



## Filing Receipt

**Received - 2022-02-07 08:54:12 AM**

**Control Number - 51986**

**ItemNumber - 3**

**NORTH TEXAS MUNICIPAL WATER DISTRICT  
FORNEY LAKE WATER SUPPLY CORPORATION  
AMENDED AND RESTATED POTABLE WATER SUPPLY CONTRACT**

THE STATE OF TEXAS                   §  
  §  
THE COUNTY OF COLLIN               §

THIS CONTRACT (the "Contract") made and entered into as of this the 27 day of January, ~~2021~~<sup>2022</sup>, by and between the North Texas Municipal Water District, hereinafter called "NTMWD," a conservation and reclamation district created under Article 16, Section 59, of the Texas Constitution, and the Forney Lake Water Supply Corporation, hereinafter called "Customer." NTMWD and Customer are each referred herein as "party" and jointly referred to as "parties" in this Contract.

W I T N E S S E T H :

WHEREAS, NTMWD and Customer are authorized to enter into this Contract pursuant to Chapter 62, Acts of the 52<sup>nd</sup> Legislature, 1951 (Article 8280-141, Vernon's Texas Civil Statutes), Chapter 791 of the Texas Government Code (the "Interlocal Cooperation Act") and other applicable laws;

WHEREAS, Customer and NTMWD previously entered into that certain Amended and Restated Potable Water Supply Contract dated August 24, 2017, (the "Previous Contract");

WHEREAS, Customer has exceeded its annual maximum which requires the Customer to enter into an amended and restated contract with NTMWD pursuant to Section 2 of the Previous Contract;

WHEREAS, Customer and NTMWD desire to amend and completely restate the terms of the Previous Contract, and supersede and replace the Previous Contract in its entirety, as provided herein, and the Previous Contract shall have no further force and effect;

WHEREAS, Customer desires to obtain an adequate and dependable water supply from NTMWD;

WHEREAS, NTMWD was created, among other things, to serve the water needs of its Member Cities, as defined below;

WHEREAS, Customer acknowledges and understands that this Contract establishes a maximum amount of potable water that NTMWD is required to deliver to Customer;

WHEREAS, Customer agrees to construct and operate adequate water distribution, storage and pump station facilities so that the maximum delivery rate of water will not exceed, at any time, 2.2 times the Highest Historical Average, as such term is defined herein;

WHEREAS, Customer acknowledges and understands that NTMWD determines the rates to be paid by Member Cities and Customer and that rates for Customer will not be the same as and are higher than the rates for Member Cities; and

WHEREAS, Customer is not compelled to purchase water from NTMWD and is voluntarily entering into this Contract;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, NTMWD agrees to furnish water, and Customer agrees to pay for water, upon the terms and conditions and for the consideration hereinafter set forth, to wit:

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

- (a) "Annual Minimum" means the minimum amount of potable water Customer must compensate NTMWD for during the Annual Payment Period, and each year thereafter, regardless of whether Customer actually takes such quantity of water. The Annual Minimum shall be adjusted annually after the first Annual Payment Period as provided in Section 8;
- (b) "Annual Maximum" means the maximum amount of potable water that NTMWD agrees to sell and deliver to Customer during any Water Year under this Contract;
- (c) "Annual Payment" means the amount of money to be paid to NTMWD by Customer during each Annual Payment Period;
- (d) "Annual Payment Period" means NTMWD's fiscal year, which currently begins on October 1 of each calendar year and ends on September 30 of the next following calendar year, but which may be any twelve (12) consecutive month period fixed by NTMWD;
- (e) "Contract Date" means the effective date of this Contract as executed by both parties, which is the day and year first above written;
- (f) "Customer" means Forney Lake Water Supply Corporation as defined in the preamble to this Contract;
- (g) "Customer Entity or Customer Entities" means any customer other than the Member Cities with which NTMWD contracts with to furnish water;
- (h) "Emergency Condition" means a condition that necessitates an expeditious delivery of water to prevent or combat imminent peril to the public health, safety, or welfare;
- (i) "Highest Historical Average" means the higher of (1) 1,256,389 gallons per day, that being 1/365 of the Annual Minimum as provided in Section 8 of this Contract at the Point(s) of Delivery, or (2) 1/365 of the highest annual amount of potable water delivered to the Customer at the Point(s) of Delivery in a Water Year during the term of this Contract;
- (j) "Member City or Member Cities" means the Cities of Allen, Farmersville, Forney, Frisco, Garland, McKinney, Mesquite, Plano, Princeton, Richardson, Rockwall, Royse City, Wylie, and any other city that may hereafter legally be annexed into the service area of NTMWD in accordance with Tex. Rev. Civ. Stat. Art. 8280-141;
- (k) "NTMWD" means the North Texas Municipal Water District as defined in the preamble to this Contract;
- (l) "Point(s) of Delivery" means the meter vault(s) at which water service is delivered by NTMWD to Customer at the location specified in Section 5, all facilities upstream of which shall be the sole

responsibility of NTMWD, and all facilities downstream of which shall be the sole responsibility of the Customer except as otherwise provided herein by this Contract;

- (m) "Regional Contract" means the "North Texas Municipal Water District Regional Water Supply Facilities Amendatory Contract," dated August 1, 1988, as amended, together with all similar contracts between NTMWD and contracting parties;
- (n) "System" means, collectively, the existing system and the future improvements and water of NTMWD included as part of the System under the Regional Contract for projects, water storage, treatment, transmission and supply, including all dams, reservoirs, and other properties or interests therein wherever located. Said terms do not include any of NTMWD's facilities that provide wastewater treatment or disposal services, or solid waste disposal services, of any kind. Said terms do not include any facilities acquired or constructed by NTMWD with the proceeds from the issuance of "Special Facilities Bonds," which are payable from any source, contract, or revenues whatsoever, other than revenues from the System; and,
- (o) "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.

Section 2. DELIVERY OF WATER. NTMWD agrees to sell and to deliver potable water under this Contract to Customer at its Point(s) of Delivery as described in Section 5 hereof, and Customer agrees to take at its Point(s) of Delivery all water required for use by Customer during the term of this Contract, including all potable water for Customer's own use and for distribution to all customers served by Customer's water distribution system, or within Customer's existing certificated retail service area regulated by the Public Utility Commission of Texas ("PUCT"), or any successor agency. It is specifically provided, however, that after the Contract Date, Customer shall be required to enter into a new potable water supply contract with NTMWD to replace and supersede this Contract in its entirety prior to the Customer entering into, renewing, or amending with regard to volume of water to be supplied, any agreement to provide wholesale or retail potable water for use outside its boundaries, its extraterritorial jurisdiction, or its certificated retail service area. Customer shall not become a party to any contract for the sale of potable water that would violate or be inconsistent with the provisions of this Contract. NTMWD will use its best efforts to furnish and remain in a position to furnish potable water sufficient for all reasonable potable water requirements of Customer, but its obligation shall be limited to the amount of potable water available to it from the System during routine operation.

The Annual Maximum that NTMWD agrees to sell and deliver to Customer under this Contract at the Point of Delivery shall be 750,000,000 gallons per year. If Customer exceeds the Annual Maximum for the Points of Delivery during any Water Year, within sixty (60) days of such exceedance Customer agrees to commence negotiations with NTMWD for the execution of a new or an amended or restated contract.

Except as provided in Section 8(j), the maximum rate of delivery at the Points of Delivery shall not exceed 2.2 times the Highest Historical Average supplied to Customer hereunder, which is consistent with the capabilities and abilities of NTMWD facilities, and it is understood that NTMWD may from time to time adjust the maximum rate of delivery on an equitable and uniform basis to all Customer Entities.

Section 3. OTHER CONTRACTS. NTMWD reserves the right to supply potable water from the System to additional parties as determined by the Board of Directors of NTMWD.

Section 4. QUALITY. The water to be delivered by NTMWD and received by Customer shall be potable water. Customer has satisfied itself that such water will be suitable for its needs, but NTMWD is obligated to treat such water so as to meet the standards of all State and Federal agencies having jurisdiction over water quality.

NTMWD and Customer shall cooperate, each within its legal powers, in preventing, to the extent practicable, the pollution and contamination of the reservoirs and watersheds from which water is obtained.

Section 5. POINT(S) OF DELIVERY. The Point of Delivery for Customer is located near Farm-to-Market Rd. 460 on the South Mesquite-Forney Pipeline. Exhibit A attached hereto identifies the location of the Point of Delivery. The parties agree that if the South Mesquite-Forney Pipeline is abandoned or relocated either at the request of the Customer, or for any other reason, the Customer shall pay all costs associated with the construction of a new Point(s) of Delivery or connection to a different pipeline at the discretion of NTMWD, including any and all costs associated with furnishing the site of the new Point(s) of Delivery as described in this section. NTMWD, in its sole discretion, may pay the costs associated with the construction of a new Point of Delivery.

Customer agrees to furnish the site at the Point(s) of Delivery and to construct and operate adequate water distribution, storage, and pump station facilities so that the maximum rate of delivery will not exceed 2.2 times the Highest Historical Average. Customer shall design and construct a separate vault for the Point(s) of Delivery. The vault will include the billing meter, control valve, and appropriate SCADA equipment. Customer shall also provide one level transmitter for the ground storage tank for NTMWD use and shall provide a separate air gap for the Point(s) of Delivery at the ground storage tank. At the request of the Customer, or upon NTMWD's own determination, NTMWD may install isolation valves associated with the Point(s) of Delivery. NTMWD may require Customer to bear all costs associated with such installation.

Customer shall provide to NTMWD all plans for the design, construction, and installation of any facilities and equipment required to receive and take all potable water delivered to it under this Contract and Customer shall not proceed with any construction or installation without NTMWD's prior written approval of such plans, which approval shall not be unreasonably withheld. Further, NTMWD shall have the right to inspect any and all facilities and equipment to ensure compliance with the NTMWD approved plans. Customer shall also perform and coordinate with NTMWD regarding any and all construction activities that involve the System. Customer shall construct, maintain, and operate, at its own cost and expense, all facilities and equipment necessary to receive and take all potable water delivered to it under this Contract. Regardless of NTMWD's approval of any Customer plans for the design, construction, and installation of any facilities and equipment required to receive and take all potable water delivered to it under this Contract, Customer is solely responsible for the sufficiency of design to receive volume(s) of water established pursuant to this Contract. Any construction from NTMWD's pipeline through the air gap must meet NTMWD standard specifications. Any change in the Point(s) of Delivery, including but not limited to a change in the type or size of meters, or size of tap, shall only be allowed if the Customer enters into a new or an amended and restated contract in accordance with Section 10, MODIFICATION. In NTMWD's sole discretion, NTMWD may waive the requirement for a new or an amended and restated contract for a change in the Point(s) of Delivery and allow such change through an amendment to this Contract.

Section 6. MEASURING EQUIPMENT. Customer shall furnish, and install at its own expense at, or near, the Points of Delivery the necessary rate of flow equipment, of a standard type approved by NTMWD, for measuring properly in both low and high flow periods the quantity of potable water delivered under this Contract and such billing meter and other equipment so installed shall become the property of NTMWD. In its sole discretion, NTMWD may furnish, install and/or replace at its own expense at, or near, the Points of Delivery the necessary rate of flow equipment for measuring properly in both low and high flow periods the quantity of potable water delivered under this Contract and such billing meter and other equipment so installed shall remain the property of NTMWD. Customer shall have access to such metering equipment at all reasonable times, but the reading, calibration, and adjustment thereof shall be accomplished only by the employees or agents of NTMWD. For the purpose of this Contract, the original record or reading of the meter shall be the journal or other record book, including, but not limited to electronic databases, maintained by NTMWD in its office in which the records of the employees or agents of NTMWD who take the reading may be transcribed. Upon written request of Customer, NTMWD will provide a copy of such journal or record book, or permit it to have access to the same in the office of NTMWD during reasonable business hours.

Not more than once in any six (6) month time period, NTMWD shall test its billing meter if requested in writing by Customer to do so, in the presence of a representative of Customer, and the parties shall jointly observe any adjustments that are made to the billing meter in case any adjustments shall be necessary. If upon any test, the percentage of inaccuracy of any billing meter equipment is found to be in excess of two percent (2%), registration thereof shall be corrected for a period extending back to the time when such inaccuracy began, if such time is ascertainable, and if such time is not ascertainable, then for a period extending back one-half (1/2) of the time elapsed since the last date of calibration, but in no event further back than a period of six (6) months. If for any reason any billing meters are out of repair so that the amount of water delivered cannot be ascertained or computed from the reading thereof, the water delivered through the period such billing meters are out of service or out of repair shall be estimated and agreed upon by the parties hereto upon the basis of the best data available. For such purpose, the best data available shall be deemed to be the registration of any check meter or meters if the same have been installed and are accurately registering. Otherwise, the amount of water delivered during such period may be estimated (i) by correcting the error if the percentage of the error is ascertainable by calibration tests or mathematical calculation, or (ii) estimating the quantity of delivery by deliveries during the preceding periods under similar conditions when the billing meter or meters were registering accurately.

Customer may, at its option and its own expense, install and operate a check meter downstream of the Points of Delivery to check each billing meter installed by NTMWD, but the measurement of water for the purpose of this Contract shall be solely by NTMWD'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 NTMWD.

Section 7. UNIT OF MEASUREMENT. The unit of measurement for potable water delivered under this Contract shall be 1,000 gallons of water, U.S. Standard Liquid Measure.

Section 8. PRICE AND TERMS. The service to be performed under this Contract by NTMWD consists of the readiness of NTMWD to deliver to Customer upon its demand, water in accordance with the conditions, limitations and provisions of this Contract.

In return for such service, Customer agrees to compensate NTMWD by payment of certain minimum annual sums of money, for each of which said sums NTMWD agrees, if required by Customer, to deliver all, or so much thereof as Customer may desire, of a certain corresponding volume of water, as follows:

(a) Customer will compensate NTMWD at the current water rate established for Customer Entities by the Board of Directors of NTMWD ("Water Rate"), as such Water Rate may be changed from time to time, for an Annual Minimum of 458,582,000, gallons of water (a daily average of 1,256,389 gallons per day), regardless of whether said quantity is actually taken by Customer, and any water delivered in excess of the amount allowed for the Annual Minimum will also be purchased at the Water Rate. The Board of Directors of NTMWD shall have exclusive authority to establish the Water Rate. The Annual Minimum Customer will be required to purchase at the above Water Rate, or such other Water Rate as may be from time to time determined by NTMWD, shall be calculated annually for each ensuing year and such minimum amount shall not be less than the value as calculated by using the same methodology as applied to the Member Cities or 458,582,000 gallons, whichever is greater; provided however, Customer cannot take more than 750,000,000 gallons per year as provided in Section 2 of this Contract, and Customer shall pay the Water Rate for any water taken in excess of 750,000,000 gallons per year.

(b) If potable water must be rationed, such rationing shall, within the limits permitted by law, be accomplished by NTMWD on an equal basis of the relative actual total amount of all potable water taken by each Customer Entity, respectively, during the last preceding Annual Payment Period in which rationing among said Customer Entities was not necessary.

(c) The Annual Minimum as set forth in Section 8 hereof shall be reviewed at the end of the first Annual Payment Period, and each year thereafter, and shall be re-determined by the Board of Directors of NTMWD at that time.

(d) Payment of the minimum annual service charge listed above shall be made each year by Customer to NTMWD in twelve (12) equal monthly installments, each of which shall be due and payable on or before the 10<sup>th</sup> day of the month following the service.

(e) It is further agreed that, in addition to the amounts required to be paid by Customer herein, if during any Water Year Customer uses System treated water in excess of the Annual Minimum for the Annual Payment Period that commenced during such Water Year up to the Annual Maximum allowed in Section 8(a) or in excess of the Annual Maximum allowed in Section 8(a), then Customer shall pay for excess water in accordance with the provisions of Section 8(a). Excess water charges shall be billed by NTMWD to Customer as soon as practicable after the end of such Water Year and shall be paid to NTMWD as soon as practicable thereafter, and in all events prior to the beginning of the next Annual Payment Period.

(f) Liability for making payments, as herein set forth, shall commence on the date of the first tender of delivery of water to Customer by NTMWD at the Points of Delivery.

(g) In the event that Customer shall fail to make any such monthly payment or annual payment within the time herein in this section specified, interest on such amount shall accrue at the rate of ten percent (10%) per annum from the date such payment becomes due until paid in full with the interest as herein specified. In the event such payment is not made within thirty (30) days from the date such payment becomes due, NTMWD may at its option discontinue delivery of water to Customer until the amount due NTMWD is paid in full with interest as herein specified.

(h) If Customer takes an amount of water above the authorized amount or authorized rate of delivery allowed by NTMWD's water conservation plan and drought contingency plan, as may be amended from time to time, NTMWD may require the Customer to pay three (3) times the Water Rate for water taken in excess of the authorized amount or authorized rate of delivery under either plan.

(i) Any time Customer exceeds the maximum rate of delivery of 2.2 times the Highest Historical Average at the Points of Delivery as determined by the NTMWD, Customer shall pay three (3) times the Water Rate for such water.

(j) In the event of an Emergency Condition, as that term is defined herein, NTMWD may, in its sole discretion, waive this increased rate in Section 8(i) for exceedance of the maximum rate of delivery of 2.2 times the Highest Historical Average for the Points of Delivery. This waiver shall apply for a 48-hour period, after which such waiver shall terminate. In its sole discretion, NTMWD may extend the waiver for additional 48-hour periods, if NTMWD determines that an extension of the waiver is warranted.

NTMWD, at its sole discretion and at any time, may deliver water to Customer at a delivery rate greater than 2.2 times the Highest Historical Average for the purpose of (i) minimizing or managing energy costs (e.g. 4 Coincident Peak (4CP), minimizing pump starts and/or stops, etc.); or (ii) managing hydraulic constraints in the System. In the event NTMWD exercises either of these options, Customer shall pay only the Water Rate for water received. Additionally, if NTMWD does not have infrastructure installed with the capability of limiting the delivery rate of water to 2.2 times the Highest Historical Average, or such infrastructure is inoperable, Customer shall pay the Water Rate for water received from NTMWD.

(k) Customer shall have the right to challenge any change in the Water Rate in violation of this Contract before the PUCT, or any successor agency having jurisdiction over same. If Customer initiates or participates in any proceeding regarding the Water Rate and NTMWD's policies under this Contract and advocates a position that is adverse to NTMWD, and NTMWD prevails, Customer shall reimburse NTMWD for its reasonable expenses, including attorneys' fees in the proceeding, within thirty (30) days after NTMWD's demand for payment.

Section 9. TERM OF CONTRACT. This Contract shall commence on the Contract Date and shall continue for a term of twenty (20) years following the Contract Date.

Section 10. MODIFICATION. This Contract may be changed or modified only by written agreement of the parties and only after having obtained approval from the governing bodies of both NTMWD and Customer. No change or modification shall be made to this Contract which will affect adversely the prompt payment when due of all monies required to be paid by Customer under the terms of this Contract.

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 Customer to make the payments required under Section 8 of 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 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 (including pandemics), 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. NTMWD agrees to carry and arrange for fire, casualty, public liability, and/or other insurance, including self-insurance for purposes and in amounts which, as determined by NTMWD, ordinarily would be carried by a privately-owned utility company owning and operating such facilities, except that NTMWD 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 NTMWD'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 just and reasonable operation and maintenance expense. The insurance coverage referenced herein does not extend to any facility owned by Customer.

Section 13. 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 14. 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, addressed to the party to be notified and sent via first-class mail and by certified mail/return-receipt requested, or by delivering the same to an officer of such party. Notice deposited in the mail in the manners hereinabove described shall be deemed to be effective, unless otherwise stated herein, from and after the expiration of three (3) 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 NTMWD, to:

Executive Director/General Manager  
North Texas Municipal Water District  
P.O. Box 2408  
Wylie, Texas 75098

If to Customer, to:

President  
Forney Lake Water Supply Corporation  
P.O. Box 2034  
Rockwall, Texas 75087

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 15. 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 16. 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 NTMWD 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.

#### Section 17. OPERATING CONDITIONS AND PROVISIONS.

(a) Operation and Maintenance of System. NTMWD 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.

(b) Title to Water; Indemnification. NTMWD shall retain title to all water supplied to Customer up to the Points of Delivery, at which point title to such water shall pass to Customer. NTMWD and Customer shall save and hold each other harmless from all claims, demands, and causes of action that may be asserted by anyone on account of the transportation and delivery of said water while title remains in such party. As between the parties, Customer shall have the first right to use all effluent produced from any wastewater treatment plant that treats the wastewater resulting from the use of the water made available under this Contract for direct reuse, but solely for its own purposes, and not for sale to, or use by, any customer of the Customer. To the extent that effluent produced by a wastewater treatment plant that treats the wastewater resulting from the use of water made available under this

Contract is discharged to water courses of the State, the right of Customer to reuse such effluent produced from such wastewater treatment is terminated, and NTMWD shall have the right, as between the parties, pursuant to any necessary authorization of the State, to indirectly reuse said effluent. Customer shall ensure via any wholesale contract with a subsequent customer, entered into after the Contract Date, to maintain NTMWD's right to indirectly reuse treated effluent, the underlying source of which is water from NTMWD made available under this Contract.

(c) Operating Expenses of Customer. Customer represents and covenants that all payments to be made by it under this Contract shall constitute reasonable and necessary operating expenses of its system and that all such payments will be made from the revenues of its system. Customer represents and has determined that the potable water supply to be obtained from the System is absolutely necessary and essential to the present and future operation of its water system and is the only available and adequate source of supply of potable water. Accordingly, all payments required by this Contract to be made by Customer shall constitute reasonable and necessary operating expenses of its respective system as described above, with the effect that the obligation to make such payments from revenues of such system shall have priority over any obligation to make any payments from such revenues (whether of principal, interest, or otherwise) with respect to all bonds or other obligations heretofore or hereafter issued by Customer.

(d) Customer's Rate for Waterworks System. Customer agrees throughout the term of this Contract to continuously operate and maintain its waterworks system, and to fix and collect such rates and charges for water services to be supplied by its waterworks 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 the provisions of the ordinances or resolutions authorizing its revenue bonds or other obligations now or hereafter outstanding and to file appropriate financial reports related to the Customer's system including annual audits.

(e) Equity. Customer acknowledges that it will accrue no equity or any other interest in the System or any other assets of NTMWD as a result of payment or other performance pursuant to this Contract.

Section 18. WATER CONSERVATION. Customer agrees to adopt, implement, and enforce any and all ordinances and policies related to water conservation and drought management as required by the Texas Water Code, rules of the TCEQ and/or as may be adopted by the Board of Directors of NTMWD. NTMWD's obligations pursuant to this Contract shall be subject to Customer preparing and implementing a water conservation plan or water conservation measures, as well as implementing any water conservation plans and drought contingency plans adopted by NTMWD and required or approved by the TCEQ, the Board, or any other federal, state, or local regulatory authority with power to require or approve water conservation and drought contingency plans. Upon execution of this Contract, Customer shall submit its water conservation plan or water conservation measures, and drought contingency plan, to NTMWD for review and approval, and Customer agrees to amend its water conservation plan or water conservation measures, and drought contingency plan as requested by NTMWD in order to comply with requirements of NTMWD's water conservation plan and drought contingency plan, program and/or rules. Customer shall also submit any changes or amendments to its water conservation plan or water conservation measures, and drought contingency plan, to NTMWD for review and approval.

NTMWD has adopted a water conservation plan and a drought contingency plan, and may amend both from time to time. If Customer fails to implement NTMWD's and its own drought contingency plan when trigger conditions occur, NTMWD may implement rationing and collect the rate for water withdrawn as provided in Section 8(h) of this Contract, as well as enforce any contractual, statutory, or common law remedies available. The amount of water that is provided pursuant to this Contract when Customer is not in compliance with NTMWD's water conservation plan and drought contingency plan will be reduced to the amount estimated as necessary to satisfy Customer's demand if Customer was operating in compliance with both NTMWD's and Customer's drought contingency plans.

If NTMWD authorizes Customer to resell water from the System pursuant to the conditions included herein, Customer shall require through a contract condition that any successive user(s) of water from the System must implement water conservation measures that comply with NTMWD's and Customer's water conservation plans, measures, programs, and/or rules.

Section 19. DEMAND ASSESSMENT. The location of the delivery point(s) and any quantity set forth in this Contract are intended to meet the water needs of Customer. The needs of Customer are independently determined by Customer, and NTMWD has conducted no independent evaluation of the Customer's water system.

Section 20. SOLE AGREEMENT. This Contract constitutes the sole and only agreement of Customer and NTMWD and supersedes any prior understanding or oral or written agreements between Customer and NTMWD with respect to the subject matter of this Contract.

Section 21. NO THIRD PARTY BENEFICIARIES. This Contract shall inure only to the benefit of the parties hereto and third persons not privy hereto shall not, in any form or manner, be considered a third-party beneficiary of this Contract. Each party hereto shall be solely responsible for the fulfillment of its customer contracts or commitments, and NTMWD shall not be construed to be responsible for Customer's contracts or commitments by virtue of this Contract or any provision contained herein.

Section 22. WAIVER. Failure to enforce or the waiver of any provision of the Contract or any breach or nonperformance by the Customer or NTMWD shall not be deemed a waiver by the Customer or NTMWD of the right in the future to demand strict compliance and performance of any provision of this Contract. No officer or agent of Customer or NTMWD is authorized to waive any provision of the Contract.

Section 23. DISPUTES OTHER THAN RATE OR FEE DISPUTES; ABATEMENT. In accordance with the provisions of Subchapter I, Chapter 271, Texas Local Government Code, the parties agree that, prior to instituting any lawsuit or other proceeding arising from a dispute under this Contract, the parties will first attempt to resolve the dispute as provided as follows:

- (a) The dissatisfied party shall deliver a written notice substantially describing the nature of the dispute to the other party, requesting the other party to deliver a written response within ten (10) business days after receipt of the notice of dispute;
- (b) If the response does not, in the opinion of the dissatisfied party, reasonably resolve the dispute, the dissatisfied party shall notify the other party in writing. Each party shall then appoint a person having authority over the activities of the respective parties who shall promptly meet, in person or via a virtual meeting, in an effort to resolve the dispute; and
- (c) If those persons cannot or do not resolve the dispute, then the parties shall each appoint a person from the highest tier of managerial responsibility within each respective party, who shall then promptly meet, in person or via a virtual meeting, in an effort to resolve the dispute.

Any lawsuit filed prior to performing these steps shall be abated pending completion of this dispute resolution process. This section shall not apply to any disputes regarding rates or fees NTMWD charges Customer. The provisions of this section are a condition precedent to the filing of any other action or complaint with any regulatory authority, governing body, or state or federal court.

Section 24. RATE OR FEE DISPUTES. Customer agrees that, as a condition precedent to instituting any lawsuit or other proceeding arising from a rate or fee dispute (including any other charges NTMWD may assess) under this Contract, Customer shall first attempt to resolve the dispute as provided as follows:

(a) Customer shall deliver a written notice substantially describing the nature of and reasons for the dispute to NTMWD;

(b) NTMWD shall respond to the dispute notification in writing within ten (10) business days after receipt of the notice of dispute;

The provisions of this section are a condition precedent to the filing of any other action or complaint with any regulatory authority, governing body, or state or federal court.

**Section 25. TERMINATION AND MATERIAL BREACH.** Any material breach of the duties or obligations of this Contract, or failure to faithfully keep and perform any of the terms, conditions and provision hereof shall be subject to the remedies provided in Section 26, including but not limited to termination. The non-breaching party shall provide the breaching party ninety (90) days written notice of its intention to terminate this Contract if the breaching party fails to cure the material breach. The written notice shall include a reasonable description of the breach. If the Customer is the breaching party, and fails or refuses to cure the breach, then NTMWD shall have the right, with five (5) years advance written additional notice to Customer and without any liability whatsoever on the part of NTMWD, to declare the Contract terminated. In the event of termination of this Contract, all rights, powers, and privileges of Customer pursuant to this Contract shall cease and terminate and Customer shall make no claim of any kind whatsoever against NTMWD, its agents or representatives, by reason of such termination or any act incident thereto. In any event, the non-breaching party shall advise the alleged breaching party in writing immediately upon acceptance of the cure of any default. The following shall, without limitation, be considered to be a material breach:

(a) Customer's failure to adopt and enforce policies or standards necessary to enforce any applicable NTMWD policies, contractual requirements, or any applicable state or federal laws or regulations;

(b) Customer's failure to pay any bill, charge or fee as provided for in this Contract;

(c) Customer's failure to provide NTMWD ingress and egress for purposes of sampling and operation and maintenance of any metering or any sampling facility; and

(d) NTMWD's failure to timely provide water to Customer in an amount sufficient to serve existing customers of the Customer, up to the Annual Maximum set forth in Sections 2 and 8.

**Section 26. REMEDIES.** 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, including termination as provided in Section 25, existing at law or in equity may be availed of by any party hereto and shall be cumulative.

**Section 27. INDEMNITY. BY SIGNING THIS CONTRACT, CUSTOMER AGREES, ON BEHALF OF ITSELF AND ITS SUCCESSORS AND ASSIGNS, THAT IT RELINQUISHES AND DISCHARGES, AND WILL, TO THE FULLEST EXTENT PERMITTED BY LAW, DEFEND, PROTECT, INDEMNIFY, AND HOLD HARMLESS NTMWD AND NTMWD'S OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND CONSULTANTS FROM AND AGAINST ALL CLAIMS, LOSSES, EXPENSES, COSTS, DAMAGES, DEMANDS, JUDGMENTS, CAUSES OF ACTION, SUITS, AND LIABILITY IN TORT, CONTRACT OR ANY OTHER BASIS AND OF EVERY KIND AND CHARACTER WHATSOEVER (INCLUDING BUT NOT LIMITED TO ALL COSTS OF DEFENSE, SUCH AS FEES AND CHARGES OF ATTORNEYS, EXPERT WITNESSES, AND OTHER PROFESSIONALS INCURRED BY NTMWD AND ALL COURT OR ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS) ARISING OUT OF OR INCIDENT TO, DIRECTLY OR INDIRECTLY, THIS CONTRACT, INCLUDING BUT NOT LIMITED TO, ANY SUCH CLAIM FOR BODILY INJURY, DEATH, PROPERTY DAMAGE, CONSEQUENTIAL DAMAGE, OR ECONOMIC LOSS AND ANY CLAIM THAT MAY ARISE IN CONNECTION WITH THE QUALITY,**

**QUANTITY, USE, MISUSE, IMPOUNDMENT, DIVERSION, TRANSPORTATION, AND MEASUREMENT OF WATER AND ANY CLAIM THAT MAY ARISE AS A RESULT OF INSTALLATION, INSPECTION, ADJUSTING, OR TESTING OF MEASURING AND RECORDING EQUIPMENT INVOLVING NTMWD DELIVERY OF WATER TO CUSTOMER, AS WELL AS ANY CLAIM THAT MAY ARISE FROM ANY CONDITION OF CUSTOMER'S FACILITIES, SEPARATE OPERATIONS BEING CONDUCTED ON CUSTOMER'S FACILITIES, OR THE IMPERFECTION OR DEFECTIVE CONDITION, WHETHER LATENT OR PATENT, OF ANY WATER, MATERIAL OR EQUIPMENT SOLD, SUPPLIED, OR FURNISHED BY NTMWD. THIS AGREEMENT BY CUSTOMER TO INDEMNIFY AND HOLD HARMLESS EXPRESSLY EXCLUDES ANY CLAIMS, LOSSES, EXPENSES, COSTS DAMAGES, DEMANDS, JUDGMENTS, CAUSES OF ACTION, SUITS AND LIABILITY IN TORT, OR ANY OTHER BASIS, ARISING SOLELY FROM ANY NEGLIGENT ACT OR OMISSION OF NTMWD, ITS EMPLOYEES, AGENTS OR CONTRACTORS.**

**PROVISIONS OF THIS SECTION SHALL SURVIVE TERMINATION OR EXPIRATION OF THIS CONTRACT.**

Section 28. ASSIGNMENT. Customer shall not assign this Contract or any of its rights hereunder without first obtaining the express prior written consent of NTMWD.

Section 29. RECITALS AND EXHIBITS INCORPORATED. The recitals contained in the preamble hereof and the exhibit(s) hereto are hereby found to be true, and such recitals and exhibit(s) are hereby made a part of this Contract for all purposes.

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 Contract Date.

*signatures on following pages*

**FORNEY LAKE WATER SUPPLY CORPORATION**

By: Charles Green  
Charles Green, President

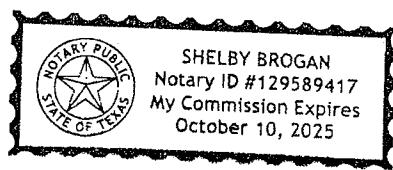
December 16, 2021  
Date

ATTEST: Robin E. Baley  
Robin E. Baley, Administrative Officer

STATE OF TEXAS           §  
  §  
COUNTY OF ROCKWALL §

This instrument was acknowledged before me on this 16 day of December, 2021, by Charles Green, President of the Board of Directors of Forney Lake Water Supply Corporation, a nonprofit water supply corporation in the State of Texas, on behalf of said political subdivision.

Notary Public, State of Texas  
Printed Name of Notary: Shelby Brogan  
Shelby Brogan  
My Commission Expires: 10/10/25



NORTH TEXAS MUNICIPAL WATER DISTRICT

By: *Phil Dyer*  
Phil Dyer, President

1/27/2022  
Date

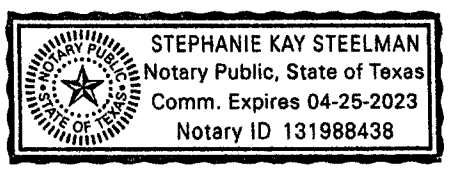
ATTEST: *Richard Peasley*  
Richard Peasley, Secretary

STATE OF TEXAS           §  
  §  
COUNTY OF COLLIN       §

This instrument was acknowledged before me on this 27 day of January, ~~2021~~ 2022, by Phil Dyer, President of the Board of Directors of North Texas Municipal Water District, a conservation and reclamation district and political subdivision of the State of Texas, on behalf of said conservation and reclamation district.

*Stephanie Kay Steelman*  
Notary Public, State of Texas  
Printed Name of Notary:

*Stephanie Kay Steelman*  
My Commission Expires: 4.25.2023





# EXHIBIT A

Location of Point of Delivery



**Legend**



-  Fomey Lake WSC Delivery Point
-  South Mesquite to Fomey 24" Pipeline

Exhibit A

