

(i) Any and all suits, actions, losses, damages, claims, or liability of any character, type, or description, including all expenses of litigation, court costs, and attorney's fees, for injury or death to any person, or injury to any property, received or sustained by any person or persons or property, arising out of, or occasioned by, directly or indirectly, the operation of the Facilities and provision of service to the Customer Connections, and accruing prior to the Transfer Effective Date, except to the extent such claims of damages arise from the gross negligence or willful misconduct of Forney; and

(ii) Any liability or obligation of Mesquite, absolute or contingent, known or unknown, arising out of Mesquite's ownership, operation, and maintenance of the Facilities and the provision of service to the Customer Connections.

(f) On or before the Transfer Effective Date, the Parties shall execute an Assignment of Easements ("Assignment"), a copy of which is attached as Exhibit E and incorporated into this Agreement, to transfer and assign the easements in which the Facilities are located.

2.3 Amendment of CCNs. Within sixty (60) days after the Effective Date of this Agreement, Mesquite shall file a petition with the Public Utility Commission of Texas (PUC) pursuant to Texas Water Code § 13.248 requesting that the PUC designate areas and customers to be served consistent with this Agreement and incorporate this Agreement into the respective CCNs of the Parties (Section 13.248 Petition) or an application for approval of the transfer pursuant to Texas Water Code § 13.301 (Section 13.301 Application). Mesquite shall endeavor to obtain PUC approval of the CCN and facility transfers contemplated herein in an expeditious manner and Forney will support the Section 13.248 Petition or the Section 13.301 Application before the PUC and will cooperate with Mesquite by providing Mesquite and the PUC with any required or requested information needed to complete, file, or review the Section 13.248 Petition or a Section 13.301 Application, and to obtain its approval by the PUC.

2.4 Effective Dates.

(a) This Agreement is effective on the date of the last signatory of this Agreement and enforceable as between Mesquite and Forney following execution by both Parties, and this date is referred to herein as the "Effective Date."

(b) The "Transfer Effective Date" shall be the date Forney assumes physical control of the Facilities and Customer Connections. The Parties shall mutually agree to the date of the Transfer Effective Date, but in no event shall the Transfer Effective Date be earlier than the PUC approve of the Section 13.248 Petition or the Section 13.301 Application.

2.5 Termination.

(a) Unless the Parties agree in writing to extend this Agreement, this Agreement shall terminate upon the date any order issued by the PUC denying the Section 13.248 Petition is final non-appealable.

(b) Either Party may terminate this Agreement if any hearing request or motion to intervene is granted by the PUC that opposes the granting of the Section 13.248 Petition.

III. MISCELLANEOUS

3.1 Section 13.248. This Agreement shall be construed and interpreted in accordance with Section 13.248 of the Texas Water Code.

3.2 Applicable Texas Law. This Agreement shall be governed by and construed and enforced under the laws of the State of Texas.

3.3 Performance. The obligations and undertakings of each of the Parties to this Agreement shall be performed in Kaufman County, Texas. Except for matters within the jurisdiction of the PUC (or its successor), the Parties expressly agree that all judicial proceedings to enforce any of the provisions of this Agreement shall take place in Kaufman County, Texas.

3.4 Entire Agreement. This Agreement contains the entire agreement of Mesquite and Forney with respect to the subject matter of the Agreement. No Agreement, statement, or promise made by any Party or to any employee, agent, or officer of any Party, that is not contained in this Agreement shall be valid, binding, or of any force or effect. Any amendments to this Agreement must be in writing and signed by the Parties.

3.5 Successors and Assigns. This Agreement shall be binding upon the Parties hereto and their respective successors, heirs, representatives, and assigns.

3.6 Agreement Drafted Equally. This Agreement shall be deemed drafted equally by the Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against either Party shall not apply.

3.7 Severability. Should any provision of this Agreement be declared void by a court of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect.

3.8 Attorneys' Fees. In the event of any suit or other adjudication between the Parties to enforce any claim arising out of this Agreement, or to interpret the terms of this Agreement, the prevailing Party shall be entitled to recover its fees, damages, costs, attorneys' fees, and such other and further relief from the non-prevailing Party, general or special, at law or in equity, to which the prevailing Party may show itself justly entitled.

3.9 Covenant of Authority. The respective signatories to this Agreement covenant that they are fully authorized to sign this Agreement on behalf of their respective Party.

IN WITNESS WHEREOF, this Agreement has been duly executed in multiple counterparts (each of which is to be deemed original for all purposes) by the Parties on the date appearing by each Parties signature.

CITY OF MESQUITE

BY: _____
Cliff Keheley, City Manager
City of Mesquite

Date: _____

ATTEST:

City Secretary for the City of Mesquite

APPROVED AS TO FORM:

City Attorney or Designee

CITY OF FORNEY

BY: _____
Tony Carson, City Manager
City of Forney

Date: _____

ATTEST:

City Secretary of the City of Forney

APPROVED AS TO FORM:

City Attorney or Designee

EXHIBIT A
TRANSFER AREA

EXHIBIT B
CUSTOMER CONNECTIONS

**EXHIBIT C
FACILITIES**

EXHIBIT D
BILL OF SALE AND ASSIGNMENT

BILL OF SALE AND ASSIGNMENT

Date: _____, 20__

Date: _____, 20__

Assignor: CITY OF MESQUITE, a municipal corporation of the State of Texas

Assignor's Mailing Address: 1515 N. Galloway Ave.
Mesquite, Texas 75149

Assignee: CITY OF FORNEY, TEXAS, a municipal corporation of the State of Texas

Assignee's Mailing Address: 101 Main Street East
Forney, Texas 75126

Consideration:

Ten dollars cash and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged.

Property:

The property set forth and described in **Exhibit 1** attached hereto and made a part hereof for all purposes.

Conveyance and Sale:

Assignor, for the Consideration and subject to any reservations from conveyance and any exceptions to conveyances, assigns, grants, sells, and conveys to Assignee, the Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold it to Assignee and Assignee's heirs, successors, and assigns, and Assignor does hereby bind itself and its successors and assigns to warrant and forever defend the Property to Assignee against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under Assignor, but not otherwise. All other warranties that might arise by common law as well as the warranties in section 5.023 of the Texas Property Code (or its successor) are excluded.

This Bill of Sale and Assignment is subject to the terms and conditions of that certain Agreement Designating Retail Water Service Territory and Transferring Facilities and Customers dated effective the ____ day of _____, 20__ by and between Assignor and Assignee, reference to which is made hereinafter for all purposes.

When the context requires, singular nouns and pronouns include the plural.

This Assignment may be executed in one or more counterparts, each of which shall be deemed an original and will become effective and binding upon the Parties as of the date shown at such time as all the signatories hereto have signed a counterpart of this Agreement.

CITY OF MESQUITE

By: _____
Cliff Keheley, City Manager
City of Mesquite, Texas

ACCEPTED as of the date first shown above.

CITY OF FORNEY, TEXAS

By: _____
Tony Carson, City Manager
City of Forney, Texas

ACKNOWLEDGED:

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

 This instrument was acknowledged before me on _____20__, by
_____, _____ of City of Mesquite, a municipal
corporation of the State of Texas, on behalf of said water district.

NOTARY PUBLIC, STATE OF TEXAS

STATE OF TEXAS §
 §
COUNTY OF KAUFMAN §

 This instrument was acknowledged before me on _____20__, by
_____, _____ of City of Forney, a municipal corporation
of the State of Texas, on behalf of said corporation.

NOTARY PUBLIC, STATE OF TEXAS

EXHIBIT 1
To
BILL OF SALE AND ASSIGNMENT
Dated

_____, 20__

DESCRIPTION

1. Customer deposits for the Customer Connections listed in Exhibit 2 to this Bill of Sale and Assignment; and
2. The following water lines, and all taps, meters, and valves along and on the water lines, the location of which is shown on Exhibit 3 to this Bill of Sale and Assignment:

[*LIST FACILITIES*]

EXHIBIT 2
To
BILL OF SALE OF ASSIGNMENT

EXHIBIT 3
To
BILL OF SALE AND ASSIGNMENT

EXHIBIT E
ASSIGNMENT OF EASEMENTS

ASSIGNMENT OF EASEMENTS

Date: _____, 20__

Assignor: CITY OF MESQUITE, a municipal corporation of the State of Texas

Assignor's Mailing Address: 1515 N. Galloway Ave.
Mesquite, Texas 75149

Assignee: CITY OF FORNEY, TEXAS, a municipal corporation of the State of Texas

Assignee's Mailing Address: 101 Main Street East
Forney, Texas 75126

Consideration:

Ten dollars cash and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged.

Description of Easements:

Those easements and right-of-way easements in Kaufman County, Texas, more particularly described on **Exhibit 1** attached hereto and incorporated herein by reference for all purposes, together with any and all other easement rights of Assignor related to or associated with the Facilities described in the Agreement Designating Retail Water Service Territory and Transferring Facilities and Customers entered into by and between Assignor and Assignee whether acquired by recorded conveyance, prescription, estoppel, consent, permission to place in public right of way, or otherwise (hereinafter called the "Easement Property").

Reservation of Rights: NONE

ASSIGNMENT:

For the Consideration, Assignor grants, conveys, and assigns to Assignee, subject to any reservations herein, all of Assignor's interest in the Easement Property, including, without limitation, all of Assignor's rights of ingress, egress, and regress associated therewith, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold the Easement Property to Assignee and Assignee's successors and assigns forever. Assignor binds the Assignor and the Assignor's successor and assigns to warrant and forever defend the title to the Easement Property in Assignee and Assignee's successors and assigns against every person

whomever lawfully claiming or to claim the Easement Property or any part of the Easement Property.

This Assignment is subject to the terms and conditions of that certain Agreement Designating Retail Water Service Territory and Transferring Facilities and Customers concerning the Facilities described therein in Kaufman County, Texas dated effective the _____ by and between Assignor, as Mesquite, and Assignee, as Forney, reference to which is made herein for all purposes.

When the context requires, singular nouns and pronouns include the plural.

This Assignment may be executed in one or more counterparts, each of which shall be deemed an original and will become effective and binding upon the Parties as of the date shown at such time as all the signatories hereto have signed a counterpart of this Agreement.

CITY OF MESQUITE

By: _____
Cliff Keheley, City Manager
City of Mesquite, Texas

ACCEPTED as of the date first shown above.

CITY OF FORNEY, TEXAS

By: _____
Tony Carson, City Manager
City of Forney, Texas

ACKNOWLEDGED:

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

 This instrument was acknowledged before me on _____20__, by
_____. _____ of City of Mesquite, a municipal
corporation of the State of Texas, on behalf of said water district.

NOTARY PUBLIC, STATE OF TEXAS

STATE OF TEXAS §
 §
COUNTY OF KAUFMAN §

 This instrument was acknowledged before me on _____20__, by
_____. _____ of City of Forney, a municipal corporation
of the State of Texas. on behalf of said corporation.

NOTARY PUBLIC, STATE OF TEXAS

**EXHIBIT 1
To
ASSIGNMENT OF EASEMENTS**

EASEMENTS:

Attachment Q

Water Transportation Agreement between the City of Mesquite and the City of Forney

APPROVED BY CITY COUNCIL
DATE 12.7.2020
AGENDA ITEM NO. 7

**WATER TRANSPORTATION AGREEMENT
BETWEEN THE CITY OF MESQUITE AND THE CITY OF FORNEY**

This Water Transportation Agreement ("Agreement") 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 Agreement ("Effective Date").

RECITALS

WHEREAS, Mesquite is a member city of the North Texas Municipal Water District ("NTMWD") and a party to the August 1, 1988 North Texas Municipal Water District Regional Water Supply Facilities Amendatory Contract, as amended ("NTMWD Wholesale Agreement");

WHEREAS, Forney is also a member city of NTMWD and also a party to the NTMWD Wholesale Agreement;

WHEREAS, Mesquite is acquiring Markout Water Supply Corporation's ("Markout") water supply system and customers, and will provide water service to the area and customers served by Markout;

WHEREAS, 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 ("Markout Wholesale Contract"), and upon the assignment of the Markout Wholesale Contract to Mesquite, to which Forney has consented, the Markout Wholesale Contract terminates;

WHEREAS, 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 transport treated water from NTMWD through Forney's water system to the Markout water system;

WHEREAS, the Parties understand that Forney's annual minimum obligations under NTMWD Wholesale Agreement cannot be reduced as a result of the transfer of the Markout water system to Mesquite, but that Mesquite intends to help Forney through the transition;

WHEREAS, the Parties have determined that it is in their respective best interests to enter into this Water Transportation Agreement and for Forney to transport Mesquite's treated water to the Markout water system.

AGREEMENT

For and in consideration of the mutual promises, covenants, obligations, and benefits described in this Agreement, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Cities agree as follows:

ARTICLE 1 DEFINITIONS

“Forney’s NTMWD Point of Delivery” means the point or points where NTMWD delivers treated water to the City of Forney.

“Forney Annual Minimum” means 2,345,109,000 gallons per year, which is the annual minimum as set out in the NTMWD Wholesale Agreement as of August 1, 2020.

“Markout Annual Minimum” means 118,196,000 gallons per year, which is the annual minimum as set out in the Markout Wholesale Agreement as of August 1, 2020.

“Markout Point of Delivery” means the point of connection between the Markout Water System and the Forney water system located at the south entrance to the Forney Middle School Football Field on South Bois D’Arc Street.

“Markout Service Area” means the area identified on **Exhibit A**, attached hereto and incorporated herein.

“Markout Water System” means the water system serving the area identified on **Exhibit A**, attached hereto and incorporated herein.

“Mesquite’s Water” means the water supplied to Mesquite by NTMWD at Forney’s NTMWD Point of Delivery for transport by Forney to the Markout Water System.

“Transportation Rate” means the rate defined in Section 3.1.

“Water Year” means the period of August 1 of each calendar year through July 31 of the next following calendar year, or such other twelve (12) month period designated by NTMWD to all Member Cities and Customer Entities.

ARTICLE 2 TRANSPORTATION OF MESQUITE’S WATER

2.1 Delivery of Mesquite’s Water to Forney. Mesquite shall cause NTMWD to deliver to Forney Mesquite’s Water to Forney’s NTMWD Point of Delivery. The total amount of Mesquite’s Water delivered by NTMWD to Forney shall be determined based on Mesquite’s meter

at the Markout Delivery Point plus a markup of 5% for system losses in Forney's water system. The total amount of Mesquite's Water Mesquite may take at the Markout Delivery Point shall not exceed 1,315 gallons per minute (1,893,600 gallons per day). Forney shall begin transporting Mesquite Water to the Markout Water System upon the close transfer of the Markout Water System to Mesquite.

2.2. Transport of Mesquite's Water to Markout Water System. Forney shall deliver to the Markout Point of Delivery Mesquite's Water at the rate specified in Section 2.1.

2.3 Quality of Water. While transporting Mesquite's Water to the Markout Water System, Forney shall ensure that Mesquite's Water is suitable for human consumption in accordance with all applicable laws, rules, and regulations of this state.

2.4 Shortages. In the event NTMWD reduces the amount of water its supplies to Forney for any reason, Forney may reduce the amount of water it transports for Mesquite to the Markout Water System by a proportionate amount to NTMWD's reduction in its supply of water to Forney.

2.5 Markout Point of Delivery. At the Markout Point of Delivery, Mesquite shall own, operate, and maintain a flow meter and a rate of flow controller to be set according to the rate specified in Section 3.1. All flow meters shall be equipped with Supervisory Control and Data Acquisition transmission devices. Forney agrees to deliver Mesquite's Water at the pressure which is maintained in the Forney water supply system, it being specifically understood that Forney is under no obligation to furnish pressurized treated water to the Markout Point of Delivery for sustaining or increasing, or both, the pressure to include the below mentioned air gap. Mesquite may utilize the pressure which is maintained in the Forney water supply system for movement of water from the Markout Point of Delivery to the point where Mesquite has facilities for sustaining or increasing pressure. Mesquite agrees that it shall take reasonable measures to insure all lines and equipment installed and operated by it and that all lines and pumping facilities which are installed or owned by its customers shall comply with the Plumbing and Sanitation Codes of each Party and the requirements of the Texas Commission on Environmental Quality (TCEQ), as the same now exist or may be modified hereafter. Mesquite must provide an air gap prior to any connections of service.

2.6 Measuring Equipment. Mesquite shall furnish, install, operate, and maintain at its own expense at the Markout Delivery Point the necessary equipment and devices of standard type, as approved by Forney, for measuring properly the quantity of Mesquite's Water transported to the Markout Water System. Forney shall read the meter monthly, and Mesquite 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 Mesquite, provided however, that if any special test is made at the request of Forney, and such meter test discloses that the meter is recording accurately, Forney shall reimburse Mesquite for the cost of such tests. Meters registering not more than one and one-half percent (1½ %) 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 on the water delivered in the corresponding period immediately prior to the failure, unless Forney and Mesquite agree to the amount of water furnished during such period. The meters used under this Agreement shall be read on the last day of each calendar month by Forney's operator and shall be available for checking by a representative of Mesquite during normal business hours of Forney. The unit of measurement of water transported under this Agreement shall be one thousand (1,000) gallons of water, U.S. Standard Liquid Measure.

ARTICLE 3 PRICE, TERM, TERMINATION

3.1 Transportation Rate and Charge. The Transportation Rate for Mesquite's Water is \$1.00 per 1,000 gallons of water. The Transportation Charge shall be calculated by multiplying the amount of water delivered by Forney to the Markout Point of Delivery (as measured by the Metering Equipment described in Section 2.6) by the Transportation Rate. If City Council of the City of Forney increases its in-city residential/commercial (non-senior citizen) water rates, Forney may increase the Transportation Rate by the same proportionate amount as the increase in the in-city residential/commercial water rates.

3.2 At the end of the Water Year, if Forney's actual water usage of NTMWD water is less than the Forney Annual Minimum, Mesquite shall pay to Forney an additional amount equal the Forney Annual Minimum minus Forney's actual water usage of NTMWD water during the Water Year up to a maximum of the Markout Annual Minimum. The additional amount will be calculated using the rate charged Forney per 1,000 gallons by the NTMWD during the NTMWD annual payment period that Forney's Annual Minimum was not met ("NTMWD Adder"). The NTMWD Adder will be established each year and billed annually as described above until Forney sets a new annual minimum that is different from the Forney Annual Minimum, or October 1, 2028. If Mesquite closes on the transfer of the Markout Water System during a Water Year, the amount owed by Mesquite at the end of the Water Year, shall be prorated to only include the months Forney delivered Mesquite Water to the Markout Water System. Mesquite additionally shall pay to Forney \$8,500 per month for the first twelve months after the Effective Date of the Agreement, and \$6,500 per month for the following twelve months.

3.3 Billing and Payment. Forney will render bills to Mesquite once each month for the payment required by this Agreement. Forney will bill Mesquite and Mesquite shall pay Forney the Transportation Charge each month during the year. Forney shall, until further notice, render such bills on or before the 10th day of each month and such bills shall be due and payable at Forney's office indicated below by the 20th day of each month or fifteen (15) days after such bill is deposited into the United States mail, properly stamped, addressed and postmarked to Mesquite, whichever is later. Mesquite shall make all payments in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private

debts and shall make payment to Forney at its city offices in Forney, Texas, or at such other place as Forney may from time to time designate by sixty (60) days written notice. Forney shall also notify NTMWD each month of the amount of water it transported for Mesquite to the Markout Water System so that the water delivered by NTMWD to Forney's NTMWD Point of Delivery is properly assigned to Mesquite and Forney.

3.4 Delinquency of Payment. All amounts due and owing to Forney by Mesquite shall be billed and paid monthly, and if not paid when due, bear simple interest at the maximum post-judgment interest rate as set out in Section 304.002, Texas Finance Code, or any successor statute from the date when due until paid, provided that such rate shall never be usurious or exceed the maximum rate as otherwise permitted by law. If Mesquite at any time disputes the amount to be paid by it to Forney, Mesquite shall nevertheless make the disputed payment or payments within the payment period set forth herein, and notify Forney of the disputed amount. After investigation, if it is subsequently determined by mutual agreement or court decision that the disputed amount paid by Mesquite should have been less or more, Forney shall promptly revise and reallocate Mesquite's payments in a manner that Mesquite or Forney will recover the amount due. If any amount due and owing by Mesquite is placed with an attorney for collection by Forney and Forney prevails, then Mesquite shall pay to Forney, in addition to all other payments provided for by this Agreement, including interest, Forney's reasonable collection expenses, including court costs and attorney's fees. Mesquite further agrees that Forney may, at its option, terminate this Agreement, or it may discontinue transporting Mesquite's Water until all judgment amounts due and unpaid are paid in full with interest as therein specified. Notwithstanding anything in this Agreement to the contrary, the Parties agree that any default shall not result in termination of this Agreement until sixty (60) days after the date that the alleged defaulting Party receives written notice from the non-defaulting Party specifying the default and the requirements to cure the same.

3.5 Conditions Precedent. Forney's obligation to transport Mesquite's Water under this Agreement and Mesquite's obligation to pay the Transportation Charge under this Agreement are conditioned on the following: (1) the Markout Wholesale Contract is assigned to Mesquite and the Markout Wholesale Contract terminates; and (2) Markout withdraws its petition seeking review of Forney's wholesale rates in Docket No. 47814.

3.6 Term.

(a) This Agreement shall be in force and effect until 11:59 p.m. Central time on December 31, 2040, unless terminated pursuant to subsections (b) or (c).

(b) Mesquite may terminate this Agreement at any time and for any reason prior to the date the Markout Wholesale Contract is assigned to Mesquite.

(c) With thirty (30) days written notice, Mesquite may terminate this Agreement for any reason after Forney sets a new annual minimum that is greater than the Forney Annual Minimum or October 1, 2028, whichever is earlier.

3.7 Transition of Markout Water System to Mesquite. On the day Mesquite closes on the transfer of the Markout Water System to Mesquite, Mesquite shall read the Markout Meter and transmit the final Markout Water System meter reading to Forney. Forney shall remit to Mesquite the final Markout Water System invoice and Mesquite shall be responsible for payment of the final invoice.

ARTICLE 4 MISCELLANEOUS

4.1 Regulatory Requirements. This Agreement is subject to all applicable federal, state, and local laws and any applicable ordinances, rules, orders, and regulations of any local, state, or federal governmental authority having jurisdiction. This Agreement is specifically subject to all applicable sections of the Texas Water Code and the rules of the TCEQ, or any successor agency subject to Section 4.7 below regarding severability and provided that changes in the law shall not be applied retroactively to amend this Agreement unless retroactivity is required by law.

4.2 Remedies. It is not intended hereby to specify (and this Agreement shall not be considered as specifying) an exclusive remedy for any default by either Party, but all such other remedies existing at law or in equity shall be cumulative including, without limitation, specific performance may be availed of by either Party. The prevailing Party shall be entitled to any reasonable attorney's fees, court costs or other expenses incurred in bringing or defending any suit alleging such default or claim. Except as provided in this section and Section 3.3, no Party shall be in default under this Agreement 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 Agreement 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. Notwithstanding the foregoing, nothing herein prevents Forney from recovering any amount due from Mesquite for a delinquent payment under section 3.3 above as adjudged in a final judgment.

4.3 Actual Damages. If an event of default shall occur, then the aggrieved Parties shall be entitled to specific performance, and injunctive relief. No party shall be liable or have any responsibility to the other for any indirect, special, consequential, punitive or delay-related or performance-related damages including, without limitation, lost earnings or profits. Such limitation on liability shall apply to any claim or action, whether it is based on whole or in part on agreement, negligence, strict liability, tort, statute or other theory of liability.

4.4 Assignability. Neither Party may assign its rights or obligations under this Agreement without first obtaining the written consent of the other Party, which consent shall not be unreasonably withheld or delayed.

4.5 No Third Party Beneficiaries. This Agreement does not create any third party benefits to any person or entity other than the signatories hereto and their authorized successors in interest, and is solely for the consideration herein expressed.

4.6 Due Authorization and Binding Obligation. This Agreement has been duly authorized, executed and delivered by all necessary action of the Parties. This Agreement, and the terms, covenants, and conditions herein contained, shall inure to the benefit of and be binding upon the heirs, personal representatives, successors, and assigns of each of the Parties hereto.

4.7 Severability. If any provision of this Agreement shall be held or deemed to be or shall, in fact, be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions, or in all jurisdictions because it conflicts with any provisions of any constitution, statute, administrative rule, regulation or finding, rule of public policy, or for any other reason, this Agreement shall remain in effect and be construed as if the invalid, inoperative, or unenforceable provision had never been in the Agreement, and such circumstances shall not have the effect of rendering the provision in question invalid, inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions of this Agreement invalid, inoperative or unenforceable to any extent whatever.

4.8 Waiver and Amendment. Failure to enforce or the waiver of any provision of this Agreement or any breach or nonperformance by either Party shall not be deemed a waiver by the other Party of the right in the future to demand strict compliance and performance of any provision of this Agreement. No officer or agent of either Party is authorized to waive or modify any provision of this Agreement. No modifications to or recession of this Agreement may be made except by a written document signed by all Parties' authorized representatives.

4.9 Force Majeure. If for any reason of force majeure, either Party is rendered unable, wholly or in part, to carry out its obligations under this Agreement, then that Party shall give notice of the reasons in writing to the other Party within a reasonable time after the occurrence of the force majeure event. The obligation of the Party giving the notice, so far as it is affected by the force majeure and provided the cause is not reasonably within its control, shall be suspended during the continuance of the inability then claimed, but for no longer period and to no greater extent than the force majeure causes such inability. The term "force majeure" as used in this Agreement shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemy, order or actions of any kind of government of the United States or the State of Texas, or any civil or military authority, insurrection, riots, epidemics, pandemics, landslides, lighting, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, explosions, breakage or accident to dams, machinery, pipelines, canals, or other structures, partial or entire failure of water supply including pollution (accidental or intentional), and any other cause not reasonably within the control of either Party.

4.10 Captions. The sections and captions contained herein are for convenience and reference only and are not intended to define, extend or limit any provision of this Agreement.

4.11 Necessary Documents and Actions. Each Party agrees to execute and deliver all such other and further instruments and undertake such actions as are or may become necessary or convenient to effectuate the purposes and intent of this Agreement.

4.12 Applicable Law and Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of Texas. The obligations contained within this Agreement are performable in Kaufman County, Texas. Any action in law or equity brought to enforce or interpret any provision of this Agreement shall be brought in a court of competent jurisdiction with venue in Kaufman County, Texas.

4.13 Negotiation by Counsel. The Parties acknowledge that each party and its counsel have reviewed and revised this Agreement, and agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

4.14 Counterparts and Electronic Transmissions. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original and all of which shall constitute the same instrument. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart. A telecopied or emailed electronically transmitted facsimile of an executed counterpart of this Agreement shall be sufficient to evidence the binding agreement of each party to the terms hereof. However, each party agrees to promptly deliver to the other party an original, duly executed counterpart of this Agreement.

4.15 Legal Construction. Whenever context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa.

4.16 Notices. Any notice required or contemplated by this Agreement 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


The Parties hereto shall have the right from time to time to change their respective addresses, and each shall have the right to specify as its address any other address within the United States of America by at least five (5) days' written notice to the other party.

4.17 Business Days. In the event that any date or any period provided for in this Agreement shall end on a Saturday, Sunday or legal holiday, the applicable period shall be extended to the first business day following such Saturday, Sunday or legal holiday. As used herein, the term "legal holiday" means any state or federal holiday for which financial institutions or post offices are generally closed in the State of Texas.

4.18 Effective Date. The Effective Date of this Agreement is the date upon which this Agreement was executed by the last Party.

[Signature pages to follow]

CITY OF MESQUITE:

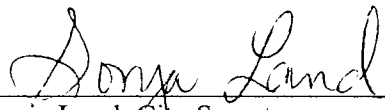


Cliff Keheley, City Manager
City of Mesquite, Texas

12-9-2020

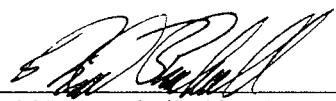
Date

ATTEST:



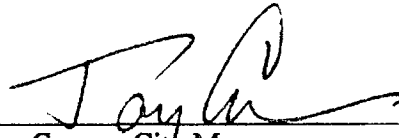
Sonja Land, City Secretary
City of Mesquite, Texas

APPROVED AS TO FORM:



David L. Paschall, City Attorney

CITY OF FORNEY:

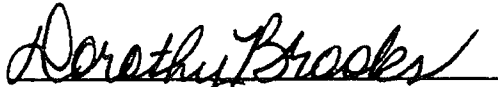


Tony Carson, City Manager
City of Forney, Texas

12-2-2020


Date

ATTEST:



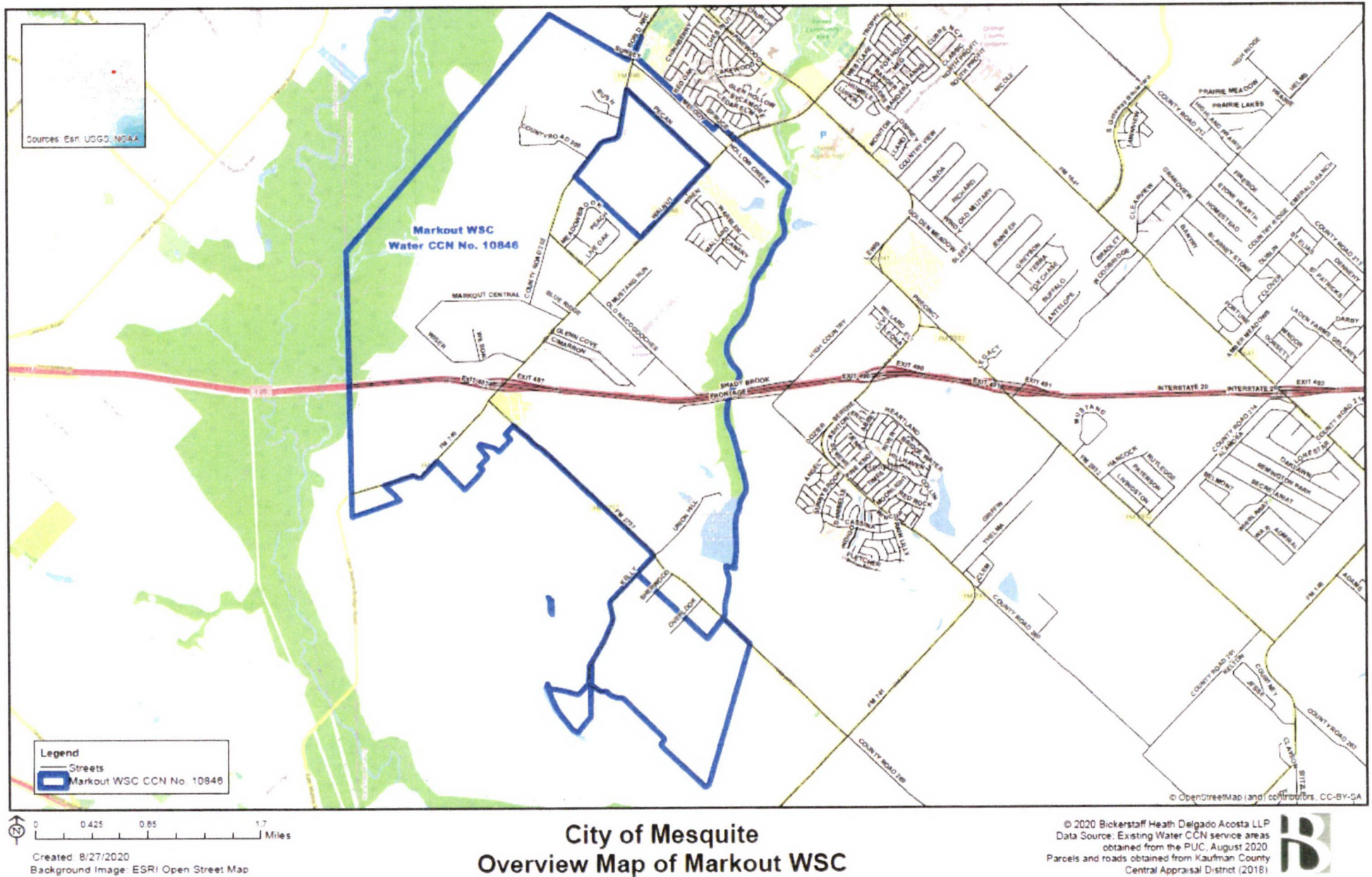
Dorothy Brooks, City Secretary
City of Forney, Texas

APPROVED AS TO FORM:



Jon Thatcher, City Attorney

EXHIBIT A



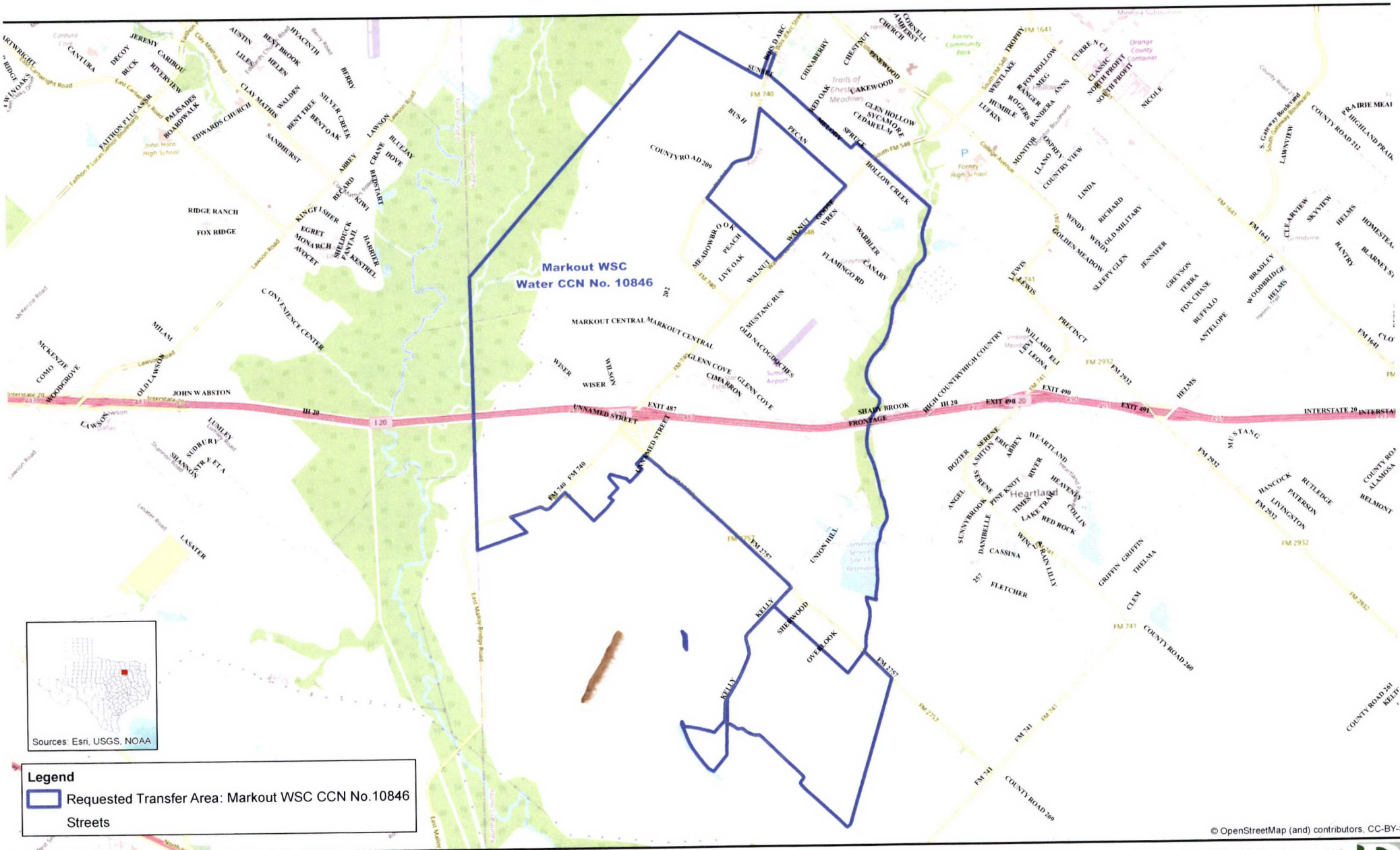
Attachment R

List of City of Mesquite Operators

Utilities License Holder			
Name	License Number	Type of License	Expiration Date
Tim Abbott	BP0007068	Backflow Prevention Assembly Tester (BPAT)	6/12/2023
"	WD011981	Water Distribution Operator B	7/30/2023
Dustin Aldridge	WD0014517 (B)	Water Distribution Operator B	1/28/2022
"	PACP	Pipeline Assessment Certification	Current
Joey Arriaga	WD0006843	Water Distribution Operator C (WCD)	5/31/2022
Claudio Garcia	WD0011109	Water Distribution Operator C (WCD)	1/18/2022
Toby Rodgers	WD0013177	Water Distribution Operator C (WCD)	4/18/2022
"	BP0017282	Backflow Prevention Assembly Tester (BPAT)	5/12/2022
	C10010341	Customer Service Inspector (CSR)	5/11/2022
Eli Sorrells	WD0002094	Water Distribution Operator C (WCD)	3/6/2021
Sergio Saucedo	WD0015739	Water Distribution Operator C (WCD)	2/10/2023
Pam Valek	WO0016128	Water Operator D (WD)	4/26/2023
Carol Martin	WO0000683	Water Operator D (WD)	8/23/2023
Jonathan Zabel	WD0037332	Water Operator D (WD)	7/9/2021
James Greene	WO0039412	Water Operator D (WD)	2/2/2023
Chris Duckworth	WD0014536	Water Distribution Operator C (WCD)	12/13/2021
Miguel Reed	WD0011387	Water Distribution Operator C (WCD)	1/21/2023
Carlos Moreno	WD0009526	Water Distribution Operator C (WCD)	11/22/2022
Jacob Gallardo	WD0013114	Water Distribution Operator C (WCD)	12/5/2022
Travis Handley	WD0013487	Water Distribution Operator C (WCD)	9/7/2022
Phillip Grinstead	WD0014763	Water Distribution Operator C (WCD)	10/23/2021
Chad Chandler	WD0014058	Water Distribution Operator C (WCD)	9/27/2023
Sergey Spiridonov	WD0010422	Water Distribution Operator B	12/5/2020
"	WD0013229	Water Distribution Operator C (WCD)	9/27/2022

Attachment S

Maps and Digital Data



Created: 12/4/2020
Background Image: ESRI Open Street Map

City of Mesquite
Request Transfer of Markout WSC CCN No. 10846 to City of Mesquite Water CCN No. 10060
DETAIL MAP

© OpenStreetMap (and) contributors, CC-BY-
© 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.



CD ATTACHED

TO VIEW PLEASE CONTACT
CENTRAL RECORDS
512-936-7180