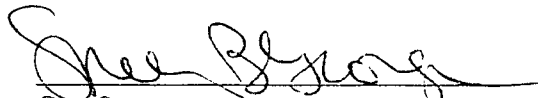
CITY OF ALLEN, TEXAS

By:



Mayor

ATTEST:



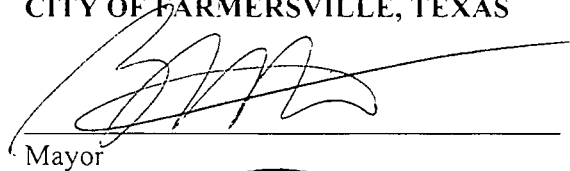
City Secretary

(CITY SEAL)

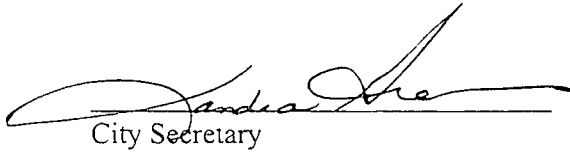
CITY OF FARMERSVILLE, TEXAS

By:

Mayor



ATTEST.



City Secretary

(CITY SEAL)



CITY OF FORNEY, TEXAS

By:

Mayor

ATTEST:

City Secretary

(CITY SEAL)

CITY OF FARMERSVILLE, TEXAS

By: _____
Mayor

ATTEST:

City Secretary

(CITY SEAL)

CITY OF FORNEY, TEXAS

By: *Ante Rana*
City Manager


ATTEST:

Nerothy Brooks
City Secretary

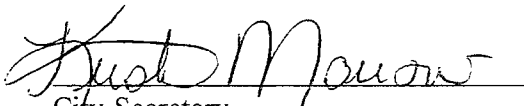
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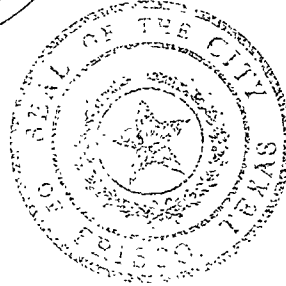


CITY OF FRISCO, TEXAS

By: 
Mayor

ATTEST:


City Secretary



(CITY SEAL)

CITY OF GARLAND, TEXAS

By: _____
Mayor

ATTEST:

City Secretary

(CITY SEAL)

CITY OF FRISCO, TEXAS



By: _____
Mayor

ATTEST:


City Secretary

(CITY SEAL)

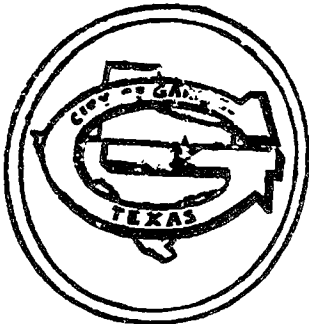
CITY OF GARLAND, TEXAS

By: 
 City Manager

ATTEST:


City Secretary

(CITY SEAL)



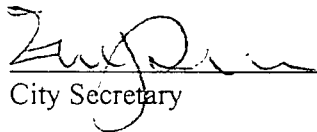
CITY OF MCKINNEY, TEXAS

By:



City Manager

ATTEST:



City Secretary

(CITY SEAL)



CITY OF MESQUITE, TEXAS

By:

City Manager

ATTEST:

City Secretary

(CITY SEAL)

CITY OF MCKINNEY, TEXAS

By: _____
City Manager

ATTEST:

City Secretary

(CITY SEAL)

CITY OF MESQUITE, TEXAS

By: _____
City Manager

ATTEST:

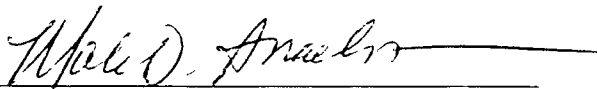
City Secretary

(CITY SEAL)

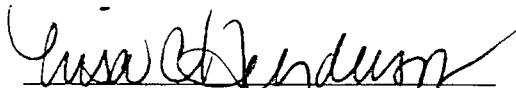
Approved as to form:

City Attorney

CITY OF PLANO, TEXAS

By: 
City Manager

ATTEST:


City Secretary



CITY OF PRINCETON, TEXAS

By: _____
City Manager

ATTEST:

City Secretary

(CITY SEAL)

CITY OF PLANO, TEXAS

By: _____
Mayor

ATTEST:

City Secretary

(CITY SEAL)

CITY OF PRINCETON, TEXAS

By: *Debra Borg*
City Manager

ATTEST:

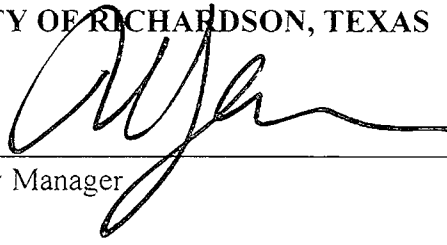
 [Signature]
City Secretary



CITY OF RICHARDSON, TEXAS

By:

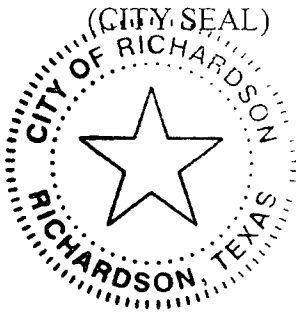
City Manager



ATTEST:



City Secretary



CITY OF ROCKWALL, TEXAS

By:

City Manager

ATTEST:

City Secretary

(CITY SEAL)

CITY OF RICHARDSON, TEXAS

By: _____
City Manager

ATTEST:

City Secretary

(CITY SEAL)

CITY OF ROCKWALL, TEXAS

By: Richard K Crowley
City Manager

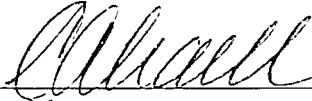
ATTEST:

Kristy Cole
City Secretary

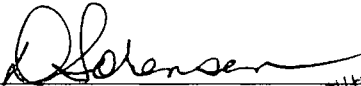
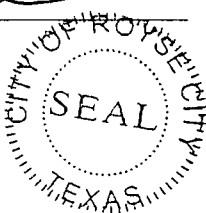
(CITY SEAL)



CITY OF ROYSE CITY, TEXAS

By: 
City Manager

ATTEST:


City Secretary
(CITY SEAL) 

CITY OF WYLIE, TEXAS

By: _____
Mayor

ATTEST:

City Secretary
(CITY SEAL)

CITY OF ROYSE CITY, TEXAS

By: _____
Mayor

ATTEST:

City Secretary

(CITY SEAL)

CITY OF WYLIE, TEXAS

By:
Mayor

ATTEST:

Stephanie Brown
City Secretary

(CITY SEAL)



ATTACHMENT I

For illustrative purposes, the reduction in a Contracting Party's minimum amount (for purposes of calculating its proportionate share of the Annual Requirement) under the Natural Drawdown Method described in Subsection 9(e) of the Contracts, would be calculated as follows:

1. Determine the total gallons of Excess Water Usage by all System Customers

E.g., 9 System Customers have a total Excess Water Usage of 10 million gallons.
2. Determine the total gallons of Under-Usage Water by all System Customers
E.g., the only System Customers that have under-usage are Contracting Parties 1, 2, 3, and 4, which have total gallons of Under-Usage Water of 20 million gallons.
3. Determine each Contracting Party's gallons of Under-Usage Water, e.g.:
Contracting Party 1: 8 million gallons of Under-Usage Water

Contracting Party 2: 6 million gallons of Under-Usage Water

Contracting Party 3: 4 million gallons of Under-Usage Water

Contracting Party 4: 2 million gallons of Under-Usage Water
4. Determine each Contracting Party's proportion of Under-Usage Water to the total gallons of Under-Usage Water ("Contracting Party's Share of Under-Usage Water")

Contracting Party 1 = 40% (8 million gallons of Under Usage ÷ 20 million gallons of total Under Usage = 40%)

Contracting Party 2 = 30% (6 million gallons of Under Usage ÷ 20 million gallons of total Under Usage = 30%)

Contracting Party 3 = 20% (4 million gallons of Under Usage ÷ 20 million gallons of total Under Usage = 20%)

Contracting Party 4 = 10% (2 million gallons of Under Usage ÷ 20 million gallons of total Under Usage = 10%)
5. Determine the respective Contracting Party's then-current minimum amount (for purposes of calculating its proportionate share of the Annual Requirement) for each Contracting Party that has Under-Usage Water and reduce each such Contracting Party's minimum

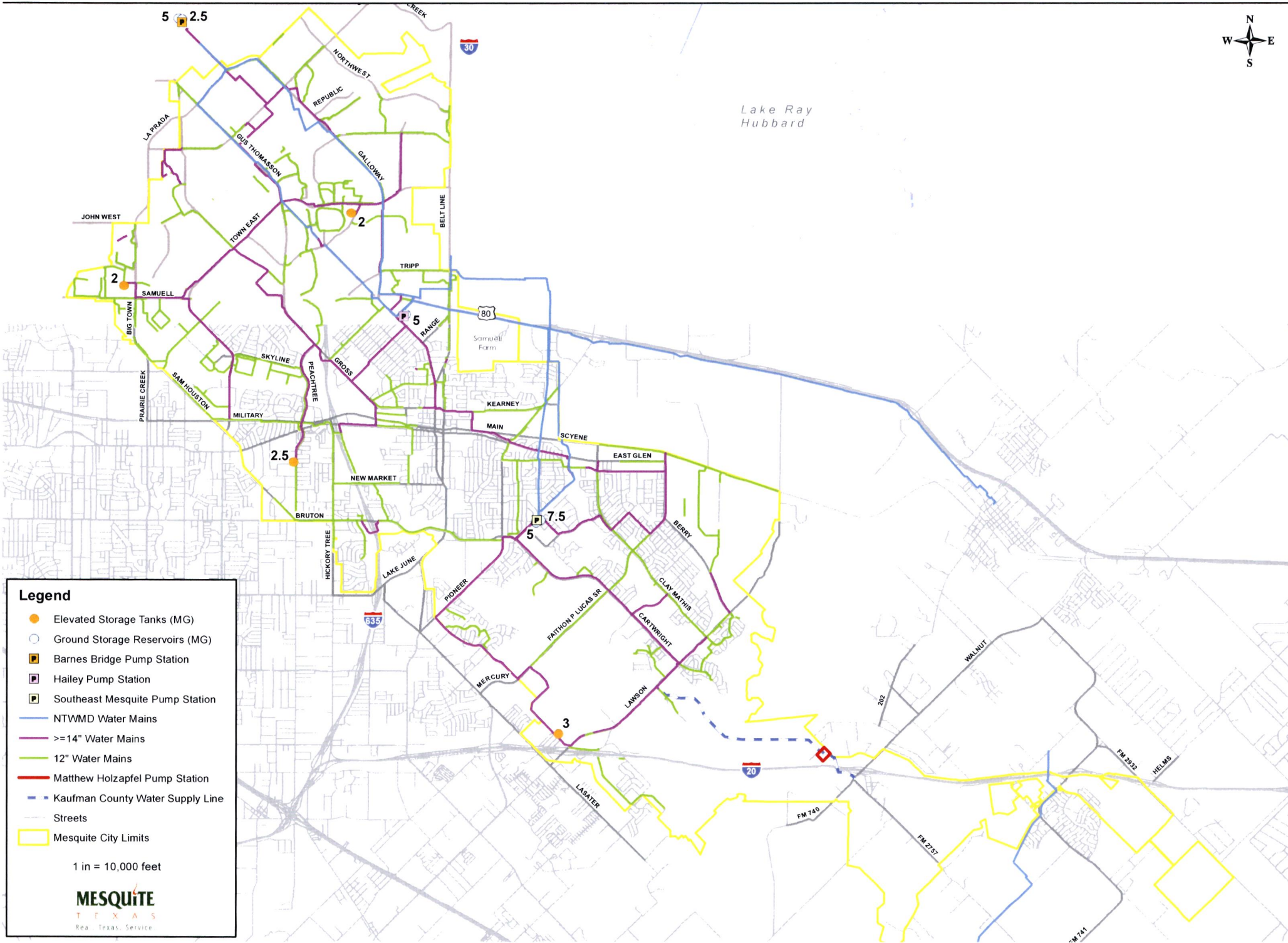
amount by its proportionate share of 1 million gallons for each 3 million gallons of Excess Water Usage. Thus:

	[A]	[B]	[C]	[D]	[E]	[F]
	Current Annual Minimum Usage [A]	Share of Under Usage [B] / Total Under Usage [B]	1/3 of Total Excess Usage [D]	Share of 1/3 rd of Excess Usage of 10 Million Gallons [E] = [C] x [D]	New Annual Minimum Usage [F] = [A] - [E]	
Contracting Party 1	50	8	40%	3.33	1.33	48.67
Contracting Party 2	40	6	30%	3.33	1.00	39.00
Contracting Party 3	30	4	20%	3.33	0.67	29.33
Contracting Party 4	20	2	10%	3.33	0.33	19.67
Total Under Usage	140	20	100%		3.33	136.67
Total Excess Usage	10					

Attachment L

Map of the City of Mesquite's Water System

City of Mesquite Water Distribution System

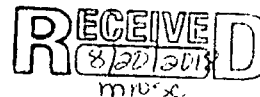


Attachment M

Texas Commission on Environmental Quality's Comprehensive Compliance Information

Attached is the TCEQ's August 16, 2018 letter regarding the results of TCEQ's compliance investigation on June 12, 2018. However, Markout WSC's most recent TCEQ Compliance Investigation occurred on October 28, 2020. As of the date this STM application was filed, Markout had not received the results of that investigation. The Parties will supplement this STM Application upon the conclusion of TCEQ's investigation.

Bryan W. Shaw, Ph.D., P.E., *Chairman*
Toby Baker, *Commissioner*
Jon Niermann, *Commissioner*
Stephanie Bergeron Perdue, *Interim Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

August 16, 2018

Mr. Brian Andrews, President
Markout WSC
P.O. Box 907
Forney, Texas 75126-0907

Re: Comprehensive Compliance Investigation at:
Markout WSC, 10371 Walnut Ln, Forney, Kaufman County, Texas
Regulated Entity No.: RN101188514, TCEQ ID No.: 1290019
Investigation: 1486556

Dear Mr. Andrews:

On June 12, 2018, Mr. Colby Maron of the Texas Commission on Environmental Quality (TCEQ) San Antonio Region Office conducted a comprehensive compliance investigation of the above-referenced operation to evaluate compliance with applicable requirements for a public water supply. No violations are being alleged as a result of the investigation.

The TCEQ appreciates your assistance in this matter and your compliance efforts to ensure protection of the State's environment.

If you or members of your staff have any questions, please feel free to contact Mr. Maron at the D/FW Regional Office at (817) 588-5891.

Sincerely,

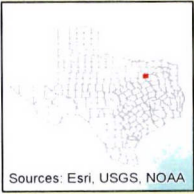
A handwritten signature in black ink, appearing to read "Charles Marshall".

Charles Marshall
Public Water Supply Program
D/FW Regional Office

CM/cm

Attachment N

Map of the City of Forney's and the City of
Mesquite's City Limits and ETJ,
and Markout's CCN



Sources: Esri, USGS, NOAA

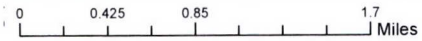
City of Mesquite

Markout WSC
Water CCN No. 10846

City of Forney

Legend

- Markout WSC CCN No. 10846
- Forney ETJ
- Forney City Limits
- Mesquite ETJ
- Mesquite City Limits
- Streets



Created: 12/1/2020
Background Image: ESRI Open Street Map

**City of Mesquite
Overview Map of Markout WSC
With City of Mesquite and City of Forney
City Limits and ETJ Boundaries**

© 2020 Bickerstaff Heath Delgado Acosta LLP
Data Source: Existing Water CCN service areas
obtained from the PUC, August 2020.
Mesquite City Limits and ETJ obtained from Mesquite GIS.
Forney City Limits and ETJ obtained from Forney GIS.



Attachment O

Markout WSC's and the City of Forney's Wholesale Water Supply Agreement

NEAL E. VELVIN, P.E.
WAYNE WEEKS, P.E.
TYLER N. HENDRICKSON, P.E.
CHRISTOPHER WEEKS, P.E.



930 E. CORSICANA ST
PO BOX 1007
ATHENS, TX 75751
PH: 903.675.3903
FAX: 903.675.8345
vwce@velvin-weeks.com

July 7, 2008

Tim Tumulty
City of Mesquite
1515 North Galloway
Mesquite, Texas 75149

RE: Markout WSC

Dear Mr. Tumulty:

Enclosed you will find a copy of the wholesale water contract between Markout WSC and the City of Forney.

If you have any questions or comments please feel free to give me a call.

Sincerely,

VELVIN & WEEKS CONSULTING ENGINEERS, INC.

A handwritten signature in black ink, appearing to read 'T. Hendrickson', with a horizontal line extending to the right.

Tyler N. Hendrickson P.E.

/cf
Enclosure

Cc: Markout WSC

**AMENDMENT #1 TO
WHOLESALE WATER CONTRACT**

STATE OF TEXAS §

COUNTY OF KAUFMAN §

This Amendment #1 to the Wholesale Water Contract ("Amendment #1") is made and entered into this June 22 2006, by and between the City of Forney, Texas, a municipal corporation in Kaufman County, Texas, acting under the laws of the State of Texas (hereinafter called "City"), and Markout Water Supply Corporation (hereinafter called "Markout"):

WITNESSETH:

WHEREAS, Markout and the City entered into a Wholesale Water Contract dated May 2, 2006 ("Contract"), whereby the City agreed to provide potable water to Markout in quantities specified therein; and

WHEREAS, the Contract was submitted to the North Texas Municipal Water District ("NTMWD") for review and approval; and

WHEREAS, the Board of Directors of the NTMWD approved such Contract contingent upon City and Markout making certain changes to the Contract;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties agree that the City and Markout hereby amend the Contract as hereafter set forth, to wit:

1. That the above recitals are hereby found to be true and correct and are incorporated herein for all purposes.
2. City and Markout agree to amend that certain Wholesale Water Contract dated May 2, 2006 ("Contract") by adding a Section 19 containing the following language:

19. **Additional Requirements of the North Texas Municipal Water District.**

- a. **Place of Use.** The Parties acknowledge and agree that, notwithstanding any provisions of this Agreement to the contrary, any water supply made available to Markout hereunder shall be used solely in the Trinity River Basin and shall not be authorized for use outside of the Trinity River Basin.
- b. **Conservation.** Markout shall prepare, formally adopt, and implement a water conservation plan that is consistent with TCEQ requirements and that is consistent with similar plans adopted by the City and the NTMWD.

- c. Surface water Impoundments. Markout or its customers shall not use treated water for the purpose of filling or maintaining the level of surface water impoundments without the express written consent of the City and the NTMWD.
- d. Title to Water: Indemnification. Title to all water supplied to Markout shall be in the City up to the Point of Delivery, at which point title shall pass to the Markout, except that the NTMWD reserves the right of reuse of treated effluent resulting from the use of water by the NTMWD, its customers or Markout, to the extent authorized by the State of Texas. The NTMWD, the City, and Markout shall save and hold each other harmless from all claims, demands, and causes of action, which may be asserted by anyone on account of the transportation and delivery of said water, while title remains in such party. Notwithstanding anything contained herein to the contrary, the parties hereto do not waive and hereby expressly retain any and all immunities and defenses, sovereign, legislative, official and otherwise, that each may now or hereafter possess. Nothing contained in this Contract shall be interpreted as conferring any rights to any person not a party to this Contract.

3. This Amendment #1 shall be deemed to have been incorporated into the Contract for all purposes with the same force and effect as all other provisions of said Contract. Except as specifically amended by this Amendment #1, the provisions of the Contract shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment #1 in duplicate originals on the date first written above, which date shall also be the effective date hereof.

CITY OF FORNEY, TEXAS

MARKOUT WATER SUPPLY CORPORATION

By: Danell Grooms

Danell Grooms



By: Odean Moore

Odean Moore
City Secretary

By: David Hinds

DAVID HINDS

President

Attest:

By: Charles M. Benedict

Charles M. Benedict
Secretary

APPROVED AS TO FORM:

Robert A. Gilliam

City Attorney

WHOLESALE WATER CONTRACT

STATE OF TEXAS §

COUNTY OF KAUFMAN §

This Wholesale Water Contract ("Contract") is made and entered into this May 2 2006, by and between the City of Forney, Texas, a municipal corporation in Kaufman County, Texas, acting under the laws of the State of Texas (hereinafter called "City"), and Markout Water Supply Corporation (hereinafter called "Markout"). This contract supersedes all Wholesale Water Contracts that may have been previously entered into by and between the parties prior to the date indicated above:

WITNESSETH:

WHEREAS, the City owns and operates water distribution and water supply facilities; and

WHEREAS, Markout and the City have previously entered into a Wholesale Water Contract dated January 18, 2000, whereby the City agreed to provide potable water to Markout in quantities specified therein; and

WHEREAS, due to increased development and demand for water within Markout's service area, it has become necessary for Markout and the City to restate and amend the prior Wholesale Water Contract to provide for additional quantities of potable water to meet the current and future demand for water by customer within Markout's service area; and

WHEREAS, Markout is desirous of obtaining an additional adequate and dependable water supply; and

WHEREAS, the City will have available potable water in quantities hereinafter contracted to be sold by it to Markout, subject to the terms and provisions of this Contract; and

WHEREAS, the parties desire to establish provisions for the sale and distribution of treated water by City to Markout and to establish the rate, duration, metering, and related responsibilities of the parties;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties agree that the City will furnish and Markout will pay for water supply services upon the terms and conditions hereafter set forth, to wit:

1. **Responsibilities of the Parties.**

- a. City is responsible for operating a water supply system to the extent permitted by available water revenues and water supply, for developing cost of service information to support rate changes, and for informing Markout of changes in financial data.

- b. Markout is responsible for keeping the City informed concerning its projected water supply needs and operating requirements, for planning and managing the Markout system to promote water conservation and efficient system operation, and for paying rates adequate to cover costs incurred in providing services to it. Markout is also responsible for maintaining pumping and pressure requirements and storage capacity within the Markout system in accordance with rules and regulations set forth by the Texas Commission on Environmental Quality ("TCEQ"), or its successor agency.

2. **Quantity.**

Subject to the provisions of this Contract and available supply from North Texas Municipal Water District ("NTMWD"), the City agrees, during the term hereof and at the delivery point hereafter specified, to deliver treated water to Markout at a rate not exceeding One Thousand Three Hundred Fifteen (1,315) gallons per minute (One Million Eight Hundred Ninety Three Thousand Six Hundred [1,893,600] gallons per day) at Markout's delivery point located at the south entrance to the Forney Middle School Football Field on South Bois D' Arc Street. Rates of delivery shall be regulated by a rate of flow controller installed by Markout but solely accessible by the City. The City shall have authority to limit Markout's usage in the event City does not have the ability to provide the usage permitted. City will use its best efforts to remain in a position to furnish treated water as herein contracted to be sold to Markout, but the City's obligations shall be limited in accordance with other conditions herein contained. In the event the total water supply available to the City shall be insufficient to meet all of the needs of the residents of the City and customers of Markout, the City may prorate the water available among all customers of the City and Markout. In the event of shortage, Markout shall be furnished water in a quantity which bears the same proportion to the total water available to City for use by individual connections as the number of individual connections served by the City. Markout may prescribe a schedule of hours covering use of water for the watering of lawns and gardens by its customers, and require adherence hereto, or prohibit the use of water for the watering of lawns and gardens, provided that if at any time the total water supply available to Markout shall be insufficient to meet all the needs of its customers, water must first be furnished to all customers of Markout sufficient to satisfy their needs for domestic purposes before supplying any water for the watering of lawns and gardens. Further, Markout shall institute a Drought Contingency and Water Emergency Plan that meets the requirements of the NTMWD and/or the requirements of the TCEQ, or any other governmental entity having jurisdiction thereof, whichever is more stringent. Markout shall give reasonable notice to City of any anticipated changes in demand requirements. Such notice shall be utilized by City in determining whether construction of additional facilities or utilization of existing system capacity will be required. In the event of a change in demand requirements, Markout shall be responsible for the cost of any additional facilities, or the utilization of existing excess system capacity (even if such utilization of existing capacity does not require additional construction), in which direct participation has not already occurred by Markout. Payments by Markout contemplated by this section for additional facilities are required prior to the awarding of any construction contracts. Payment by Markout for utilization of existing excess capacity must be paid prior to the

capacity being provided. Markout understands and agrees that City's ability and capacity to provide increases in demand or volume is subject to available supply and the ability to deliver treated water as may be determined by City through its sole source of such water, NTMWD. The City reserves the right to enter into water purchase contracts with other entities under the same or similar provisions as contained in this contract.

3. **Quality.**

Under the provisions of this Contract, City is obligated to furnish Markout treated water suitable for human consumption in accordance with all applicable laws, rules, and regulations of this state.

4. **Point(s) of Delivery.**

The point of delivery of water to Markout from the City's system shall be at the south entrance to the Forney Middle School Football Field on South Bois D' Arc Street in the manner and the amounts specified in Section 2 above. Markout shall install a flow meter and a rate of flow controller to be set according to the contracted amount of water contained herein at the point of delivery. All flow meters installed after the date of this Contract shall be equipped with Supervisory Control and Data Acquisition ("SCADA™") transmission devices. All existing meters as of the effective date of the Contract shall be equipped in conformance with this provision within three years of such effective date. City agrees to deliver at the point of delivery the quantities of water herein contracted for, said water to be delivered at the pressure which is maintained in the water supply system of the City, it being specifically understood that the City is under no obligation to furnish pressurized treated water to any connection between the delivery point and Markout's facilities for sustaining and/or increasing pressure to include the below mentioned air gap. Markout may utilize the pressure which is maintained in the City system for the movement of water from the delivery point to the point where Markout shall have facilities for sustaining or increasing pressure. Markout agrees that it shall take all reasonable measures to insure all lines and equipment installed and operated by it and that all lines and plumbing facilities which are installed or owned by its customers shall comply with the Plumbing and Sanitation Codes of the City and the requirements of the TCEQ, as the same now exist or as they may be modified hereafter. Markout must provide an air gap prior to any connections of service. Cost of all connection facilities from the delivery point to the contracting party's facilities installed subsequent to the date of this contract shall be borne by Markout. Markout shall be responsible for the design, contracting, construction, and financing of connection facilities and acquisition of any right-of-way for delivery of the water from the applicable delivery point to Markout's facilities. Should the quantities desired by Markout as contained herein or identified at a future date require improvements to the City of Forney facilities or the City of Forney distribution system, or require the utilization of existing excess system capacity (even if such utilization of existing capacity does not require additional construction), in which direct participation has not already occurred by Markout then, in such case, Markout shall be responsible for their proportional share of the cost of those improvements or any above described excess capacity utilization. Payments by Markout contemplated by this section for

additional facilities are required prior to the awarding of any construction contracts and for the utilization of existing excess capacity payments must be made prior to the capacity being provided. Any improvements made to the City of Forney distribution system up to the point of delivery become the property of the City of Forney. Plans for such improvements shall be submitted to City for written approval with all designs, materials and specification conforming to the City's requirements. The City shall have the right to make periodic inspections and final approval.

5. **Measuring Equipment.**

Markout shall furnish, install, operate, and maintain at its own expense at the delivery point, the necessary equipment and devices of standard type, as approved by the City, for measuring properly the quantity of water delivered under this Contract. City shall read the meter monthly, and Markout shall test and calibrate the meter at intervals of not more than twenty-four (24) months. The cost of all tests shall be borne by Markout, provided however, that if any special test is made at the request of City and shall disclose that the meter is recording accurately, City shall reimburse Markout for the cost of such tests. Meters registering not more than one and one-half percent (1 ½%) above or below normal shall be deemed to be accurate. The readings of any meter which have been disclosed by test to be inaccurate shall be corrected for the ninety (90) days preceding the test in accordance with the percentage of inaccuracy found. Should any meter fail to register for any period, the amount payable shall be based upon the water delivered in the corresponding period immediately prior to the failure, unless the City and Markout shall agree to the amount of water furnished during such period. The meters used under this Contract shall be read on the last day of each calendar month by the City's operator and shall be available for checking by a representative of Markout during normal business hours of the City.

6. **Unit of Measurement.**

The unit of measurement for water delivered under the provisions of this Contract shall be one thousand (1,000) gallons of water, U.S. Standard Liquid Measure.

7. **Price and Terms.**

a. For purposes of this Contract the total of all water to be annually purchased under the terms of this Contract by Markout shall constitute the Annual Minimum. Markout will pay for all water services required hereby as indicated below:

1. Markout shall pay for all water purchased under this Contract, save and except that amount of water contemplated in Section 7.a.2. below, shall be paid for at a rate of Sixty Three percent (63%) above the rate charged City by NTMWD per one thousand (1,000) gallons ("Differential Rate") for water furnished to the City. Said Differential Rate shall automatically adjust upon any change to the rate charged City by NTMWD, however, in no case shall the differential result in a rate of less than \$.61 per one thousand (1,000) gallons. The Differential Rate shall be subject to

review and adjustment by the City Council each year during the term of this Contract, beginning with the effective date hereof. Adjustment of the percentage associated with the Differential Rate by the City Council shall be based upon factors such as, but limited to, any and all debt load of the City, required water system improvements not otherwise contemplated by this Contract, administrative costs, any and all regulatory changes that impact water system operating costs, and any other factor which may impact the operations or funding of the City water system. The only portion of the Differential Rate subject to the above factors during any City Council review is that portion of the rate above Sixty Three percent (63%).

2. The unused portion of the minimum associated with the NTMWD infrastructure from Forney pump station #1 to Forney pump station #2 ("PS#2 Minimum" hereinafter defined in 7.b.(3) below) will be paid for by Markout at the rate charged City by NTMWD. The PS#2 Minimum which is used in one year and used the next, will be paid for by Markout at the Differential Rate subject to the same terms and conditions outlined in 7.a.1. above.

- b. The Annual Minimum amount of water that Markout shall be deemed to have been taken and used, regardless of whether or not such amount is or was actually taken or used, and which Markout shall be required to purchase and pay for at the above rate shall be calculated as:

the greater of:

- (1) 65,046,000 gallons, or
- (2) the maximum number of gallons actually taken from the system by Markout during any previous Water Year during the term of this Contract. For purposes of this section, Water Year means the period of August 1 of each calendar year through July 31 of the next following calendar year.

plus:

- (3) an additional annual amount shall be added to the Annual Minimum amount contemplated in Section 7.b.(1) and (2) and hereinafter referred to as PS#2 Minimum. The purpose of the PS#2 Minimum amount is to pay for the NTMWD infrastructure required for Forney Pump Station #2. PS#2 Minimum was divided based on project demand among various users of the system. The PS#2 Minimum amount shall begin when Forney Pump Station #2 is capable of pumping water which may not necessarily be when Markout is ready to take/receive water from the pump station. The annual PS#2 Minimum amount shall be implemented over a six year period as indicated below unless such amounts are changed by action of the NTMWD:

	Annual PS#2 Minimum	Annual Increase
Year 1	2,842,156	NA
Year 2	4,547,482	1,705,326
Year 3	6,252,754	1,705,272
Year 4	7,958,081	1,705,327
Year 5	9,663,353	1,705,272
Year 6	11,368,679	1,705,326

In the event that supply becomes available from Forney pump station #2 prior to the end of the first full Water Year after execution of this Contract then the amount of Year 1 PS#2 Minimum indicated above shall be divided by twelve (12) then multiplied by the number of months remaining in the then current Water Year and the resulting total shall be added to the Annual Minimum Amount. The monthly installments required in Section 7.d. below shall be increased in an amount equal to the proportional PS#2 Minimum at the then current rate charged by NTMWD to City for water.

Upon completion of the sixth year the Annual Minimum shall be that amount as determined by the calculations in Section 7.b.(1) and (2) above which shall include the total amount of the PS#2 Minimum in Year 6 above.

- c. The Annual Minimum amount of water Markout will be required to purchase at the above rates shall be calculated annually for the following Annual Payment Period, and the amount of water to be purchased by Markout during the following Annual Payment Period shall be calculated in accordance with the requirements of Section 7.b. above. For purposes of this section, "Annual Payment Period" shall mean October 1 of each calendar year through September 30 of the next following calendar year.
- d. Payment for water service charges as calculated above shall be made each year by Markout to the City in twelve (12) 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 in the Annual Minimum payment effective for that year shall be made by Markout to the City at the rates specified herein as follows: When Markout usage exceeds one hundred percent (100%) of the Annual Minimum amount required to be taken or paid for during any year, charges for the excess water will be billed by the City to Markout on the second month following the month in which the one hundred percent (100%) level is reached, such billing being for the excess water delivered in the month prior to the month being billed, and the procedure shall continue to the end of the water year with Markout making payment for all the excess not previously paid for on or before the 10th of the month following the end of such water year. Markout's liability and responsibility for making such payments as herein set forth shall commence on the effective date of this Contract. The initial monthly payment shall

be one-twelfth (1/12) of the amount that would result from the sale of 65,046,000 gallons at the above rate.

- e. In the event Markout shall fail to make any such monthly payment or annual payment within the time required, interest on such amount shall accrue at the rate of ten percent (10%) per annum from the date such payment becomes due until paid in full with interest, as herein specified. In the event said payment is not made within sixty (60) days from the date such payment becomes due, City may, at its option, discontinue delivery of water to Markout until the amount due City is paid in full with interest as herein specified.

8. **Cooperative Collections and Customer Cutoff.**

The City may from time to time provide sewer and/or garbage collection services to customers within Markout's water service area. The City and Markout agree that Markout will provide billing services for sewer and/or garbage collection service, as applicable, through its billing process. Markout agrees that it will bill and collect at rates established by the City and will remit to the City on a monthly basis the total collected for such services less a ten percent (10%) administrative services fee. Markout will provide a statement with each monthly remittance including the total collected by customer, less the administrative fee and the net amount.

The parties further desire to cooperate in the disconnection of water service to any customer who fails to keep an account current (defined for the purposes of this Contract as 10 days past due), including sewer and/or garbage service charges and, in that regard, Markout agrees, except as otherwise set forth in this Section, to disconnect, in accordance with its Tariff, water service to any customer who fails to keep an account current. Provided, however, that the parties recognize and agree that Markout is bound by and limited in its ability to disconnect water service to a customer by the terms and conditions of its Tariff together with the other state statutes, rules and regulations applicable to Markout. Nothing herein shall be considered or construed as an obligation on the part of Markout to disconnect water service to any customer if, to do so, would be contrary to Markout's Tariff or any other state statute, rule, regulation applicable to Markout. The failure of Markout to disconnect water to a customer that fails to keep an account current, when to do so would be a violation of Markout's Tariff or other state statutes, rules or regulations applicable to Markout, shall not constitute a default hereunder, or breach of this contract by Markout. In the event Markout does disconnect water service to a customer in accordance with this Section, Markout may choose to charge a customer reconnection and/or late fee and the City shall not be entitled to any portion thereof. Markout shall only be required to remit to the City those fees that otherwise would have been due to the City under this Section. Should it become necessary to refer an account for collection to a collection agency, the City shall be responsible for its proportionate share of such expense.

9. **Annual Report.**

Markout shall provide an Annual Report to the City which shall be used for water planning and budgeting purposes. The report shall be due no later than July 31st of each year and shall be in the form attached hereto as Exhibit "A".

10. **Force Majeure.**

In case of reason of "force majeure" wherein either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Contract, 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 so relied on, the obligation of the party giving such notice, insofar 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 a public enemy, orders of any kind of the government of the United States or the State of Texas or any kind of civil or military authority, earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage, or accidents of machinery, pipe lines or canals, partial or entire failure of the water supply, and inability on the part of City to deliver water hereunder or of Markout to receive such water, or 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.

11. **Hold Harmless**

Markout hereby agrees to hold the City whole and harmless from any claims or damages to Markout water mains or water system resulting from the rate of flow or quantity of water delivered, from any claims or damages arising as a result of the chemical or bacteriological content of water provided, unless such damages resulting from the chemical or bacteriological content of the water are caused by the negligence of the City, and from any act or omission of any representative, agent, customer, employee, and/or invitee of Markout, including any and all claims for damages, cost, and expenses, including reasonable attorney's fees and costs of court, if any, that may arise out of, or be occasioned by, this contract or any of its activities unless such damages result from the gross negligence or willful misconduct of the City.

12. **Term of Contract.**

This Contract shall continue in force and effect for a period of 25 years from the effective date hereof and for such period of time in addition thereto as may be agreed upon by the parties.

13. **Assignment.**

This contract may not be assigned by Markout to any other party without the express written consent of the City Council of the City of Forney.

14. **Modification and Review.**

The Differential Rate established by this Contract may be modified by the City Council of the City each year, provided that any modification shall be withheld until the City shall have given Markout ninety (90) days notice in writing that a modification will take effect. Should the NTMWD increase the price of water to the City of Forney then that increase will be automatically and immediately reflected in the next billing to Markout without notice or hearing.

15. **Regulatory Bodies.**

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

16. **Sanitary Supervision.**

It is agreed that Markout will furnish all sanitary supervision as may be necessary for the purpose of inspection, observation, measurement, sampling, and testing of any of Markout's waterline improvements to be constructed to accomplish the purposes of this Contract and that such supervision shall be in accordance with the sanitary provisions of the rules and regulations of the Texas Department of Health, the TCEQ, and the Sanitary and Plumbing Codes of the City.

17. **Limitation on Resale.**

Markout agrees that it will not, during the term of this Contract, resell any of the treated water it purchases from City hereunder to any wholesale or other customer other than retail customers within its service area, without prior written consent by the City Council of the City of Forney, Texas, based on a formal action of the Council.

18. **Notice.**

All notices or communications provided for herein or necessary in connection with this Contract shall be in writing and hand delivered or sent certified mail, postage prepaid, return receipt requested, to:

City of Forney
P.O. Box 826
Forney, Texas 75126


Markout Water Supply Corporation
P.O. Box 907
Forney, Texas 75126

Either address may be changed by either party by written notice to the other party.

IN WITNESS WHEREOF, the parties hereto have executed this Contract in duplicate originals on the date first written above, which date shall also be the effective date hereof.

CITY OF FORNEY, TEXAS

MARKOUT WATER SUPPLY CORPORATION


By: Danell Grooms
Mayor
Attest:
By: Odessa Moore
Odessa Moore
City Secretary

By: B. David Hinds
B. DAVID HINDS
President

Attest:

By: Charles Benedict
Charles Benedict
Secretary

APPROVED AS TO FORM:
Robert K. Dillman
City Attorney

EXHIBIT "A"

Annual Report

Below is the Annual report required by Section 9 of that certain Wholesale Water Contract by and between the water supply corporation named below and the City of Forney.

Name of Water Supply Corporation:	Markout WSC
Name/title of person completing report:	Brenda Kearby
Contact number of person completing report:	972-897-2259
Number of active connections for current reporting period (June 1 through July 31):	535
Average demand per connection for current reporting period (August 1 through July 31):	12,000
Projected number of connections in next Water Year (August 1 through July 31):	525
Projected demand per connection for next Water Year (June 1 through July 31):	12,000
Projected total demand for next Water Year (June 1 through July 31):	67,000,000

Brenda Kearby
Printed Name of Person Completing Report

Brenda K. Kearby
Signature of Person Completing Report

5/5/06
Date of Submission

**YEAR TO DATE WATER DISTRICT USAGE, YEAR-END RECONCILIATION,
and NEXT BUDGET YEAR CALCULATION**

Water Year Data for FY06 Budget						
	Markout	Highpoint	Corrugated Meter 1	Corrugated Meter 2	Talty Meter 1	Talty Meter 2
City Rate per 1,000	\$1.58	\$1.58	1.58		1.58	
NTMWD Rate per 1,000	0.97	0.97	0.97		0.97	
Differential Rate @ 63%	\$0.61	\$0.61	\$0.61		\$0.61	
2005-2006 Monthly Payment	\$8,564.39	\$12,454.22	\$18,231.49		\$35,147.10	
Annual Minimum	65,046,000	94,589,000	138,467,000		266,940,000	
Aug-05	9,577,000	13,712,000	2,832,000	10,934,000	35,523,000	43,685,000
Sep-05	7,408,000	10,432,000	1,950,000	7,318,000	17,240,000	20,109,000
Oct-05	2,927,000	12,944,000	2,591,000	10,290,000	14,344,000	17,615,000
Nov-05	2,488,000	7,514,000	2,324,000	8,890,000	9,142,000	12,366,000
Dec-05	5,905,000	4,535,000	2,461,000	9,138,000	8,081,000	9,985,000
Jan-06	6,564,000	8,665,000	2,364,000	11,095,000	11,555,000	8,713,000
Feb-06	3,091,000	4,370,000	1,446,000	7,437,000	5,964,000	7,511,000
Mar-06	5,134,000	6,221,000	1,198,000	10,650,000	6,574,000	12,180,000
Apr-06						
May-06						
Jun-06						
Jul-06						
Usage by Meter	43,094,000	68,393,000	17,166,000	75,752,000	108,423,000	132,164,000
Total Actual Usage	43,094,000	68,393,000	92,918,000		240,587,000	
Annual Minimum	65,046,000	94,589,000	138,467,000		266,940,000	
Over (Under)						
Annual Minimum	(21,952,000)	(26,196,000)	(45,549,000)		(26,353,000)	

Year-End Reconciliation - To Be Paid By September 30, 2006				
Annual Minimum	65,046,000	94,589,000	138,467,000	266,940,000
PS#2 Minimum	2,000,000	0	0	0
Annual Minimum w/out PS#2	63,046,000	94,589,000	138,467,000	266,940,000
Total Actual Usage	43,094,000	68,393,000	92,918,000	240,587,000
Difference w/out PS#2				
Over (Under)	(19,952,000)	(26,196,000)	(26,196,000)	(26,353,000)
Addl Cost - Annual Min. w/out PS#2	\$0.00	\$0.00	\$0.00	\$0.00
Addl Cost - PS#2 Min.	\$0.00	\$0.00	\$0.00	\$0.00
Total Due	\$0.00	\$0.00	\$0.00	\$0.00

New Minimums, Rates, Monthly Payments and Budget Totals for FY07				
New Minimums Based on Actual Usage	65,046,000	94,589,000	138,467,000	266,940,000
Rate per 1,000	1.58	1.58	1.58	1.58
PS#2 Min Yr 1 of 6	0	0		0
Rate per 1,000	0.97	0.97		0.97
Total Minimum Beginning October 2006	65,046,000	94,589,000	138,467,000	266,940,000
	\$102,772.68	\$149,450.62	\$218,777.86	\$421,765.20
FY07 Budgeted Revenues			\$892,766.36	
Monthly Payment Beginning October 2006	\$8,564.39	\$12,454.22	\$18,231.49	\$35,147.10

Attachment P

Memorandum of Understanding between the City of Mesquite and the City of Forney

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF MESQUITE AND THE CITY OF FORNEY**

For

**THE PURPOSE OF DEFINING EXPECTATIONS AND RESPONSIBILITIES OF THE
PARTIES RELATED TO THE ACQUISITION OF
MARKOUT WATER SUPPLY CORPORATION WATER SYSTEM AND CUSTOMERS
AND THE DIVISION OF THAT SYSTEM**

This Memorandum of Understanding ("MOU") is made by and between the City of Mesquite ("Mesquite") and the City of Forney ("Forney") (collectively the "Cities" or "Parties"), pursuant to the Interlocal Cooperation Act, Chapter 791, Texas Government Code, to be effective on the date of the last signatory to this MOU ("Effective Date").

1. Background and Objectives

- A. Markout Water Supply Corporation ("Markout") provides retail water service to over 1000 customers in Kaufman County, Texas. Markout's customers are located inside the city limit and extraterritorial jurisdiction of Forney, and in the city limits and extraterritorial jurisdiction of Mesquite. Markout operates its system under Certificate of Convenience and Necessity (CCN) No. 10846. Markout obtains treated water from Forney pursuant to the May 2, 2006 Wholesale Water Contract, as amended by the June 22, 2006 Amendment # 1 to the Wholesale Water Contract ("Wholesale Contract").
- B. Markout's Board of Directors has requested that Mesquite acquire Markout's water supply system and customers, and provide water service to the area and customers currently served by Markout. Mesquite has agreed to work with Markout to transfer the Markout water system and customers to Mesquite. Before the transfer of the system may occur, the members of Markout must vote to approve the transfer at a membership meeting, and the Public Utility Commission of Texas ("PUC") must approve the transfer of the system and customers to Mesquite.
- C. It is Mesquite's and Forney's intent to transfer to Forney the rights to provide water service within the Grayhawk subdivision and adjacent vacant land constituting an approximate 52 acres currently in the city limits of Forney (Kaufman County Property ID Nos. 9528 and 9529), the location of which is set out in *Exhibit A* of this MOU ("Transfer Area"). However, the transfer of the Transfer Area to Forney cannot occur without Mesquite first completing the feasibility study currently underway, which will not be finalized before the transfer of the Markout water system, if approved, to Mesquite.

- D. Until Mesquite has designed and constructed facilities to extend Mesquite's water system to the Markout water system and connected the Markout water system to Mesquite's water system, Mesquite will need to obtain treated water through Forney's water system. For this reason, the Parties agree to negotiate in good faith a water transportation agreement or a wholesale water supply agreement, which will become effective upon the closing of the transfer of the Markout water system to Mesquite. If, at the time of closing, Forney and Mesquite have entered into a water transportation agreement or a wholesale water supply agreement, the Wholesale Contract will be assigned to Mesquite and terminated upon the closing of the transfer of the Markout water system to Mesquite.
- E. Mesquite and Forney, in negotiating a water transportation or wholesale water supply agreement, agree to set rates for the transportation of Mesquite water or the supply of wholesale water to the Markout water system at a rate that will afford the Markout water system a rate reduction over the current rate charged under the Wholesale Contract.
- F. The purpose of this MOU is to (1) outline the steps the Parties will take to evaluate and transfer the rights to provide water service to the Transfer Area from Mesquite to Forney, (2) provide consent to the assignment of the Wholesale Contract to Mesquite, and (3) provide for the termination the Wholesale Contract.

2. **Agreement Regarding Assignment and Transfer of Transfer Area**

- A. Forney hereby consents to the assignment of the Wholesale Contract to Mesquite. Forney further agrees to support Mesquite's Sale, Transfer, Merger Application to be filed with the PUC to transfer the Markout water system and customers to Mesquite, and to not file any protests or other objections to such Application. Upon the assignment of the Wholesale Contract to Mesquite, the Wholesale Contract shall terminate.
- B. Within thirty (30) days after the closing of the transfer of the Markout water system to Mesquite (or such later date as agreed to by the parties), Mesquite and Forney shall execute an agreement pursuant to the Texas Water Code § 13.248 transferring the Transfer Area and customers within the Transfer Area to Forney ("Texas Water Code § 13. 248 Agreement"), the form of which is attached hereto as *Exhibit B*. In accordance with the Texas Water Code § 13.248 Agreement, Mesquite will prepare the application and maps to be filed with the PUC to effectuate the transfer of the Transfer Area to Forney, and file the Texas Water Code § 13.248 Agreement with the PUC in accordance with such agreement. If the PUC, or successor agency, requires approval of the transfer pursuant to Texas Water Code § 13.301, Mesquite, with Forney's assistance, will prepare the application and maps to be filed with the PUC to effectuate the transfer of the Transfer Area to Forney.

- C. Mesquite is currently conducting a feasibility study to provide options and recommendations for disconnecting the Transfer Area from the Markout water system and reconnecting the Transfer Area to the Forney water system. The feasibility study shall consider the following:
 - (1) Protection of the existing water systems of Mesquite and Forney so as to not make either system become out of compliance with the Drinking Water Standards, or otherwise jeopardize water service to their respective existing customers or water quality; and
 - (2) Protection of the quality of water and water service provided to the customers on the Markout water system.
- D. Mesquite will complete such feasibility study within one (1) year after the transfer of the Markout water system to Mesquite. If Mesquite cannot complete the feasibility study within one (1) year after the transfer of the Markout water system, Mesquite shall provide Forney with written notice of the delay of the completion of the feasibility study and of the estimated date of completion.
- E. Upon completion of the feasibility study, Mesquite and Forney shall work together to determine how and when to disconnect the Transfer Area from the Markout water system, and reconnect the Transfer area to Forney's water system. Mesquite shall be responsible to fund all costs associated with disconnecting the Transfer Area from the Markout water system, and reconnecting the Transfer Area to Forney's water system up to One Hundred and Fifty Thousand Dollars (\$150,000.00). Any additional costs for the Transfer Area under this paragraph shall be the responsibility of both Mesquite and Forney equally.
- F. If Forney annexes into its city limits territory to which Mesquite provides water service, Forney may request that Mesquite transfer to Forney the rights to provide water service to the area annexed by Forney. Upon receipt of a request from Forney, Mesquite and Forney shall work together to assess the feasibility of transferring water service to the annexed area to Forney, and if it is determined to be feasible, negotiate in good faith an agreement to effectuate the transfer, including obtaining any approvals from the PUC or its successor agency.

3. **Miscellaneous**

- A. Term. The term of this MOU shall begin on the Effective Date and shall continue until the physical disconnection of the Transfer Area from the Markout water system and the reconnection of the Transfer Area to Forney's water system. Unless the parties otherwise agree in writing, this MOU shall terminate if Mesquite files

an application with the PUC to transfer the Markout system prior to Forney and Mesquite entering into a transportation agreement or a wholesale water supply agreement. Prior to the execution of any water transportation or wholesale water supply agreement between Mesquite and Forney, or the filing of an application with the PUC to transfer the Markout water system to Mesquite, either party may terminate this MOU for any reason by giving the other Party 30 days written notice of termination.

- B. Severability. If any provision of this MOU is held to be invalid for any reason by a court or agency of competent jurisdiction, the remainder of this MOU shall not be affected thereby, and this MOU shall be construed as if such invalid provision had never been contained herein, and the remaining enforceable provisions of this MOU are expressly deemed severable for this purpose.
- C. Cooperation. The Parties hereto agree to cooperate at all times in good faith to effectuate the purposes and intent of this MOU.
- D. Entire Agreement. This MOU contains the entire agreement of the Parties and supersedes all prior or contemporaneous understandings or representations, whether oral or written, respecting the subject matter hereof.
- E. Amendments. Any amendment to this MOU must be in writing and shall be effective only if signed by the authorized representatives of each Party to this MOU.
- F. Effect of Force Majeure. If any Party is unable to perform, in whole or in part, its obligations under this MOU by reason of "force majeure," then performance of such obligations shall be suspended to the extent and during the period directly affected by the force majeure; provided, however, all due diligence must be exercised to eliminate the force majeure and to resume full performance at the earliest practicable time. As soon as reasonably possible after the occurrence of the force majeure relied upon to suspend performance, the Party whose performance is suspended shall give notice and full particulars of the force majeure to the other Parties. The term "force majeure" includes: acts of God; strikes; lockouts or other industrial disturbances; criminal conduct or sabotage; acts of the public enemy; orders of the government of the United States or the State of Texas or any civil or military authority; insurrections or riots; landslides; lightning; earthquakes; fires; hurricanes; storms; floods; washouts; droughts; epidemics; pandemics; arrests; restraints of government; civil disturbances; explosions; or any other events, whether similar to those enumerated or otherwise, (i) that are not within the reasonable control of the Party claiming the right to suspend performance, and (ii) that could not have been avoided by the exercise of due diligence.
- G. Effect of Legislative Changes. If any Party to this MOU is unable to perform, in whole or in part, its obligations under this MOU by reason of legislative or

regulatory changes beyond its control, then performance shall be suspended only to the extent and during the period affected by the change.

- H. No Third-Party Beneficiaries. This MOU shall inure only to the benefit of the Parties and their successors and assigns as permitted by this MOU. No person or entity that is not a Party to this MOU shall be considered a third-party beneficiary of this MOU.
- I. Assignment. Neither Party may assign its rights and obligations under this MOU without first obtaining a written consent from the other Party, which consent shall not be unreasonably withheld or delayed.
- J. Applicable Law. This MOU shall be construed in accordance with Texas law.
- K. Venue. Venue for any action arising hereunder shall be in Kaufman County, Texas.
- M. Notices. Any notice required or contemplated by this MOU shall be deemed given (i) if mailed via Certified Mail Return Receipt Requested, on the earlier of the date actually received or five business days after mailed, and (ii) if deposited with a private delivery service (such as U.P.S. or FedEx), when delivered, as evidenced by a receipt signed by a person at the delivery address, when received at the delivery address. All notices shall be addressed as follows:

If to Mesquite:

City of Mesquite, Texas
Attn: City Manager
1515 N. Galloway
Mesquite, TX 75149
Phone: 972-216-6293

And

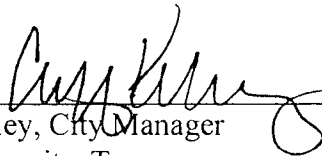
City of Mesquite, Texas
Attn: City Attorney
1515 N. Galloway
Mesquite, TX 75149
Phone: 972-216-6272

If to Forney:

City of Forney
Attn: City Manager
101 Main Street East
Forney, TX 75126
Phone: 972-564-7300

- N. Events of Default. Except as provided in this section, no Party shall be in default under this MOU until notice of the alleged failure of such Party to perform has been given (which notice shall set forth in reasonable detail the nature of the alleged failure) and until such Party has had a reasonable time to cure the alleged failure (such reasonable time determined based on the nature of the alleged failure, but in no event less than 15 days after written notice of the alleged failure has been given). In addition, no Party shall be in default under this MOU if within the applicable cure period the Party to whom notice was given begins performance and thereafter diligently and continuously pursues performance until the alleged failure has been cured within a reasonable period of time. If an event of default shall occur, then the aggrieved Parties shall be entitled to specific performance, injunctive relief, and damages to the maximum extent available under applicable law.
- O. Counterparts. This MOU may be executed in multiple counterparts, each of which will be deemed an original, and all of which will constitute one and the same instrument. Each Party represents and warrants that they have the full right, power and authority to execute this MOU.
- P. Effective Date. The Effective Date of this MOU is the date upon which this MOU was executed by the last Party.

CITY OF MESQUITE:

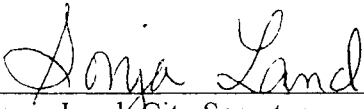


Cliff Keheley, City Manager
City of Mesquite, Texas

9-22-2020

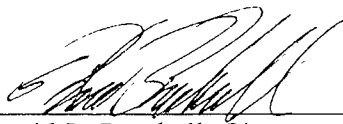
Date

ATTEST:



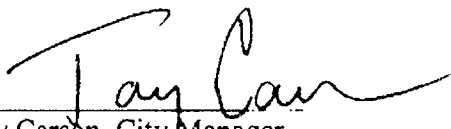
Sonja Land, City Secretary
City of Mesquite, Texas

APPROVED AS TO FORM:

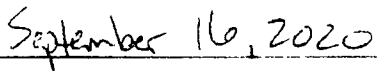


David L. Paschall, City Attorney

CITY OF FORNEY:

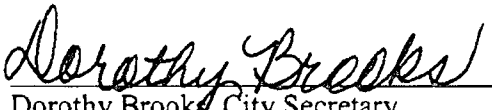


Tony Carson, City Manager
City of Forney, Texas



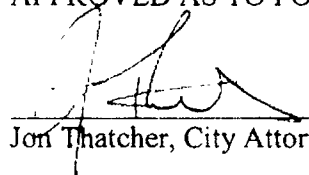
Date

ATTEST:



Dorothy Brooks, City Secretary
City of Forney, Texas

APPROVED AS TO FORM:



Jon Thatcher, City Attorney

EXHIBIT A
TRANSFER AREA

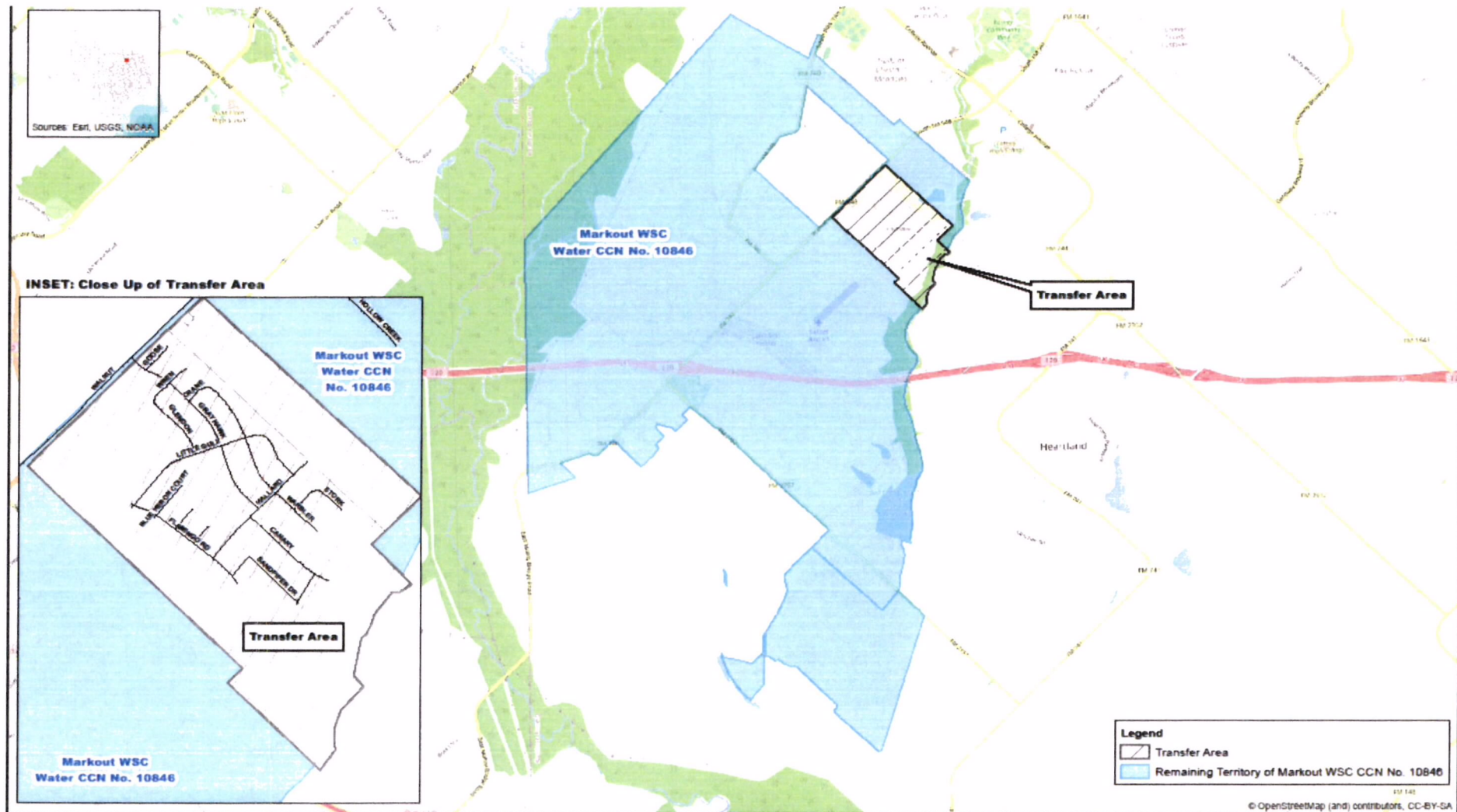


EXHIBIT B
FORM OF TEXAS WATER CODE § 13.248 AGREEMENT

**AGREEMENT DESIGNATING RETAIL
WATER SERVICE TERRITORY
AND TRANSFERRING FACILITIES AND CUSTOMERS**

THIS AGREEMENT Designating Retail Water Service Territory and Transferring Facilities and Customers is made and executed by and between the City of Mesquite (Mesquite), and the City of Forney (Forney). Mesquite and Forney may be collectively referred to herein as the "Parties."

I. RECITALS

WHEREAS, Mesquite is municipal corporation in Texas and holds water Certificate of Convenience and Necessity (CCN) No. 10060 (Mesquite Water CCN);

WHEREAS, Forney is a municipal corporation in Texas which holds water CCN No. 10956;

WHEREAS, on _____ Forney and Mesquite executed the Memorandum of Understanding Between the City of Mesquite and the City of Forney for the Purpose of Defining Expectations and Responsibilities of the Parties Related to the Acquisition of Markout Water Supply Corporation Water System and Customers and the Division of that System (MOU);

WHEREAS, pursuant to that MOU, the Parties agreed to transfer the rights to provide water service to the Grayhawk subdivision and other area currently in the city limits of Forney to Forney;

WHEREAS, by transferring rights to provide water service to the Transfer Area, the Parties will enhance the planning and development of capital improvement programs, and water services to be provided to the respective areas;

WHEREAS, this Agreement will accomplish legitimate public purposes of the Parties and will permit more dependable water service planning that will benefit the public health, safety and welfare of their respective present and future customers within each Parties' service area; and

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained in this Agreement, including the recitals set forth above, and other good and valuable consideration, the receipt of which is hereby acknowledged, by their representatives affixing signatures below, Mesquite and Forney agree as follows:

II. TERMS OF AGREEMENT

2.1 Transfer Area.

(a) Mesquite hereby agrees to decertify the portion of the Mesquite Water CCN identified on the attached map, attached hereto and incorporated herein for all purposes as Exhibit A, and transfer the territory identified on Exhibit A to Forney.

(b) The area within the Mesquite Water CCN to be transferred from Mesquite to Forney identified in Exhibit A is designated as the "Transfer Area."

2.2 Transfer to Forney. Mesquite and Forney agree that, on and after the Transfer Effective Date (as defined in Paragraph 2.5(b)), Forney shall have the sole right to provide retail water service within the Transfer Area, and Mesquite will have no further obligation or right to provide retail water service to any current or future customers in the Transfer Area.

2.3 Customers and Facilities in the Transfer Area.

(a) As of the Effective Date of this Agreement (as defined in Paragraph 2.5(a)), Mesquite serves customer connections in the Transfer Area ("Customer Connections") and shall continue to provide water service to the Customer Connections until the Transfer Effective Date. The customer names, physical addresses, meter sizes, and customer deposits of those Customer Connections are identified on Exhibit B attached hereto.

(b) On the Transfer Effective Date of this Agreement, Mesquite shall transfer to Forney the Customer Connections identified in Exhibit B. On or before the Transfer Effective Date, Mesquite shall also provide Forney with its final meter reading for each Customer Connection. Mesquite's final utility bill to the customer at each Customer Connection shall be determined using the meter reading as provided in this paragraph. Mesquite shall not be entitled to receipt of payments for water delivered after the final meter reading provided in this paragraph.

(c) At least ten (10) days before Transfer Effective Date, the Parties shall provide written notice of the transfer to each Customer Connection listed in Exhibit B.

(d) Subject and pursuant to the terms and conditions set forth in this Agreement, on the Transfer Effective Date of this Agreement, Mesquite shall transfer and Forney shall acquire **[LIST OF FACILITIES]**, with all the taps, meters, and valves and other appurtenances along and on the water line ("Facilities"). A map identifying the location of the water lines and Customer Connections is attached hereto as Exhibit C. Mesquite shall continue to operate, maintain, possess and use the Facilities after the Effective Date of this Agreement until the Transfer Effective Date, when all of the Customer Connections have been transferred to Forney as provided by this Paragraph 2.3. Upon the transfer of all of the Customer Connections to Forney on the Transfer Effective Date, Mesquite shall relinquish physical control over the Facilities and Customer Connections to Forney.

(e) On or before the Transfer Effective Date, the Parties shall execute a Bill of Sale and Assignment ("Bill of Sale"), a copy of which is attached as Exhibit D and incorporated into this Agreement, to transfer and assign the Facilities, Customer Connections, and customer deposits to Forney. Upon the execution of the Bill of Sale, Mesquite shall transfer the Facilities, Customer Connections, and customer deposits to Forney. The Bill of Sale shall provide for Forney's assumption of all of Mesquite's obligations and liabilities under or related to the Facilities and Customer Connections, except Forney does not assume the following: