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ItemNumber - 9

DOCKET NO. 53698

PETITION OF AM BUSINESS	§	
TRUST 2021-001, A FOREIGN	§	
TRUST BASED IN UTAH	§	BEFORE THE
REGISTERED TO DO BUSINESS	§	
IN TEXAS, TO AMEND	§	PUBLIC UTILITY COMMISSION
CITY OF GRAND PRAIRIE’S	§	
WATER CERTIFICATE OF	§	OF TEXAS
CONVENIENCE AND NECESSITY	§	
NO. 10105 IN ELLIS COUNTY	§	
BY STREAMLINED EXPEDITED	§	
RELEASE	§	

**CITY OF GRAND PRAIRIE’S
VERIFIED RESPONSE TO AM BUSINESS TRUST 2022-001’S
PETITION FOR STREAMLINED, EXPEDITED RELEASE**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

City of Grand Prairie (the “City”) responds to the petition for streamlined expedited decertification (“Petition”) filed by the AM Business Trust 2022-001 (the “AMB Trust”), which is a foreign trust based in Utah that is registered to do business in Texas, and which is represented in this matter by its trustee, AM Real Estate Solutions, Inc. (the “Trustee”), and the Trustee’s designated representative, Trustee Vice President Robert Feiger. The City respectfully requests that the Public Utility Commission of Texas (the “Commission”) deny the Petition because the property at issue (the “Subject Property”) is being served by the City, as the City will show by this verified response and its attachments as follows:

I. SUMMARY

It is the “receiving service” element of a streamlined expedited decertification petition that is at issue in this docket. The AMB Trust fails to meet its burden to prove that it is not “receiving service” under the precedent established by the Commission and Texas courts. The AMB Trust shows that it owns more than 25 acres in a qualified county, but cannot overcome the fact that it *is* receiving service from the City—in fact, the AMB Trust has *admitted* in writing that the City can serve and chose not to disclose its written communication from the

City's Director of Engineering and Public Works that states "yes," the City will serve.¹ The AMB Trust also did not divulge that its engineer reviewed the City's "south sector water CIP [Capital Improvement Plan]" and the City's GIS-based existing utilities infrastructure database and realized that "it does appear there are options in the area."² After the AMB Trust's communication about water service with the Engineering and Public Works Department's Director, the AMB Trust pivoted to work on subdivision-development details, separate and apart from water service, with a different department of the City, the City's Planning and Development Department. In late 2021 there was a disagreement between the AMB Trust and City Planning and Development staff about lot size and the nature of the development plan, which had nothing to do with water service.

The AMB Trust ignores the City *Engineering and Public Works* Director Gabriel Johnson's position on water service and mischaracterizes the City's position on water service by only pointing to the City *Planning and Development* Director Rashad Jackson's policy position on lot size and the nature of the development plan. Why the AMB Trust chose not to disclose these important written communications is telling. The AMB Trust's own written communications reflect that the City *can* provide water service. Above and beyond the AMB Trust's own admission that the City can meet the development's water-service needs, the City bolsters its position that it is providing water service with this verified response and the attached affidavits, infrastructure map, and written communications between the parties.

II. PROCEDURAL BACKGROUND

On June 8, 2022, the AMB Trust filed its Petition pursuant to Texas Water Code ("TWC") § 13.2541 and 16 Texas Administrative Code ("TAC") § 24.245, from the City's water Certificate of Convenience and Necessity ("CCN") No. 10105, seeking streamlined expedited decertification of the Subject Property, which is approximately 317.4 acres located in Ellis County. It is uncertain why the AMB Trust indicates in ¶ 1.6 of its Petition that it had to request service then wait 90 days before filing its Petition as would be required under a

¹ See Attachments 4 and 5 (Affidavits of City's Director of Engineering and Public Works Gabriel Johnson, P.E. and email exchange between Mr. Johnson and the AMB Trust's engineer Carlo Silvestri, P.E.).

² *Id.*

different, inapplicable statute (TWC § 13.254(a-1)(2)). Order No. 3 is clear that the Petition will be processed as a streamlined expedited release petition under TWC § 13.2541.

After providing the AMB Trust with an opportunity to cure its deficient Petition, Order No. 3 was issued declaring the Petition administratively complete and adopting a procedural schedule. Pursuant to Order No. 3, this response is timely filed.

III. RESPONSE TO PETITION

A. “Receiving Service” Standard

Texas statutes and case law and Commission rules and precedent provide guidance on what constitutes “receiving water or sewer service.” TWC § 13.2541(b) allows for the release of a tract of land “that is not receiving water or sewer service.” The Commission’s rule that implements this statute allows release if “the tract of land is not receiving service of the type that the current CCN holder is authorized to provide under the applicable CCN...”³ TWC § 13.002(21) and 16 TAC § 24.3(33) define “service” as follows:

Any act performed, anything furnished or supplied, and any facilities or lines committed or used by a retail public utility in the performance of its duties under TWC Chapter 13 to its patrons, employees, other retail public utilities and the public, as well as the interchange of facilities between two or more retail public utilities.

The term “facilities,” as used, is defined as:

the plant and equipment of a retail public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the business of any retail public utility.⁴

Courts have interpreted the Texas Legislature’s definition of “service” as intentionally broad in scope and encompassing an array of activities that a retail public utility might engage in to provide potable water service or sewer service. In *Texas General Land Office v. Crystal Clear Water Supply Corporation*, the Court of Appeals held that whether a tract of land is “receiving service” is a fact-based inquiry “requiring the Commission to consider whether the retail public utility has facilities or lines committed to providing water to the particular tract or

³ 16 TAC § 24.245(h).

⁴ 16 TAC § 24.3(15).

has performed acts or supplied anything to the particular tract in furtherance of its obligations to provide water to the tract pursuant to the CCN.”⁵ In *Crystal Clear*, the Court of Appeals focused on the interpretation of “committed,” and was clear in its holding that “receiving water service” does not require showing actual physical service to the property.⁶

Streamlined Expedited Release permitted by TWC § 13.2541(b) is distinguishable from Expedited Release under TWC § 13.254(a-1), which allows for the release of land that is not “*actually* receiving water or sewer service.”⁷ In 2011, the Legislature created Streamlined Expedited Release as an alternative to Expedited Release, and excluded the term “actually” from the text of the statute.⁸ By excluding the term “actually,” the Legislature removed the requirement that a CCN holder must be providing *actual* service at the time a petition for decertification is submitted.⁹ Accordingly, the Austin Court of Appeals has refused to interpret TWC § 13.2541(b) as requiring property to be receiving “*actual*” water service. (emphasis added). Instead, the *Crystal Clear* Court made clear that land does not have to be receiving *actual* service to qualify as receiving service but must have facilities or lines “committed” to service.¹⁰

Since the *Clear Crystal* decision, the Commission has considered dozens of petitions for streamlined expedited release and emphasized that each case presents a unique, fact-based inquiry. At the Commission’s Open Meeting on May 21, 2021, the Commissioners attempted to establish a bright-line rule for determining whether a CCN holder had sufficient facilities committed to providing service to warrant a determination that a tract of land was “receiving service.” Commissioner McAdams explained that tangible commitments made by the CCN holder would support a finding of receiving service while simply “moving paperwork” is insufficient. Additionally, the Commissioners agreed that a tract of land should not be considered to be receiving service unless the CCN holder is capable of providing reliable

⁵ *Tex. Gen. Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130 (Tex. App.—Austin 2014, pet. denied).

⁶ *Crystal Clear* at 140.

⁷ TWC § 13.2541(b); TWC § 13.254(a-1)(emphasis added).

⁸ See Acts 2011, 82nd R.S., ch. 1325, General and Special Laws of Texas.

⁹ *Brown v. De La Cruz*, 156 S.W.3d 560, 568 (Tex, 2004) (when the Legislature has carefully employed a term in one section of a statute and excluded it within another, it should not be implied where excluded).

¹⁰ See *supra* note 3 at 136.

service in a timely manner.¹¹ As demonstrated in this verified response and its attachments, the City meets the requisite standard to show that the AMB Trust's Subject Property is receiving water service from the City.

B. Analysis of Factual Circumstances in This Docket

1. Direct Response to Petition

The AMB Trust's primary evidence is the *unsworn, unsigned* testimony of the Trustee's Vice President Robert Feiger and whatever verified allegations in the Petition that do not hinge on Mr. Feiger's unsworn, unsigned affidavit at Exhibit 4.¹² Absent procedural relief granted by the Administrative Law Judge to address Exhibit 4, the Petition, as filed, is unfounded and should be denied. Assuming, arguendo, that the Administrative Law Judge allows the AMB Trust to supplement its Petition with a substantively identical Exhibit 4 affidavit that is signed and sworn to, the City provides this response as though the affidavit were sworn to and properly signed and filed.

What we know about Mr. Feiger's alleged familiarity with and personal knowledge of the City's water service is what he states that he learned from Carlo Silvestri, one of the Trustee's consultants, and perhaps what Mr. Feiger has read in the *incomplete* excerpt of emails between Mr. Silvestri and City staff that are attached as Exhibit 7 to the Petition. Based on this very weak predicate, Mr. Feiger verifies a Petition that makes six (6) allegations, which the City addresses as follows:

¹¹ See *Petition of Carnegie Development, LLC to Amend James A. Dyche DBA Crest Water Company Certificate of Convenience and Necessity in Johnson County by Streamlined Expedited Release*, PUC Docket No. 51351 (Nov. 12, 2020).

¹² The Petition filed at 2:10 p.m. (Docket Item No. 1 on the Commission's interchange) does not include a signed, notarized affidavit at Exhibit 4. Although the Petition is verified, Mr. Feiger who verified the Petition qualifies his statements in the Petition at ¶ 1.3, which states:

As evidenced by the Affidavit, Mr. Feiger is familiar with the CCN Holder, the City of Grand Prairie and its lack of existing service to the Subject Property, and the Subject Property, and the documents referenced in the Petition. Accordingly, Mr. Feiger is able to provide the Affidavit attached hereto as **Exhibit No. "4,"** and verify the evidence of certain jurisdictional facts recited both in the Affidavit and this Petition based upon his personal knowledge.

Because this affidavit addresses essential allegations, is critical to the Petition, and was filed with the Petition as an unsworn, unsigned document, all of the AMB Trust's allegations associated with Mr. Feiger's affidavit should be disregarded.

AMB Trust's Allegation #1: Mr. Feiger alleges that he is familiar with the CCN holder (Petition at ¶ 1.3 and Exhibit 4)

The City is not familiar with Mr. Feiger. The City, upon information and belief, knows that he serves as a vice president of a trustee that represents the AMB Trust, and that he appears to be employed as a lawyer at a firm located in far north Dallas. The Petition indicates that someone at the AMB Trust reviewed online information about the City on the City's and Commission's webpages. As the only AMB Trust representative who has attempted to provide verified or sworn statements, perhaps Mr. Feiger reviewed those webpages. But there is no description of Mr. Feiger's expertise or knowledge of what is required to demonstrate that water service is or is not being received. It is apparent but speculative that Mr. Feiger is relying upon and interpreting a select number of emails between Mr. Silvestri and City staff that are attached to Exhibit 7 to the Petition. If Mr. Feiger were to see Mr. Silvestri's emails at Exhibit 1 to this response, he would recognize that Mr. Silvestri acknowledged that the City can serve the Subject Property with water service.

The Petition indicates that Mr. Feiger's knowledge of the City's CCN is limited to his or his team's review of the webpages and emails to and from City staff attached to the Petition, which when read in context with the complete set of emails attached hereto at Exhibit 1 show that the City *can* provide water service to the Subject Property. Beyond that information, Mr. Feiger does not offer any evidence that the City cannot provide water service to the Subject Property in the manner, at the level, and on the timeline required by the AMB Trust.

AMB Trust's Allegation #2: Mr. Feiger claims that he is familiar with an alleged lack of existing water service to the Subject Property from City of Grand Prairie (Petition at ¶¶ 1.3, 1.5(e) and 1.8(ii), and Exhibits 1, 2, 4, 7 and 8)

Because the Subject Property was historically and continues to be undeveloped land that has not been platted and that has not required service from the City, the City has not physically served the Subject Property. However, under the applicable legal standard for providing "water service" to the Subject Property, the City *is* currently serving. The City relies on the substantive description of the City's provision of water service in this response and in the attachments hereto.

AMB Trust’s Allegation #3: The AMB Trust seeks to secure water service to the Subject Property at an economically reasonable cost from a qualified reliable provider in a timely fashion (Petition at ¶ 1.5(e))

City Engineering and Public Works Director Gabriel Johnson, P.E. and his staff made available to the AMB Trust’s engineer, Carlo Silvestri, P.E., a link to GIS data showing the City’s water utility infrastructure, after which Mr. Silvestri responded that “it does appear there are options in the area.”¹³ Then, Mr. Johnson communicated to Mr. Silvestri that, “yes,” the City can provide water service.¹⁴

AMB Trust’s Allegation #4: The City has no facilities capable of providing continuous and adequate water service at, on, or in the vicinity of the Subject Property (Petition at ¶¶ 1.5(iii), 1.8(iii) and Exhibits 1, 2, 4, 7 and 8)

The AMB Trust’s own engineer, Mr. Silvestri, acknowledged that the City does have facilities in the area.¹⁵ The City’s Engineering and Public Works Director Gabriel Johnson, P.E. explains in great detail that the City is capable of providing continuous and adequate water service at, on, or in the vicinity of the Subject Property. In his attached affidavit, Mr. Johnson explains how the City has secured long-term water supply contracts and designed and constructed water lines to commit both water supply and water facilities to the Subject Property. Maps provided by Mr. Johnson show that the City is already providing continuous and adequate water service in the vicinity of the Subject Property.¹⁶

AMB Trust’s Allegation #5: The City is unwilling to provide service to the Subject Property at this time (¶¶ 1.5(iv), 1.7 and Exhibits 4 and 7)

The AMB Trust’s allegation is based wholly on a statement by the City’s Planning and Development Director that had nothing to do with water service. The AMB Trust’s careful selection of emails attached to its Petition mischaracterizes the City’s position about willingness and capability to provide water service. In Exhibits 4 and 7 the Petition refers to an excerpt of an email exchange between Mr. Silvestri and the City’s Planning and

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *See* Exhibit 2.

Development Director Mr. Jackson. Mr. Jackson is responsible for working through the development process with owners of property to ensure that their land-development plans are consistent with City guidelines and ordinances. His role “does not include determining the City’s ability or commitment to provide water utility service to proposed developments.”¹⁷

As stated in Exhibits 1 and 3 of this response, Mr. Silvestri was put in touch with Mr. Jackson to “hammer out” a development agreement after the Engineering and Public Works Director confirmed that the City would serve the Subject Property. Over the period of several months, Mr. Silvestri and Mr. Jackson communicated regarding the AMB Trust’s development proposal and the City’s design standards.¹⁸ The information Mr. Jackson provided to Mr. Silvestri did not include information that in any way addressed the City’s ability to or commitment to provide water service.

Mr. Feiger’s statement that the City responded, to the AMB Trust’s request to provide water service to the Subject Property, that it does not have service or infrastructure capable of providing water service to the Subject Property is false. Mr. Jackson did not indicate that the City could not support a request to provide water service to the Subject Property. In fact, as the Planning and Development Director, it is outside the scope of Mr. Jackson’s responsibilities and qualifications to make such a determination regarding the City’s capacity to serve water.¹⁹

Mr. Jackson solely expressed an opinion based on the development proposal’s conformity with the City’s design standards. He provided that the “city is not open to the proposed project at this time” and “did not foresee the development moving forward *as proposed*.” (emphasis added). Mr. Jackson did not close the door to approval of a future development. He instead provided that the City was not open to the proposed project in its current form.²⁰ However, when Mr. Silvestri asked whether the City would provide water service to the Subject Property, the City’s Director of Engineering and Public Works, Mr. Johnson, explicitly confirmed, “yes.”²¹

¹⁷ See Exhibit 4.

¹⁸ See Exhibit 3.

¹⁹ See supra note 16.

²⁰ See supra note 17.

²¹ See Exhibit 1.

As provided by the affidavit and memorandum of the City's Engineering and Development Director Gabriel Johnson, P.E., and Mr. Johnson's verification of this response, the City has the capability and is committed to provide water service to the Subject Property and has taken steps to further its obligation to serve the Subject Property.

AMB Trust's Allegation #6: The City's Planning and Development Director Rashad Jackson indicated that the City could not support and would not grant a request to provide water service to the Subject Property (¶ 1.6)

The AMB Trust misleads the Commission by only providing an excerpt of email communications. Exhibits 1 and 3 hereto clear up the City's position. Mr. Jackson is responsible for overseeing the non-water-service design issues whereas Mr. Johnson is responsible for overseeing the water-service issues. As stated above, it exceeds the scope of Mr. Jackson's responsibilities to have an opinion regarding the City's capacity to serve water and Mr. Johnson has affirmed that the City can provide water service.

Therefore, the core issue addressed in Mr. Jackson's email exchange with Mr. Silvestri is not whether the Subject Property is receiving water service from the City or whether the City would grant a request to provide water service to the Subject Property. The issue addressed in those emails is whether the AMB Trust and the City can come to an agreement regarding the non-water-service design standards for future development.²² A petition for Streamlined Expedited Release is not an appropriate remedy for a developer to address its dissatisfaction with a city staff position on development design standards.

The State of Texas provides remedies, both administrative and judicial, at the local and state level, for a developer that is seeking to obtain approval or cooperation from a local authority to develop land. These remedies do not involve petitioning for the release of land that is receiving water service within a water CCN. Ultimately, the City as the water CCN holder is obligated to furnish, make available, render, or extend continuous and adequate water service to land within its CCN regardless of whether it approves of a landowner's development.²³ As demonstrated in this response, the City has met and continues to meet this

²² See supra note 17.

²³ See Tex. Water Code Chap. 13.

obligation to serve by committing water facilities and water supply to development in the Subject Property.

2. The City's Additional Proof that the AMB Trust Is Receiving Service

The AMB Trust is “receiving water service” based upon the interpretation of this phrase in *Crystal Clear*.²⁴ As discussed below, the City has invested in and installed water pipes, water production, and storage capacity, and has entered long-term water supply contracts to serve the area that the AMB Trust seeks to decertify. These are the type of facts that establish that the existing CCN holder is serving and that a decertification petition must be denied.

The *Crystal Clear* court was emphatic in its holding that “receiving water service” does not necessarily mean receiving actual water on the property. Rather, whether a tract is receiving service is a fact-based inquiry requiring the Court to determine whether facilities or lines are committed to providing water to a particular tract or the CCN holder has performed acts or supplied anything to the particular tract in furtherance of its obligations to provide water pursuant to the CCN. The Commission is required to take into consideration these acts to further the utility’s obligations to the tracts served by the CCN.²⁵

The City has both committed facilities to providing water to the Subject Property and performed acts in furtherance of its obligations to provide water to the Subject Property within its CCN. First, the City has committed an existing water line to serving the Subject Property and secured substantial water supply to serve the Subject Property. As described by Mr. Johnson in his affidavit and shown by the attached maps in Exhibit 2, the City owns a 16” water supply line (Line II) that runs parallel to the eastern boundary of the Subject Property and was constructed to serve the northeastern portion of the City’s ETJ (extraterritorial jurisdiction) including the Subject Property. Line II was put in the ground next to the Subject Property so that the City could easily serve the Subject Property and extend waterlines into the Subject Property.²⁶ This is supported both by the City’s water supply apply agreement with the City of Midlothian (“Midlothian Contract”) and the City’s most recent Capital Improvement Plan (the “Plan”).

²⁴ *Tex. Gen. Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d at 130.

²⁵ *Id.* at 136.

²⁶ *See* Exhibits 1, 2, and 5.

In 2021 the City entered into the Midlothian contract to secure water supply to serve future development in the City's ETJ, specifically the northeastern portion of the ETJ where the Subject Property is located. Through the Midlothian contract the City secured immediate supply of 2.0 MGD and sole discretion to increase its water supply to 3.0 MGD. The City currently has 1.6 MGD of available supply from this source alone that is committed to future development in the Subject Property.

While Line II and water supply from the Midlothian contract are committed to serving the Subject property, they are not the only water supply and facilities the City has secured to serve its ETJ. The City owns a 24" diameter pipeline paralleling U.S. 287 and extending from a 12" line that cuts through the southern portion of the City's ETJ.²⁷ The City also entered into an agreement with the City of Mansfield to secure water supply to serve the southern portion of the City's ETJ.²⁸ The surplus water secured by the Mansfield contract and other facilities committed to serving the City's entire ETJ have allowed the City to fully commit Line II and water supply secured by the Midlothian Contract to serve the Subject Property.

Second, the Plan, which was approved by City Council, commits future facilities to the Subject Property. The City's intentional planning to provide water service to the Subject Property is an act in furtherance of its obligation to serve customers within its CCN. The Plan specifically commits a water line, service pumping, and storage capacity to the northeastern portion of the ETJ encompassing the Subject Property. The Plan shows the City's commitment to a 16" inch water supply line extending from Line II, which the City has committed to serving the Subject Property, and cutting directly through the Subject Property. Further, as described in Mr. Johnson's affidavit, the Plan includes pump stations to re-pressurize water supplied from the Midlothian contract and Mansfield contract that will have the capacity to serve 5,200 connections and 14,400 connections respectively. Lastly, the plan includes a combined 8.5 MG of total storage capacity in the 775 Pressure Plane, where the Subject Property is located, that will make available approximately 42,399 connections for the Subject Property.²⁹ These connections are specifically committed to the 775 Pressure Plane that fully encompasses the Subject Property and are thereby clearly committed to the Subject Property.

²⁷ See Exhibit 1.

²⁸ See Exhibit 1.

²⁹ See Exhibits 2 and 5.

The City has performed acts to commit facilities to the Subject Property by supplying funds to permit, plan, design, construct, own, and operate water facilities that are ready and able to serve the Subject Property. The City has even performed hydraulic water modeling to ensure the future water distribution system committed to the City's ETJ and the Subject Property will maintain the City and TCEQ design requirements for minimum pressure, fire flow, velocity, and headloss.³⁰

In *Crystal Clear* and subsequent Commission orders granting decertification, the Court and Commission could not find that facilities were committed to the tracts of land at issue because the CCN holders lacked evidence, such as clear maps and explanatory affidavits, specifying how certain facilities were serving the decertified tracts.³¹ In this docket, Mr. Johnson has provided a sworn affidavit, P.E.-sealed memo, and detailed maps specifying the water lines and facilities that the City has constructed and will construct for the Subject property.³² Furthermore, the factual statements bolstering the City's water service to the Subject Property contained in this response are verified by Mr. Johnson.

As evidenced by this response and the attached exhibits, the circumstances involved in this docket do *not* present a case where the City has arbitrarily secured water facilities and water supplies in anticipation of unspecified future development. Rather, the City has intentionally committed water supply and facilities to its ETJ and has committed specific water supplies and facilities to certain areas within its ETJ, including the Subject Property. The City has thoughtfully planned, designed, and constructed facilities that are committed to the Subject Property and continues to plan, design, and construct facilities committed to the Subject Property. Under the Commission Staff and Commissioners' own precedents in streamlined expedited decertification dockets regarding "receiving water service," consistent with the *Crystal Clear* opinion, the AMB Trust's Petition should be denied.

³⁰ *Id.*

³¹ *Tex. Gen. Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d at 130; *Mountain Peak Special Util. Dist. v. Pub. Util. Comm'n of Tex.*, No. 03-16-00796-CV, 2017 WL 5078034, at 5* (Tex. App.—Austin Nov. 2, 2017, pet. denied).

³² See Exhibits 1, 2, and 5.

PRAYER

WHEREFORE, PREMISES CONSIDERED, for the reasons set forth herein and the attachments incorporated herein, the City respectfully requests that the Petition be denied in its entirety, and that it be granted all other and such relief as it may be entitled.

Respectfully submitted,

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/s/ Michael A. Gershon

Michael A. Gershon
State Bar No. 24002134
C. Cole Ruiz
State Bar No. 24117420

ATTORNEYS FOR CITY OF
GRAND PRAIRIE

CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on September 28, 2022, in accordance with the Order Suspending Rules, issued in Docket No. 50664, and the order of the Administrative Law Judge.

/s/ Michael A. Gershon

Michael A. Gershon

Exhibit 1

**City of Grand Prairie's
Business Records Affidavit of Records Custodian
Gabriel Johnson, PE, PH, CFM, GISP**

DOCKET NO. 53698

PETITION OF AM BUSINESS	§	
TRUST 2021-001, A FOREIGN	§	
TRUST BASED IN UTAH	§	BEFORE THE
REGISTERED TO DO BUSINESS	§	
IN TEXAS, TO AMEND THE CITY	§	PUBLIC UTILITY COMMISSION
OF GRAND PRAIRIE’S WATER	§	
CERTIFICATE OF CONVENIENCE	§	OF TEXAS
AND NECESSITY NO. 10105	§	
IN ELLIS COUNTY BY	§	
STREAMLINED EXPEDITED	§	
RELEASE	§	

**CITY OF GRAND PRAIRIE’S
BUSINESS RECORDS AFFIDAVIT OF RECORDS CUSTODIAN
GABRIEL JOHNSON, PE, PH, CFM, GISP**

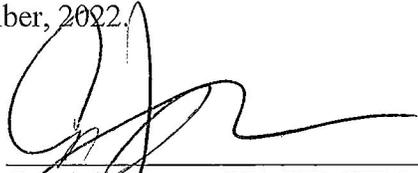
BEFORE ME, the undersigned authority, on this day personally appeared Gabriel “Gabe” Johnson, who, being by me duly sworn, deposed as follows:

1. My name is Gabe Johnson. I am over 21 years of age, of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated:
2. I am the Director of Engineering and Public Works for the City of Grand Prairie (the “City”) and am familiar with the manner in which its records are created and maintained by virtue of my duties and responsibilities.
3. Attached hereto are seventy-two (72) pages of business records of the City which were created by the City or have been filed with or otherwise submitted to the City, which the City considers to be public information and records of the City.
4. It is the regular practice of the City to make these types of records at or near the time of each act, event, condition, or opinion set forth in the record.
5. It is the regular practice of the City for these types of records to be made by, or from information transmitted by, persons with knowledge of the matters set forth in them.

- 6. These business records were kept by the City in the regular course of business.
- 7. The records attached hereto are the original or exact duplicates of the original.

Further affiant sayeth naught.

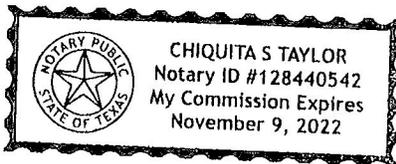
SIGNED on this 28 day of September, 2022.



Gabriel Johnson, PE, PH, CFM, GISP
Director, Public Works Department

STATE OF TEXAS §
 §
COUNTY OF Dallas §

SUBSCRIBED AND SWORN TO BEFORE ME on this 28th day of September, 2022.



Notary Public, State of Texas

EXHIBIT A

Madison Huerta

From: Romin Khavari <Rkhavari@GPTX.org>
Sent: Wednesday, June 23, 2021 3:39 PM
To: Cami McKillop
Cc: Gabriel Johnson
Subject: RE: WA21020 - 303-Acres, GP ETJ

We will!

Thanks again for looking into this.

Romin A. Khavari, P.E., CFM
City Engineer

City of Grand Prairie, Engineering
300 W. Main Street
P.O. Box 534045
Grand Prairie, Texas
75053-4045.
Phone: (972) 237-8145
www.gptx.org
Live Life Grand!

From: Cami McKillop <Cmckillo@GPTX.org>
Sent: Wednesday, June 23, 2021 3:06 PM
To: Romin Khavari <Rkhavari@GPTX.org>
Cc: Gabriel Johnson <gjohnson@GPTX.org>
Subject: RE: WA21020 - 303-Acres, GP ETJ

I'm glad the link is working now.

Let us know if you discover any other issues.

Cami McKillop
City of Grand Prairie
Communications and Marketing Department
P.O. Box 534045
Grand Prairie, TX 75053
Phone: 972-237-8108
www.gptx.org

From: Romin Khavari <Rkhavari@GPTX.org>
Sent: Wednesday, June 23, 2021 1:42 PM
To: Carlo Silvestri <CarloS@wierassociates.com>; Gabriel Johnson <gjohnson@GPTX.org>; Cami McKillop <Cmckillo@GPTX.org>; Rashad J. Jackson <rjackson@GPTX.org>; Noreen M. Housewright <nhousewright@GPTX.org>; Megan Mahan <mmahan@gptx.org>; Walter Shumac <Wshumac@GPTX.org>
Subject: RE: WA21020 - 303-Acres, GP ETJ

Hello Carlo,

Thanks for letting us know – I asked our Marketing Department to check it out and with this email I will let Cami know that it is working now.

Have a Great day!

Romin A. Khavari, P.E., CFM

City Engineer

City of Grand Prairie, Engineering

300 W. Main Street

P.O. Box 534045

Grand Prairie, Texas

75053-4045.

Phone: (972) 237-8145

www.gptx.org

Live Life Grand!

From: Carlo Silvestri <CarloS@wierassociates.com>

Sent: Wednesday, June 23, 2021 1:35 PM

To: Romin Khavari <Rkhavari@GPTX.org>; Gabriel Johnson <gjohnson@GPTX.org>

Cc: Bill Hills <Bhills@GPTX.org>; Rashad J. Jackson <rjackson@GPTX.org>; Noreen M. Housewright <nhousewright@GPTX.org>; Megan Mahan <mmahan@gptx.org>; Walter Shumac <Wshumac@GPTX.org>

Subject: RE: WA21020 - 303-Acres, GP ETJ

By the way. The link is working now.

Carlo Silvestri, P.E.

President/CEO

WIER & ASSOCIATES, INC.

Engineers / Surveyors / Land Planners

Celebrating 42 Years of Serving Clients, Employees & Community

2201 E. Lamar Blvd., Suite 200E, Arlington, TX 76006-7440

Ph: 817-467-7700 ext. 120 Fax: 817-467-7713

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From: Romin Khavari <Rkhavari@GPTX.org>

Sent: Wednesday, June 23, 2021 1:20 PM

To: Carlo Silvestri <CarloS@wierassociates.com>; Gabriel Johnson <gjohnson@GPTX.org>

Cc: Bill Hills <Bhills@GPTX.org>; Rashad J. Jackson <rjackson@GPTX.org>; Noreen M. Housewright <nhousewright@GPTX.org>; Megan Mahan <mmahan@gptx.org>; Walter Shumac <Wshumac@GPTX.org>

Subject: RE: WA21020 - 303-Acres, GP ETJ

Hello Carlo,

You are very welcome!

We will have the link checked out.

Romin A. Khavari, P.E., CFM

City Engineer

City of Grand Prairie, Engineering
300 W. Main Street
P.O. Box 534045
Grand Prairie, Texas
75053-4045.
Phone: (972) 237-8145
www.gptx.org
Live Life Grand!

From: Carlo Silvestri <CarloS@wierassociates.com>
Sent: Wednesday, June 23, 2021 1:15 PM
To: Romin Khavari <Rkhavari@GPTX.org>; Gabriel Johnson <gjohnson@GPTX.org>
Cc: Bill Hills <Bhills@GPTX.org>; Rashad J. Jackson <rjackson@GPTX.org>; Noreen M. Housewright <nhousewright@GPTX.org>; Megan Mahan <mmahan@gptx.org>; Walter Shumac <Wshumac@GPTX.org>
Subject: RE: WA21020 - 303-Acres, GP ETJ

Thank you sir. The link was not working on the website.

Carlo Silvestri, P.E.
President/CEO

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From: Romin Khavari <Rkhavari@GPTX.org>
Sent: Wednesday, June 23, 2021 1:13 PM
To: Gabriel Johnson <gjohnson@GPTX.org>; Carlo Silvestri <CarloS@wierassociates.com>
Cc: Bill Hills <Bhills@GPTX.org>; Rashad J. Jackson <rjackson@GPTX.org>; Noreen M. Housewright <nhousewright@GPTX.org>; Megan Mahan <mmahan@gptx.org>; Walter Shumac <Wshumac@GPTX.org>
Subject: RE: WA21020 - 303-Acres, GP ETJ

Please see the attached design criteria for wastewater also available at our City Web-site at the link below:

<https://www.gptx.org/city-government/city-departments/engineering/engineering-design-and-cip-projects>

Romin A. Khavari, P.E., CFM
City Engineer
City of Grand Prairie, Engineering
300 W. Main Street
P.O. Box 534045
Grand Prairie, Texas
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Live Life Grand!

From: Gabriel Johnson <gjohnson@GPTX.org>
Sent: Wednesday, June 23, 2021 12:05 PM
To: Carlo Silvestri <CarloS@wierassociates.com>; Romin Khavari <Rkhavari@GPTX.org>
Cc: Bill Hills <Bhills@GPTX.org>; Rashad J. Jackson <rjackson@GPTX.org>; Noreen M. Housewright <nhousewright@GPTX.org>; Megan Mahan <mmahan@gptx.org>; Walter Shumac <Wshumac@GPTX.org>
Subject: RE: WA21020 - 303-Acres, GP ETJ

Romin-

What criteria do you want Carlo to assume for wastewater demands.

Gabe Johnson, PE, PH, CFM, GISP

City of Grand Prairie
Director of Engineering and Public Works
office - (972) 237-8154
email – gjohnson@gptx.org
Development Center
300 W Main St.
Grand Prairie, TX 75050

From: Carlo Silvestri <CarloS@wierassociates.com>
Sent: Monday, June 21, 2021 5:15 PM
To: Gabriel Johnson <gjohnson@GPTX.org>
Cc: Bill Hills <Bhills@GPTX.org>; Rashad J. Jackson <rjackson@GPTX.org>; Noreen M. Housewright <nhousewright@GPTX.org>; Megan Mahan <mmahan@gptx.org>; Walter Shumac <Wshumac@GPTX.org>
Subject: RE: WA21020 - 303-Acres, GP ETJ

Gab, hope all is well. I was going to prepare some sewer demand info for this project as requested in our last meeting and I noticed that the Waster Water criteria link is not working on your website. Can you send me the criteria or can I just provide you with the number of LUE's we are proposing and you consultant can determine the needed sewer demand and water needs based on that for their analysis

Carlo Silvestri, P.E.

President/CEO

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From: Gabriel Johnson <gjohnson@GPTX.org>
Sent: Thursday, May 20, 2021 10:40 AM
To: Carlo Silvestri <CarloS@wierassociates.com>
Cc: Bill Hills <Bhills@GPTX.org>; Rashad J. Jackson <rjackson@GPTX.org>; Noreen M. Housewright <nhousewright@GPTX.org>; Megan Mahan <mmahan@gptx.org>; Walter Shumac <Wshumac@GPTX.org>
Subject: RE: WA21020 - 303-Acres, GP ETJ

Carlo-

Do you have some days/times you'd like to meet with our team? Give me some options over the next few weeks and we will get it on the books.

Gabe Johnson, PE, PH, CFM, GISP

City of Grand Prairie
Director of Engineering and Public Works
office - (972) 237-8154
email – gjohnson@gptx.org
Development Center
300 W Main St.
Grand Prairie, TX 75050

From: Gabriel Johnson

Sent: Tuesday, May 18, 2021 5:55 PM

To: Carlo Silvestri <CarloS@wierassociates.com>

Cc: Bill Hills <Bhills@GPTX.org>; Rashad J. Jackson <rjackson@GPTX.org>; Noreen M. Housewright <nhousewright@GPTX.org>; Megan Mahan <mmahan@gptx.org>; Walter Shumac <Wshumac@GPTX.org>

Subject: RE: WA21020 - 303-Acres, GP ETJ

We need to setup a preapp meeting to discuss the proposed development. On our side it would include CMO, legal and development directors.

Gabe Johnson, PE, PH, CFM, GISP

City of Grand Prairie
Director of Engineering and Public Works
office - (972) 237-8154
email – gjohnson@gptx.org
Development Center
300 W Main St.
Grand Prairie, TX 75050

From: Carlo Silvestri <CarloS@wierassociates.com>

Sent: Tuesday, May 18, 2021 2:00 PM

To: Gabriel Johnson <gjohnson@GPTX.org>

Cc: Bill Hills <Bhills@GPTX.org>; Rashad J. Jackson <rjackson@GPTX.org>; Cora Snyder <Csnyder@GPTX.org>; Douglas A. Taylor <dataylor@GPTX.org>; Noreen M. Housewright <nhousewright@GPTX.org>

Subject: RE: WA21020 - 303-Acres, GP ETJ

Gab, Our client is interested in proceeding down the path to get a Developers Agreement in Place. As you mentioned below, there are a lot of details to be worked out. Can you tell me or lead me to the person to discuss the next step to work towards the agreement.

Thanks

Carlo Silvestri, P.E.

President/CEO

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From: Gabriel Johnson <gjohnson@GPTX.org>
Sent: Tuesday, May 11, 2021 2:15 PM
To: Carlo Silvestri <CarloS@wierassociates.com>
Cc: Bill Hills <Bhills@GPTX.org>; Rashad J. Jackson <rjackson@GPTX.org>; Cora Snyder <Csnyder@GPTX.org>; Douglas A. Taylor <dataylor@GPTX.org>; Noreen M. Housewright <nhousewright@GPTX.org>
Subject: RE: WA21020 - 303-Acres, GP ETJ

Yes....but.

This would have to be a development agreement. There are a lot of things that have to get hammered out.

Gabe Johnson, PE, PH, CFM, GISP
City of Grand Prairie
Director of Engineering and Public Works
office - (972) 237-8154
email – gjohnson@gptx.org
Development Center
300 W Main St.
Grand Prairie, TX 75050

From: Carlo Silvestri <CarloS@wierassociates.com>
Sent: Tuesday, May 11, 2021 2:02 PM
To: Gabriel Johnson <gjohnson@GPTX.org>; Robert Castillo <rcastillo@GPTX.org>
Cc: Bill Hills <Bhills@GPTX.org>; Rashad J. Jackson <rjackson@GPTX.org>; Cora Snyder <Csnyder@GPTX.org>; Douglas A. Taylor <dataylor@GPTX.org>; Noreen M. Housewright <nhousewright@GPTX.org>
Subject: RE: WA21020 - 303-Acres, GP ETJ

Thank you Gab, all the information provided was very helpful and it does appear there are options in the area. That being said, will the City serve the 303-acres if our client does not proceed with voluntary annexation but constructs the necessary infrastructure to provide water and sewer to the property, pay impact fees and constructs other required public infrastructure such as the extension of Prairie View Blvd as shown on the thoroughfare plan? It appears that the property is covered by the City of GP water CCN.

Carlo Silvestri, P.E.
President/CEO

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From: Gabriel Johnson <gjohnson@GPTX.org>
Sent: Monday, May 10, 2021 12:11 PM
To: Carlo Silvestri <CarloS@wierassociates.com>; Robert Castillo <rcastillo@GPTX.org>
Cc: Bill Hills <Bhills@GPTX.org>; Rashad J. Jackson <rjackson@GPTX.org>; Cora Snyder <Csnyder@GPTX.org>; Douglas A.

Taylor <dataylor@GPTX.org>; Noreen M. Housewright <nhousewright@GPTX.org>

Subject: RE: WA21020 - 303-Acres, GP ETJ

Carlo-

Below is a link to the south sector water CIP that we completed in 2019 laying the framework to serve the area and the development assumptions. I'll ask Robert Castillo to provide you a link and login information to access our GIS so you can see what existing utilities we have in the area.

<https://gptx.box.com/s/pj4q4lzm8vdo5i60ze4093rozfvqjsn8>

Robert-

Can you provide the GIS login information for Carlo.

Gabe Johnson, PE, PH, CFM, GISP

City of Grand Prairie
Director of Engineering and Public Works
office - (972) 237-8154
email – gjohnson@gptx.org
Development Center
300 W Main St.
Grand Prairie, TX 75050

From: Carlo Silvestri <CarloS@wierassociates.com>

Sent: Wednesday, May 5, 2021 9:52 AM

To: Gabriel Johnson <gjohnson@GPTX.org>

Cc: Bill Hills <Bhills@GPTX.org>; Rashad J. Jackson <rjackson@GPTX.org>; Cora Snyder <Csnyder@GPTX.org>; Douglas A. Taylor <dataylor@GPTX.org>

Subject: RE: WA21020 - 303-Acres, GP ETJ

Thank you for the quick response. Would you mind giving me access to your GIS so I can investigate the sewer you are talking about.

Also, do you have a study that shows how you plan to serve the area that I can also look at so we can determine how best to extend services?

Carlo Silvestri, P.E.

President/CEO

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www.WierAssociates.com

From: Gabriel Johnson <gjohnson@GPTX.org>

Sent: Wednesday, May 5, 2021 8:05 AM

To: Carlo Silvestri <CarloS@wierassociates.com>

Cc: Bill Hills <Bhills@GPTX.org>; Rashad J. Jackson <rjackson@GPTX.org>; Cora Snyder <Csnyder@GPTX.org>; Douglas A. Taylor <dataylor@GPTX.org>

Subject: RE: WA21020 - 303-Acres, GP ETJ

We have laid out a framework to serve that area over time. We are not interested in wholesaling to Aqua Texas. There is sewer to the west that serves the area. If the developers wish to find another way to get service for their development feel free to do so, but we will seek compensation for our CCN.

There are other developments in the area that are looking for service, so infrastructure is going to be moving forward. I don't have anything definitive at the moment.

Gabe Johnson, PE, PH, CFM, GISP

City of Grand Prairie
Director of Engineering and Public Works
office - (972) 237-8154
email – gjohnson@gptx.org
Development Center
300 W Main St.
Grand Prairie, TX 75050

From: Carlo Silvestri <CarloS@wierassociates.com>

Sent: Monday, May 3, 2021 3:47 PM

To: Gabriel Johnson <gjohnson@GPTX.org>

Subject: RE: WA21020 - 303-Acres, GP ETJ

Good afternoon Sir. A couple of months ago, we discussed in concept, options to serve a 155-acre tract of land located along Highway 287. Our client decided to pass on that property but has put another 303-acre property under contract last week. I have attached an exhibit showing the location. It's located within the City of Grand Prairie's ETJ but appears to also have water and sanitary sewer service challenges unless the City has plans we are not aware of. It appears to be located within the City of Grand Prairie's water CCN but there is no sewer CCN established for the area that I have found. The City of Cedar Hill is located directly east of the property.

Similar to the other project, our client does not desire to proceed with voluntary annexation and plans to utilize a third party utility provider, Aqua Texas. Our client would like to discuss purchasing wholesale water from the City thru Aqua Texas.

I would like to setup a time to discuss further.

Thank You.

Carlo Silvestri, P.E.

President/CEO

WIER & ASSOCIATES, INC.

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EXHIBIT B

**Agreement for the Sale and Delivery of Treated Water to
the City of Grand Prairie by
the City of Midlothian**

STATE OF TEXAS §
 §
COUNTY OF ELLIS §

THIS AGREEMENT (the "Agreement") entered into this 14th day of September , 2021 (the "Effective Date") by and between the City of Midlothian, a home rule municipality operating under and governed by the laws and Constitution of the State of Texas ("Midlothian"), and the City of Grand Prairie, a home rule municipality operating under and governed by the laws and Constitution of the State of Texas ("Grand Prairie") hereinafter collectively referred to as the ("Parties"), evidences a binding agreement between the Parties regarding the sale and delivery of treated water. For good and valuable consideration and in consideration of the agreements contained in this Agreement, the adequacy, receipt, and sufficiency of which are acknowledged, the Parties hereby agree as follows:

Recitals

WHEREAS, Midlothian is a home rule municipality operating under and governed by the laws and Constitution of the State of Texas, with its corporate limits and ETJ (defined herein) in Ellis County, Texas; and

WHEREAS, Grand Prairie is a home rule municipality operating under and governed by the laws and Constitution of the State of Texas, with its corporate limits and ETJ extending in portions of Dallas, Ellis, Johnson, and Tarrant Counties, Texas; and

WHEREAS, Midlothian owns, operates, and maintains facilities for storing, treating and transmitting Treated Water (defined herein); and

WHEREAS, Midlothian is agreeable to providing Treated Water to Grand Prairie, provided that rights to Raw Water (defined herein) to be treated on behalf of Grand Prairie shall be secured by Grand Prairie at their sole expense and all existing water rights that Midlothian has in Joe Pool Reservoir and other sources are specifically excluded from this Agreement; and

WHEREAS, Midlothian and Grand Prairie have two (2) existing treated water contracts, entitled, "Midlothian-Grand Prairie Interlocal Cooperative Treated Water Agreement to Supply Ellis County Freshwater District No. 1 and Johnson County Freshwater District No. 2" ("City/District Contract"), which is dated September 30, 2005 and "Agreement for the Sale and Delivery of Treated Water to the City of Grand Prairie by the City of Midlothian" ("Midlothian/GP Contract"), which is dated March 25, 2014 (collectively, the "Existing Contracts"); and

WHEREAS, the Existing Contracts do not meet the present needs of all Parties due to changed conditions and Grand Prairie and Midlothian desire to replace these Existing Contracts in order to meet current needs and conditions; and

WHEREAS, it is deemed to be in the best interest of both Midlothian and Grand Prairie that said Parties do enter into a new mutually satisfactory agreement by means of which Grand Prairie may obtain Treated Water from Midlothian, replacing the Existing Contracts; and

WHEREAS, Grand Prairie desires to purchase wholesale from Midlothian Treated Water in sufficient quantities to supply customers located within Grand Prairie's corporate limits and ETJ; and

WHEREAS, Grand Prairie desires to resell on a wholesale or retail basis, Treated Water purchased from Midlothian under this Agreement to customers in the Grand Prairie corporate limits, the Grand Prairie ETJ, and the Grand Prairie Water CCN boundaries; and

WHEREAS, there is an existing 24" diameter pipeline owned by Grand Prairie, paralleling U.S. 287 and extending from a 12" line owned by Midlothian ("Line I") to a delivery point northwest of the westernmost corporate limits of Midlothian on U.S. Highway 287 (hereinafter known as "Delivery Point A"); and

WHEREAS, there is an existing 16" diameter pipeline owned by Grand Prairie ("Line II") that delivers Treated Water from the Midlothian Tayman Plant ("Delivery Point B") to Grand Prairie's existing water distribution system; and

WHEREAS, the Parties may choose to share in certain costs and cooperate in the construction of all or segments of an additional water transmission pipeline to be generally located along the western corporate limits of Midlothian and the eastern corporate limits and/or ETJ of Grand Prairie ("West Side Supply Line") to provide Treated Water to Grand Prairie's water distribution system at Delivery Point A and other delivery point(s) to be determined in accordance with this Agreement as well as provide local water service and the transmission of Treated Water for Midlothian; and

WHEREAS, Midlothian and Grand Prairie concur that the terms, conditions and considerations stated herein are fair, just and reasonable and will mutually benefit the Parties and serve the public interest.

NOW, THEREFORE, pursuant to *Chapter 791, Texas Government Code*, and as otherwise authorized and permitted by the laws of the State of Texas for and in consideration of the covenants, conditions and undertakings hereinafter described, and subject to each and every term and condition of this Agreement, the Parties contract, covenant and agree as follows:

ARTICLE 1
Findings and Purpose

- 1.1 Recitals.** The recitals hereinabove set forth are incorporated herein for all purposes and are found to be true and correct.
- 1.2 No Grant of Equity or Ownership.** Unless otherwise stated, no provision of this Agreement shall be construed to create any type of joint or equity ownership of any property or any partnership or joint venture. Unless otherwise stated, neither this Agreement, nor any acts of the Parties hereunder, nor Grand Prairie's payments, shall be construed as granting to or otherwise vesting in Grand Prairie any right, title, interest, or equity in the Midlothian Raw Water System (defined herein) nor in the Midlothian Treated Water System (defined herein) or any element thereof.
- 1.3 Purpose.** This Agreement provides the terms and conditions whereby Treated Water may be purchased by Grand Prairie from Midlothian.
- 1.4 City/District Contract and Midlothian/GP Contract.** The Parties agree that this Agreement shall replace the City/District Contract and the Midlothian/GP Contract in their entireties, with these Existing Contracts terminating on the Effective Date of this Agreement.

ARTICLE 2
Definitions and Interpretation

- 2.1 Definitions.** The following terms and expressions used in this Agreement, unless the context indicates otherwise, shall mean:

Agreement means this "Agreement for the Sale and Delivery of Treated Water" and any subsequent amendments agreed to in writing by the Parties.

Annual Daily Average means the measured annual usage as determined through Meter readings divided by the total number of days in the year.

AWWA means the American Water Works Association.

Business Day means any Day other than Saturdays, Sundays and legal holidays that are observed by both Grand Prairie and Midlothian.

City/District Contract – shall have the meaning provided in the Recitals of this Agreement.

CCN means certificate of convenience and necessity.

Cost of Service Study means that study performed pursuant to Article 5.2(b) of this Agreement.

Cost of the System means all costs of acquiring, constructing, developing, permitting, implementing, expanding, improving, enlarging, bettering, extending, replacing, repairing, maintaining and operating the Midlothian Raw Water System and the Midlothian Treated Water System. The costs of property, interests in property, water and water rights, capitalized interest, land, easements and rights-of-way, damages to land and property, leases, treatment and other facilities, equipment, telemetry, machinery, pumps, pipes, tanks, lines, meters, taps, valves, fittings,

mechanical devices, office equipment, assets, contract rights, wages and salaries, employee benefits, chemicals, storage, materials, supplies, power, supervision, engineering, testing, auditing, franchises, charges, assessments, claims, insurance, financing, consultants, administrative expenses, auditing expenses, legal expenses, amounts for an operation and maintenance reserve fund, amounts for a debt service reserve fund, amounts for principal and interest on bonds issued by Midlothian to pay for the Costs of the System, amounts required for bond coverage reflective of Midlothian's policies and obligations to pay for Costs of the System, bond issuance expenses, amounts for working capital, appropriate general and administrative costs of Midlothian and other similar or dissimilar expenses and costs related to providing wholesale water service required for the Midlothian Raw Water System and the Midlothian Treated Water System.

Day means a 24-hour period from 12:00 a.m. to 11:59 p.m.

Delivery Point(s) means the point(s) at which Midlothian agrees to deliver, and Grand Prairie agrees to receive, Treated Water under this Agreement.

Delivery Point A shall have the meaning provided in the Recitals of this Agreement, as shown on Exhibit A, attached hereto and incorporated herein for all purposes.

Delivery Point B shall have the meaning provided in the Recitals of this Agreement, as shown on Exhibit B, attached hereto and incorporated herein for all purposes.

Effective Date means the date that this Agreement has been signed by both Parties acting under authority provided by the governing bodies of the respective Parties.

Emergency means a bona-fide emergency condition created by unforeseeable mechanical failure, by unprecedented high rate of Treated Water usage, such as a major fire or a major water main break, or by circumstances beyond the Parties' control.

ETJ means extraterritorial jurisdiction.

Existing Contracts shall have the meaning provided in the Recitals of this Agreement.

Expiration Date means the last effective date of this Agreement as specified in Article 8.1, absent the renewal of this Agreement.

Fiscal Year is the fiscal year of Midlothian from October 1 through September 30.

Initial Maximum Day Demand means the estimated daily maximum usage specified in Article 5.2(a) of this Agreement.

Initial Rates means the rates set under Article 5.2(a) of this Agreement until the recalculated rates, from the first Cost of Service Study that is completed after the Effective Date of this Agreement, become effective.

Maximum Allowed Daily Demand means a Maximum Day Usage, which shall be 1.5 times the Annual Daily Average amount as established during the preceding Rate Year, unless a mutually agreed upon change is made by the Parties in writing.

Maximum Day Usage means the highest amount of Treated Water delivered to Grand Prairie at the Delivery Point(s) during any Day, as determined through Meter readings.

Meter(s) means the metering facility or devices installed or to be installed at each Delivery Point to measure the amount of Treated Water delivered to Grand Prairie by Midlothian as provided in this Agreement.

Midlothian/GP Contract – shall have the meaning provided in the Recitals of this Agreement.

Midlothian Raw Water System means all facilities, structures, improvements, property, rights, certificates of adjudication, permits, licenses, contracts and other property of any nature whatsoever, now or hereafter owned by Midlothian, in connection with the storage, diversion, transportation, and delivery of Raw Water. All existing water rights that Midlothian has in Joe Pool Reservoir and other sources are specifically excluded from this Agreement.

Midlothian Supply Line I or Line I means an existing 24” diameter pipeline owned by Grand Prairie, paralleling U.S. 287 and extending from a 12” line owned by Midlothian to Delivery Point A, as is more particularly described by Exhibit A, attached hereto and incorporated herein for all purposes.

Midlothian Supply Line II or Line II means an existing 16” diameter water transmission line owned by Grand Prairie that transports Treated Water from Delivery Point B at Midlothian’s Tayman Water Treatment Plant to a location within Grand Prairie’s city limits, as is more specifically depicted in Exhibit B, attached hereto and incorporated herein for all purposes.

Midlothian Treated Water System means all facilities, structures, improvements, property, rights, permits, licenses, and other property of any nature whatsoever, now or hereafter owned by Midlothian, in connection with the diversion, storage, transportation, treatment, and delivery of Treated Water.

Municipal Customer means any entity receiving wholesale water service from Midlothian including wholesale customers of either entity.

Party means either Midlothian or Grand Prairie, and “Parties” means Midlothian and Grand Prairie, collectively.

Rate of Flow means usage on a per minute basis (i.e., gallons per minute (gpm)).

Rate Year means each twelve-month period beginning October 1 and ending September 30 of the next calendar year.

Raw Water means water that is purchased by Midlothian from TRWD and Grand Prairie’s raw water rights in Joe Pool Reservoir, in its natural state prior to treatment.

Raw Water Charge means the charge calculated by applying the Raw Water Rate to the number of gallons of Treated Water provided to Grand Prairie by Midlothian, as measured by each Meter and billed on a monthly basis.

Raw Water Rate means the raw water rate charged to Midlothian for Raw Water by TRWD.

Regulatory Requirements means all applicable requirements and provisions of federal, state, and county constitutions, laws, statutes, rules, regulations and ordinances enacted or issued from time to time, including, without limitation, all applicable sections of the Texas Water Code and the rules and regulations of the Texas Commission on Environmental Quality, and the Texas Administrative Code, and all judicial and administrative orders, judgments, and decrees of any governmental authority having jurisdiction concerning the matters contained herein issued from time to time.

TCEQ means the Texas Commission on Environmental Quality or its successor agency(ies).

Treated Water means Raw Water that has been treated and purified to at least Drinking Water Standards as required by applicable TCEQ rules and regulations for Public Water Systems, as amended from time to time.

TRWD means Tarrant Regional Water District.

TRWD Buy-In means charges by the TRWD for reserving a quantity of Raw Water for use by the payer.

Volume Charge means the charge calculated by applying the Volume Rate to the number of gallons of Treated Water provided to Grand Prairie by Midlothian as measured by each Meter (or as estimated in accordance with Section 4.3 of this Agreement) and billed on a monthly basis.

Volume Rate means the dollar amount per 1,000 gallons applied to Grand Prairie's usage of Treated Water in order to calculate the Volume Charge. The Volume Rate excludes Midlothian's Raw Water costs, which are captured within the Raw Water Rate.

Water means either Raw Water or Treated Water, or both Raw Water and Treated Water, as indicated by the context in which the word appears.

Water Conservation means those practices, techniques, and technologies that will reduce the consumption of water, reduce the loss or waste of water, improve efficiency in the use of water, and/or increase the recycling and reuse of water.

West Side Supply Line means all or segments of a water transmission line that is proposed to be financed and constructed by the Parties pursuant to the West Side Supply Line Agreement and is to be installed in the general location of the western city limits of Midlothian and along the eastern city limits and/or ETJ line of Grand Prairie as shown in Exhibit C, attached hereto and incorporated herein for all purposes.

West Side Supply Line Agreement means a potential future "Agreement between the City of Midlothian and the City of Grand Prairie for the Funding and Construction of the West Side Supply Line," to be negotiated and agreed upon and constructed at a later date.

Wholesale Customer means the class of customers, including, but not limited to, Grand Prairie, to whom, under the terms of a specific agreement, Midlothian sells and provides Treated Water for re-sale.

2.2 Interpretations. The following principles shall control the interpretation of this Agreement:

- (a) Unless otherwise stated, reference to any document, other than a license, certificate of adjudication or permit, means the document as amended or supplemented from time to time.
- (b) Reference to any Party (including the Parties) or governmental regulatory agency means that entity and its successors and assigns.
- (c) Misspelling of one or more words in this Agreement shall not void the Agreement. Such misspelled words shall be read so as to have the meaning apparently intended by the Parties.
- (d) Words of any gender used in this Agreement shall be held and construed to include any other gender.
- (e) Words in the singular number shall be held to include the plural, unless the context otherwise requires.
- (f) Articles and headings contained herein are for convenience and reference and are not intended to define or limit the scope of any provision of this Agreement.

ARTICLE 3
Water Provided Under Agreement

3.1 Treated Water.

(a) **Delivery and Acceptance.**

(1) Midlothian acknowledges that Grand Prairie has satisfied the conditions contained in Subsection 5.1(a) relating to the securing of Raw Water from TRWD and therefore, except as limited in this Agreement, Midlothian agrees to furnish and sell to Grand Prairie up to an Annual Daily Average of 2.0 MGD of Treated Water. Midlothian shall deliver any and all portions of such 2.0 MGD supply of Treated Water at Delivery Points A, B, and other future Delivery Point(s) that are mutually agreed upon, in the quantities and at the times requested by Grand Prairie so long as the Rate of Flow at each Delivery Point does not exceed the amounts set forth or otherwise determined in accordance with Section 3.11 of this Agreement or as determined in accordance with Section 4.2, or such lesser amount as Midlothian may

be able to supply in the event of an Emergency. Midlothian's obligation to deliver the requested portion of the 2.0 MGD of Treated Water specified under this Subsection, that is over and above the initial volume stipulated in Subsection 5.2(a), is triggered upon Grand Prairie providing Midlothian with one hundred twenty (120) days written notice prior to the start of the next Rate Year of the increased amount of Treated Water to be delivered; provided, however, that increase(s) in the Annual Daily Average shall be in increments of no less than 0.10 MGD and no more than 0.25 MGD unless agreed to by Midlothian, with a corresponding Maximum Day Demand of 1.5 times the Annual Daily Average.

- (2)** By executing this Agreement, Grand Prairie agrees to accept delivery of the Treated Water furnished by Midlothian to meet the conditions of Subsection 3.1(a)(1) of this Agreement and to pay for such Water in accordance with the terms herein, including any future TRWD buy-in for additional quantities of Raw Water. Raw Water that Grand Prairie furnishes Midlothian from Joe Pool Reservoir for treatment under terms of this Agreement, if any, is not subject to the TRWD buy-in cost or Raw Water Charge.
- (b) Source of Supply and Capacity.** Midlothian's agreement to make Treated Water available is limited to the extent that Raw Water, as that term is defined in this Agreement, is available and the extent to which capacity is available in the Midlothian Treated Water System.
- (c) Additional Water.** To the extent Treated Water is available in amounts greater than the Maximum Allowed Daily Demand, Midlothian may, at its sole discretion, provide Grand Prairie with additional Treated Water, subject to the charges described in Article 5; save and except any TRWD buy-in fees or take-or-pay fees. Should Midlothian elect to provide Grand Prairie with Treated Water in excess of the Maximum Allowed Daily Demand, Midlothian may terminate or reduce providing Treated Water at the excess amount by providing Grand Prairie with twenty-four (24) hours prior written notice of such termination or reduction. Grand Prairie agrees that Midlothian shall never be obligated during the term of this Agreement to make Treated Water available to Grand Prairie in excess of the Maximum Allowed Daily Demand. The purchase of any additional supplies of Treated Water over the Maximum Allowed Daily Demand does not guarantee that Midlothian shall make Treated Water available on that basis at any time other than the timeframe Midlothian elects to provide additional supplies of Treated Water to Grand Prairie.
- (d) Water Pressure.** Midlothian agrees to furnish and sell to Grand Prairie Treated Water delivered under the operating pressure prevailing in the Midlothian Treated Water System at each Delivery Point that is mutually agreed upon. Notwithstanding anything in this Agreement or in the requirements of any regulatory agency to the contrary, Midlothian does not represent or guarantee to Grand Prairie that Treated Water provided to Grand Prairie under this Agreement shall be provided at any specific minimum

pressure at each Delivery Point, and Midlothian is under no obligation with respect thereto. **Grand Prairie understands and acknowledges that maintaining a certain water pressure in Grand Prairie's delivery system shall require the use of storage or pumps on Grand Prairie's system and will require, at such time in Grand Prairie's discretion, the construction of a pump station and elevated water tanks.**

- (e) **Interruption of Service for Maintenance.** Notwithstanding anything in this Agreement or in the requirements of any regulatory agency to the contrary, Midlothian shall be entitled at any and all times to install, repair, maintain, and replace such equipment or devices or to take any other action under an Emergency (including reduction or cessation of water service to Grand Prairie) as necessary or appropriate to allow Midlothian at all times to maintain a minimum pressure as required by law at all retail service locations directly served by the Midlothian Treated Water System. Midlothian shall use all reasonable efforts to install, repair, maintain, and replace such equipment and devices in a manner that minimizes, to the extent practical under the circumstances, any reduction in the amount of Treated Water furnished by Midlothian to Grand Prairie under this Agreement. Midlothian may install at each Delivery Point appropriate devices to monitor and enforce all or any of these limitations or any other limitations on the volume or pressure of Treated Water delivered by Midlothian to Grand Prairie pursuant to this Agreement. In the event of such service interruptions, Midlothian shall make all reasonable efforts to expedite the restoration of service in a timely manner. Midlothian shall provide Grand Prairie with twenty-four (24) hours prior written notice of all known repairs that are expected to interrupt service.

3.2 Regulatory Requirements. Grand Prairie acknowledges and agrees that this Agreement defines the extent of Midlothian's obligations to supply Treated Water to Grand Prairie and that, except as expressly provided by this Agreement, Midlothian is under no obligation to provide Grand Prairie with a sufficient amount of Treated Water for Grand Prairie to meet its minimum production, storage, service pump, or pressure maintenance requirements, or any other requirements imposed on Midlothian by virtue of 30 Texas Administrative Code, Chapters 290 or 291, or any other Regulatory Requirements.

3.3 Delivery Points. Subject to the conditions set forth herein, Midlothian agrees to divert, transport, treat, and deliver Treated Water to Grand Prairie at each Delivery Point. The location of Delivery Points shall be mutually agreed upon by and between Grand Prairie and Midlothian. Delivery Points shall not be moved or relocated except by mutual consent of the Parties in writing. The Delivery Points are more particularly described in Exhibits "A" and "B", which are attached hereto and incorporated for all purposes.

3.4 Relocated Delivery Point. Any request to relocate a Delivery Point shall be submitted in writing by the requesting Party. If the relocated Delivery Point is mutually agreed upon, then the requesting Party shall be responsible for funding all costs related to constructing the improvements for such relocated Delivery Point, unless the Parties agree on a division of costs based on mutual benefit; provided,

however, that if Grand Prairie submits a request to relocate a Delivery Point, then the following shall also apply:

- (1) If Midlothian is to construct all necessary improvements, Grand Prairie shall be responsible for reimbursing Midlothian, as agreed upon in writing, including the acquisition of any easements or right-of-way. Prior to any act being performed to effectuate the construction, the Parties shall enter into a written agreement to specify the manner and timeframe for such reimbursement to Midlothian and the time for construction.
- (2) If Grand Prairie is to construct the necessary improvements for a relocated Delivery Point, Grand Prairie shall submit documents to acquire rights-of-way and will submit plans for the construction of the improvements to Midlothian for approval prior to construction commencing; provided, however, that such approval shall not be unreasonably withheld or delayed if the plans comply with Midlothian's technical standards and incorporate Midlothian's requirements. If Midlothian approves the documents and plans submitted, Midlothian will give Grand Prairie notice of said approval in writing within a commercially reasonable time. During the construction, Midlothian may, but is not obligated to, inspect improvements under construction at its sole cost. All costs for the construction of the improvements, including the costs for any easements and/or rights-of-way, shall be borne as agreed upon in writing. Midlothian may, but is not obligated to, make a final inspection at its sole cost, after construction of the improvements are completed and before the improvements are approved by Midlothian for use. Midlothian agrees to notify Grand Prairie of the date it will do a final inspection, should Midlothian choose to do a final inspection, within seven (7) days of being notified of the completion of the improvements.

3.5 Additional Delivery Points and Delivery Line. It is anticipated that Grand Prairie may request one or more additional Delivery Point(s) and/or delivery line(s). Such request(s) shall be made in writing by Grand Prairie and Midlothian shall provide a written response within a commercially reasonable amount of time upon receipt of such request. If additional Delivery Point(s) and/or line(s) are mutually agreed upon, then Grand Prairie shall submit documents to acquire rights-of-way and/or easements and shall submit plans for the construction of the improvements to Midlothian for approval prior to construction commencing; provided, however, such approval shall not be unreasonably withheld or delayed if the plans comply with Midlothian's technical standards and incorporate Midlothian's requirements. If Midlothian approves the documents and plans submitted, Midlothian shall give Grand Prairie notice of said approval in writing. During the construction of such improvements, Midlothian may, but is not obligated to, inspect improvements under construction at its sole cost. All costs for the construction of the improvements, including the costs for any easements and/or rights-of-way, shall be borne by Grand Prairie. Midlothian

may, but is not obligated to, make a final inspection at its sole cost, after construction of the improvements are completed and before the improvements are approved by Midlothian for use.

- 3.6 Improvements to Existing Delivery Points.** If Grand Prairie requests that improvements be made to an existing Delivery Point, then Grand Prairie shall submit the request in writing to Midlothian. If Midlothian approves the request, then the Parties shall then decide whether Midlothian or Grand Prairie will be responsible for constructing the improvements and shall follow the procedures set forth in Article 3.4.
- 3.7 Responsibilities for Water Line that Connects to the Delivery Points.** Grand Prairie shall maintain ownership of water transmission lines that connect to the Delivery Points for so long as this Agreement and any renewal thereof is in effect, and Grand Prairie shall be responsible for the maintenance and repair of said water lines. Costs for the West Side Supply Line shall be pursuant to the West Side Supply Line Agreement if entered into by the Parties.
- 3.8 Valves at Delivery Point.** All valves releasing water from the Midlothian Treated Water System to Grand Prairie shall be solely operated and maintained by Midlothian. Grand Prairie shall not obstruct or block access to those valves.
- 3.9 Property of Parties.** Acquired easements, rights-of-way, and water supply assets shall be owned by the acquiring Party. The acquiring Party shall not charge rental or other fees to the other Party for the use of such rights-of-way or easements. Easements, rights-of-way and water supply assets jointly purchased by the Parties shall be owned by the Party in which the easements, rights-of-way and water supply assets lay.
- 3.10 Title to and Responsibility for Water.** Title to, possession and control of the Treated Water shall remain with Midlothian to each Delivery Point, whereupon title to, possession and control of the Treated Water shall pass to Grand Prairie.
- 3.11 Maximum Delivery Rate.** The Parties agree that Midlothian's obligation under this Agreement to deliver Treated Water to Grand Prairie is subject to the maximum Rate of Flow as set forth below:

Delivery Point A: 2,083 GPM (3.0 MGD)*

Delivery Point B: 2,083 GPM (3.0 MGD)*

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

*maximum combined Rate of Flow between Delivery Points A and B shall not exceed 2,083 gpm (3.0 MGD)

- 3.12 Additional Treatment.** To the extent any additional, or alternative treatment or processing is required to make the water delivered by Midlothian to Grand Prairie at each Delivery Point, suitable, compatible, or of a quality for introduction into the Grand Prairie distribution system with the water then-within Grand Prairie's distribution system, Grand Prairie is responsible, at its sole cost, for installing any

additional facilities or processes within Grand Prairie's Water System for any additional treatment, conditioning or processing.

ARTICLE 4 Metering and Rate of Flow Control

- 4.1 Treated Water Measurement and Control.** Grand Prairie shall install at its sole cost, any Meters and appropriate valves, back flow prevention, flow controllers, or other appropriate equipment, including Supervisory Control and Data Acquisition (SCADA) at each Delivery Point and the necessary SCADA improvements at Midlothian's water treatment plant to measure and control the amount of Treated Water delivered to Grand Prairie under the terms of this Agreement. Each Meter shall be specified by Midlothian and meet appropriate AWWA standards. Each Meter shall be installed and tested prior to actual delivery of Treated Water. Each Meter and related equipment shall be solely owned, operated, and maintained by Midlothian at Midlothian's cost, but such cost, or projected cost, shall be included within the cost of service study.
- 4.2 Rate-of-Flow Controllers.** The rate at which Treated Water is withdrawn by Grand Prairie from the Midlothian System shall be regulated by rate-of-flow controllers. The rate of withdrawal shall be controlled so that the maximum rate shall not exceed the Maximum Allowed Rate of Flow without a specific written request by Grand Prairie and approval from Midlothian. Notwithstanding anything in this Agreement to the contrary, approval of a request to increase the rate of flow and the length of time the request will be met, shall be at Midlothian's sole discretion. Midlothian shall respond to the request within seventy-two (72) hours of receiving the request. If Midlothian approves the request, Midlothian shall make the adjustments within forty-eight (48) hours of responding to the request. Rate of Flow setting shall be solely operated and maintained by Midlothian.
- 4.3 Calibration of Meters.**
- (a) **Annual Testing.** For Meters that require calibration, Midlothian shall routinely test for accuracy at its sole cost. Meters shall be serviced and tested per manufacture's recommendations, or as necessary. Copies of the results of such tests and all related information shall be provided to Grand Prairie within thirty (30) days of such calibration. Grand Prairie shall have access to the Meter(s) at all reasonable times; provided, however, that any reading, calibration or adjustment to such Meter(s) shall be done by employees or agents of Midlothian, or other mutually approved third Party calibration agent, in the presence of representatives of Grand Prairie and Midlothian, if so requested by Grand Prairie. Midlothian shall provide Grand Prairie with seventy-two (72) hours prior notice of such reading, calibration or adjustment. Midlothian shall retain the right to test the Meter(s) more frequently than once each twelve (12) month period; provided, such additional tests are at Midlothian's sole cost.

- (b) **Inaccuracy.** After any calibration, if it is determined that the accuracy envelope of such Meter(s) is found to be lower than ninety-five percent (95%) or higher than one hundred five percent (105%) expressed as a percentage of the full scale of the Meter(s), or Meter(s) fail to perform to AWWA water metering standards (whichever is more restrictive), then the registration of the flow as determined by such defective Meter(s) shall be corrected for a period extending back to the time such inaccuracy began, if such time is ascertainable; or, if such time is not ascertainable, then for a period extending back one-half (1/2) of the time elapsed since the date of the last calibration, but in no event further back than a period of six (6) months. In the event it is determined that there are inaccuracies with any Meter, Midlothian shall charge or credit Grand Prairie's next invoice in an equal amount per month for the time period that the inaccuracies were determined to have occurred as appropriate, to reflect Grand Prairie's prior underpayments or overpayments. Midlothian shall charge or credit Grand Prairie's account in an amount equal to the difference between the amount actually paid by Grand Prairie and the amount that should have been paid by Grand Prairie, as determined by the corrected registration of the flow of the inaccurate Meter during the period of inaccuracy as determined in this subsection. Each Meter shall be properly sealed, and the seals shall not be broken unless representatives of both Grand Prairie and Midlothian have been notified and given a reasonable opportunity to be present.
- (c) **Meter out of Service - No Readings.** If a Meter used to determine the flow of Treated Water to Grand Prairie is out of service or out of repair so that the amount of Treated Water metered cannot be ascertained or computed from the reading thereof, the Treated Water delivered during the period such Meter is out of service or out of repair shall be estimated and agreed upon by Grand Prairie and Midlothian upon the basis of the best data available. The basis for estimating such flow includes, but is not limited to, extrapolation of past patterns of flow for said Meter under similar conditions. In the event that Grand Prairie and Midlothian cannot agree on the extrapolated estimate of Treated Water volume delivered before the payment due date, Grand Prairie shall make payment to Midlothian based on the same month in the previous year on or before the payment due date. After making such payment, Grand Prairie may request that the matter be submitted to non-binding mediation as provided herein. Midlothian may also request that the matter be submitted to non-binding mediation, as herein provided.

4.4 Meter Reading.

- (a) Midlothian shall read each Meter provided for herein at monthly intervals, and Grand Prairie and Midlothian shall have free access to read any Meter daily, if either Party so desires. It shall be the duty of both Grand Prairie and Midlothian to give immediate notice, each to the other, should any Meter be found to not be functioning properly, and, upon such notice, repairs to such Meter shall be made promptly.

- (b) Grand Prairie shall have access to records on the Meter(s) readings during reasonable business hours and shall be furnished a copy of readings upon request.

4.5 Additional Meter Testing. Grand Prairie shall have the right to request Midlothian to test any Meter, but no more frequently than once per month. Upon any such request, Midlothian agrees to perform its testing and calibration of the Meter with notice to Grand Prairie, and the Parties shall be entitled to jointly observe any testing, calibration, and adjustments that are made to the Meter, in the event such modifications shall be necessary. For such additional testing requests, Midlothian shall give Grand Prairie notice forty-eight (48) hours in advance of the time when any such testing shall occur. Grand Prairie shall pay the cost of any such additional testing request for any Meter if the test shows that such Meter is accurate (within five percent (5%) registration), but Midlothian shall pay the costs of such additional test if the results indicate that such Meter is not accurate (in excess of five percent (5%) registration).

ARTICLE 5 Fees, Billing, and Payment

5.1 Charges for Water.

- (a) **Untreated Water.** In accordance with Subsection 3.1(a)(2), herein, Midlothian acknowledges that Grand Prairie, with Midlothian's cooperation, has secured and paid or caused others to pay (i) Midlothian the TRWD Buy-In cost for 2.0 MGD of Raw Water, and (ii) the portion of the "take-or-pay" rates attributable to Grand Prairie, if any, that is charged to Midlothian by TRWD. Unless Grand Prairie furnishes Raw Water from Joe Pool Reservoir to Midlothian for treatment under the terms of this Agreement, if any, all Raw Water treated by Midlothian shall be considered TRWD Raw Water, regardless of the source and/or treatment facility providing the treatment, and shall be subject to the TRWD Raw Water Rate.
- (b) **Treated Water.** Except as otherwise provided in this Agreement, Grand Prairie shall pay to Midlothian the following fees and charges for the Treated Water delivered by Midlothian to Grand Prairie at each Point of Delivery: Volume Charge and Raw Water Charge. Such fees and charges may include Late Fees.

5.2 Water Rates.

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

Volume Rate - \$2.620 per 1,000 gallons

The Initial Annual Daily Average Demand is 1.33 MGD.

The Initial Maximum Day Demand is 2.0 MGD.

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

Raw Water Rate - \$1.25448 per 1,000 gallons.

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

5.3 Billing and Payment.

- (a) **Volume Charge.** Each month during the term of this Agreement, Midlothian shall read each Meter measuring the amount of Treated Water provided to Grand Prairie. The number of gallons of Treated Water measured by each Meter shall be multiplied by the Volume Rate to determine the Volume Charge. Midlothian shall prepare and deliver to Grand Prairie a statement showing the Volume Charge for all Treated Water delivered to Grand Prairie. Payment shall be made no later than the 30th day after receipt of the statement.
- (b) **Raw Water Charge.** Each month during the term of this Agreement, Midlothian shall read each Meter measuring the amount of Treated Water provided to Grand Prairie. The numbers of gallons of Treated Water measured by each Meter plus an amount equal to five percent (5%) of the total number of gallons treated shall be multiplied by the Raw Water Rate as charged to Midlothian by TRWD to calculate the Raw Water Charge. The billing and payment for the Raw Water Charge shall be made in accordance with the billing and payment for the Volume Charge in Article 5.3(a). The Raw Water Charge invoiced by Midlothian to Grand Prairie each month shall not include the amount of Treated Water provided to Grand Prairie that was initially Raw Water supplied by Grand Prairie from their Joe Pool Reservoir water rights, if any.
- (c) **Late Fees.** If Grand Prairie is late in the payment of any charge or fee due and payable to Midlothian under this Agreement, late payments shall bear per

annum interest at a rate equal to the lesser of two percentage points (2%) above the Prime Interest Rate as published in the Wall Street Journal on the day said statement becomes delinquent, or the maximum allowed by law to be charged to Grand Prairie. If any charges remain unpaid at the expiration of thirty (30) days after receipt of the statement, Grand Prairie shall be in default under this Agreement, and Midlothian may invoke the remedies specified herein or otherwise available by law.

- (d) **Settle-Up.** Excluding the Raw Water Rate component, a “settle-up” shall be made no less than sixty (60) days after the end of Midlothian’s fiscal year, whereupon any under or over payment shall be paid or remitted to the appropriate Party. For the Raw Water Rate component, a separate “settle-up” shall be made no less than sixty (60) days after receipt by Midlothian of the previous years audited “actual” Raw Water Rate from TRWD, whereupon any under or over payment shall be paid or remitted to the appropriate Party.

5.4 **Billing Questions and Disputes.**

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

The Parties agree to negotiate in good faith to resolve the dispute. The Parties shall agree to submit the dispute to non-binding mediation as provided in Article 13.1 of this Agreement.

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

ARTICLE 6
Treated Water Transmission Lines

- 6.1 West Side Supply Line Construction.** The Parties contemplate entering into a Treated Water Transmission Line Agreement at a later date, which shall address the responsibilities of the Parties related to the design, construction, and maintenance of the West Side Supply Line. This Agreement will be complementary to, and not replace, any existing water line agreements unless specifically cancelling or modifying such previous agreements. Cost sharing arrangements and operational responsibilities for future treated water transmission lines shall be established through either written agreement separate from this Agreement or as an amendment to this Agreement. Either Midlothian or Grand Prairie may trigger the need to enter into the West Side Supply Line Agreement by providing written notice to the other Party at least one hundred and eighty (180) days before the design of the West Side Supply Line must commence in order to meet projected demand in the area to be served by the West Side Supply Line. In the event an agreement relating to the West Side Supply Line is not mutually agreed to by the Parties by the time one Party projects the need for the West Side Supply Line, that Party may proceed with the design and construction of the West Side Supply Line with capacity required for only that Party.
- 6.2 Delivery Point A Limitations.** It is expressly understood by the Parties that the current Midlothian water distribution system delivery capability to Delivery Point A is limited. As a result, at a minimum, the West Side Supply Line shall consist of a new segment of treated water transmission line that will transport treated water from the high service pump station at Midlothian's Auger Water Treatment Plant to Delivery Point A. This line must be installed and in service prior to (i) the 801 single family connection or its equivalent being provided treated water purchased from Midlothian at Delivery Point A or (ii) within five (5) years from the effective date of this Agreement, whichever occurs first. In the event that the conditions in (i) or (ii) above are triggered and the Parties have not entered into a Treated Water Transmission Line Agreement, the following shall apply:
- (a) Grand Prairie shall design and construct or cause others to design and/or construct this segment of the West Side Supply Line, with the minimum size of this line being designed to convey an amount of treated water that is sufficient to meet Grand Prairie's needs, with this capacity only being available for Grand Prairie.
 - (b) Grand Prairie shall acquire the necessary easements for this segment of the West Side Supply Line, with Midlothian approving the final alignment and design of the project in writing prior to the commencement of construction, with such approval not being unreasonably withheld or delayed if the alignment and design plans comply with Midlothian's technical standards and incorporate Midlothian's requirements.

- (c) During the construction, Midlothian may, but is not obligated to, inspect improvements under construction at its sole cost. All costs for the construction of the improvements, including costs for any easements and/or rights-of-way, shall be borne by Grand Prairie. Midlothian may, but is not obligated to, make a final inspection at its sole cost, after construction of the improvements are completed and before the improvements are approved by Midlothian for use. Upon completion of construction, Grand Prairie shall convey the improvements to Midlothian.

ARTICLE 7

Restrictions and Conditions

- 7.1 Resale of Treated Water.** Grand Prairie and Midlothian agree that the Treated Water supplied to Grand Prairie by Midlothian shall be used solely by Grand Prairie to meet the reasonable water supply needs of Grand Prairie's potable retail and wholesale water customers located within Grand Prairie's boundaries, ETJ, or service area as defined by Grand Prairie's water CCN, as currently authorized or as may be amended in the future, whichever is more expansive. Grand Prairie shall not sell Treated Water to customers of Midlothian.
- 7.2 Amendments to Certificates of Convenience and Necessity.** The Parties agree that during the term of this Agreement, except as provided herein, neither Party shall seek to amend its water CCN to increase its service area within the corporate limits or ETJ of the other Party without the prior written consent of such Party.
- 7.3 Water Conservation and Demand Management.**
 - (a) **Water Conservation.** Grand Prairie shall cooperate with and assist Midlothian and TRWD in their efforts to promote water conservation, so long as the water conservation measures placed on Grand Prairie by Midlothian or TRWD are not more restrictive than the measures Midlothian or TRWD places on its other Municipal Customers. This may include the development of any conservation or rationing plans by either Midlothian, TRWD, or Grand Prairie that may be necessary or appropriate to address operational constraints, whether or not the same are required by any state or federal regulatory agency. Additionally, upon the development and distribution of model drought contingency or water conservation plans by TRWD, Grand Prairie agrees to implement any such drought contingency or water conservation plan, or substitute plan approved by TRWD, within a reasonable amount of time from receipt of the model plan. Grand Prairie agrees to notify TRWD in writing of any deviation from the model plan and obtain TRWD's consent to such proposed deviation. Furthermore, Grand Prairie agrees to develop and implement plans, programs and rules to develop water resources and to promote practices, techniques and technologies that will reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in use of water or increase the recycling and reuse of water and to include the foregoing provision in all future contracts for resale of Treated

Water on a wholesale basis. Grand Prairie shall provide a copy of any drought contingency or water conservation plan adopted by Grand Prairie to Midlothian and TRWD within thirty (30) days from the Effective Date.

- (b) **Demand Management.** When Midlothian or TRWD shall manage water demand through rationing the use of water to its Municipal Customers, then a proportional rationing of Treated Water supplied to Grand Prairie by Midlothian shall be instituted, at Midlothian's option; provided, however, the rationing measures placed on Grand Prairie shall not be more restrictive than the measures placed on the other Municipal Customers of Midlothian or TRWD. Rationing does not relieve Grand Prairie from its obligation to pay the monthly take-or-pay obligations and the Raw Water Charge unless such rationing extends for a continuous period exceeding ninety (90) days. At such time rationing exceeds a continuous ninety (90) day period, Grand Prairie's monthly take-or-pay obligations and the Raw Water Charge will be proportionally adjusted to reflect its reduced demand instituted through rationing measures. Upon Midlothian's removal of such rationing measures, the monthly take-or-pay obligations and the Raw Water Charge will be adjusted to reflect the removal of the rationing measures.
- (c) **Temporary Rationing.** Where an Emergency may dictate temporary conservation or rationing requirements for either Midlothian or Grand Prairie, either Party may implement any measures considered appropriate by it to alleviate the Emergency. If either Party implements measures to alleviate an Emergency, such Party shall notify the other Party in writing within five (5) days of implementing such measures.

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

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

ARTICLE 8
Term of Agreement and Extension

- 8.1 Term of Agreement.** Unless terminated as provided for in this Agreement, this Agreement shall commence upon the Effective Date and shall remain in effect for a term of thirty (30) years from the Effective Date.
- 8.2 Renewal of Agreement.** At the end of the term of this Agreement, this Agreement shall automatically renew for a five (5) year term, unless either Party notifies the other in writing that it does not wish to renew this Agreement for the additional five (5) year term. Such written notification shall be delivered to the Parties at least five (5) years prior to the Expiration Date. In the event that both Parties wish to renew this Agreement past the five (5) year term, this Agreement can be renewed for a new term that is agreeable to both Parties upon written notification by both Parties, with such written notification being delivered to each Party on or before the end of the second year of the five (5) year term.

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

- 8.3 Alternate Water Supply.** Grand Prairie agrees to take the steps to acquire water supply from another source of supply upon the Expiration Date in the event that Grand Prairie notifies Midlothian that it does not elect to renew this Agreement, in accordance with Section 8.2, above; and Grand Prairie shall provide Midlothian evidence that Grand Prairie is taking steps to secure such alternative and sufficient water supply. This requirement is expressly enforceable by Midlothian. If at least two (2) years prior to the Expiration Date of this Agreement Grand Prairie and Midlothian have not agreed to the quantity of water or the rate for the water, then, Grand Prairie shall provide Midlothian evidence that Grand Prairie has secured an alternative and sufficient water supply. This requirement is expressly enforceable by Midlothian.
- 8.4 Payments After Non-Renewal.** If this Agreement is not renewed, after expiration of this Agreement, Grand Prairie shall nonetheless pay Midlothian for all Raw Water Charges and Volume Charges for Treated Water delivered prior to the expiration of this Agreement, as well as penalties such as Late Fees, under the terms of this Agreement.

ARTICLE 9
Termination and Default

- 9.1 Termination by Mutual Consent.** This Agreement may be terminated in whole or in part by the mutual written consent of Grand Prairie and Midlothian. In the event of termination of this Agreement by such mutual consent, all rights, powers, and privileges of the Parties hereunder shall cease and terminate without necessity of further action. Neither Party shall make any claim of any kind whatsoever against the other Party, its agents or representatives, by reason of such termination or any act incident thereto. If the Parties agree to terminate this Agreement, Grand Prairie shall nonetheless pay Midlothian for all Raw Water Charges and Volume Charges for Treated Water delivered prior to the termination of this Agreement, as well as penalties such as Late Fees under the terms of this Agreement. The provisions of this section survive termination of this Agreement.
- 9.2 Default by Grand Prairie.** In the event Grand Prairie is in default under the terms of this Agreement, other than default by failing to timely pay the amount due Midlothian, Midlothian shall give Grand Prairie written notice of such default. If Grand Prairie's default is not cured after the expiration of thirty (30) days after the receipt of such written notification, then Midlothian may temporarily suspend the delivery of Treated Water to Grand Prairie.
- 9.3 Default by Midlothian.** In the event Midlothian is in default under the terms of this Agreement, Grand Prairie shall give Midlothian written notice of such default. If Midlothian's default is not cured after the expiration of thirty (30) days after such written notification is given to Midlothian, Grand Prairie may seek remedies, other than termination, in accordance with this Agreement.
- 9.4 Damages.** In no event shall either Party be liable to the other Party for any special, indirect, incidental, consequential, or punitive damages for any dispute arising under this Agreement. In the event either Party is awarded damages in a final, non-appealable judgment, then such damages shall be offset against all sums due or to become due to the other Party hereunder until the awarded Party's damages are fully compensated.
- 9.5 Other Charges.** In the event any sales or use taxes, or taxes, assessments, production fees or charges of any similar nature are imposed by a federal, state, or local authority (other than a Party to this Agreement) on production, storing, delivering, gathering, impounding, taking, selling, using, or consuming the water received by a Party to this Agreement, the amount of tax, assessment, or charge shall be borne by that Party, in addition to all other charges, and whenever a Party shall be required to pay, collect, or remit any tax, assessment, or charge on water received by such Party, then the other Party shall promptly pay or reimburse such Party for the tax, assessment, or charge in the manner directed by such Party.
- 9.6 Default in Payments.** All amounts due and owing to a Party to this Agreement by the other Party to this Agreement shall, if not paid when due, bear interest at the Texas post-judgment interest rate under Texas law from the date when due until paid,

provided that such rate shall never be usurious or exceed the maximum rate as permitted by law as set forth in Chapter 1204, as amended, Texas Government Code. If any amount due and owing by one Party to the other Party is placed with an attorney for collection, the Party owing the amount shall pay to the other Party, in addition to all other payments provided by this Agreement, including interest, the other Party's collection expenses, including court costs and attorneys' fees as may be the order of the court or tribunal. The Party who is owed the money may, to the extent permitted by law, suspend delivery of water to the other Party if the other Party remains delinquent in any payments due hereunder for a period of sixty (60) days, and is not required to resume delivery of water while the Party is so delinquent. Either Party may pursue all legal remedies against the other Party to enforce and protect the rights of the Party under this Agreement.

- 9.7 **Pledge of Gross Revenue.** Each Party to this Agreement represents and covenants to the other Party that all payments to be made by it under this Agreement shall constitute reasonable and necessary "operating expenses" of its utility system, and that all such payments will be made from the gross revenues of its utility system. Each Party represents and has determined that the water supply to be obtained from the other Party is absolutely necessary and essential to the present and future operation of its utility system, and, accordingly all payments required by this Agreement to be made by the Party shall constitute reasonable and necessary operating expenses of the Party's utility system as described above with the effect that the obligation to make such payments from gross revenues of such utility system or systems shall have priority over any obligation to make any payments from such revenues, whether of principal, interest, or otherwise, with respect to all bonds heretofore or hereafter issued by the Party. Each Party agrees throughout the term of this Agreement to continuously operate and maintain its utility system and to fix and collect such rates and charges for water services to be supplied by its utility system as will produce gross revenues in an amount equal to at least all of its payments under this Agreement.
- 9.8 **A PARTY TO THIS AGREEMENT SHALL NEVER HAVE THE RIGHT TO DEMAND PAYMENT BY ANOTHER PARTY OF ANY OBLIGATIONS ASSUMED BY OR IMPOSED UPON THAT PARTY UNDER OR BY VIRTUE OF THIS AGREEMENT FROM ANY FUNDS RAISED OR TO BE RAISED BY TAXATION AND A PARTY'S OBLIGATION UNDER THIS AGREEMENT SHALL NEVER BE CONSTRUED TO BE A DEBT OF THE PARTY OF SUCH KIND AS TO REQUIRE IT UNDER THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS TO LEVY AND COLLECT A TAX TO DISCHARGE SUCH OBLIGATION.**
- 9.9 **Payment under Protest.** If a Party at any time disputes the amount to be paid by it to the other Party, the Party shall nevertheless promptly make the disputed payment or payments, but if it is subsequently determined by agreement or court decision that the disputed amount paid by the Party should have been less, or more, the other Party

shall promptly revise the monthly payment in a manner that the Party, will recover the amount due within six (6) months.

- 9.10 Stipulations.** By signing this Agreement, each Party stipulates and agrees that the other Party will be prejudiced if a Party avoids the obligation to furnish water while accepting the benefits of payments, or avoids the obligation to pay the rates for water specified in this Agreement while accepting the benefits of obtaining water, from the other Party. Nothing in this Agreement shall be construed as constituting an undertaking by a Party to furnish water to the other Party except pursuant to the terms of this Agreement.
- 9.11 Remedies.** Recognizing that failure in the performance of any Party's obligations hereunder could not be adequately compensated in money damages alone, each Party agrees in the event of any default on its part that each Party shall have available to it the equitable remedy of mandamus and/or specific performance, but not termination. It is the intent of the Parties that any default shall be subject to the remedy of specific performance and/or mandamus to the extent that specific performance and/or mandamus is possible under the existing circumstances. The remedy of specific performance and/or mandamus shall be first requested by either Party in the event of default by the other Party. However, if, despite a Party's request for specific performance or mandamus, a court determines that the other Party has breached this Agreement, but the court declines to order specific performance as a remedy, the Party shall then be entitled to seek damages. In either event, the prevailing Party may recover court costs, attorneys' fees, and witness fees.

ARTICLE 10

Joe Pool Water

- 10.1 Availability and Usage.** Subject to availability as determined by Grand Prairie, Midlothian may be allowed to utilize unused Grand Prairie raw water reserve rights in Joe Pool Reservoir to meet Midlothian's water source requirements under this Agreement. However, Midlothian is not obligated to treat any of Grand Prairie's raw water from Joe Pool Reservoir and will only do so if Midlothian has the capacity available to treat such raw water, which will be at Midlothian's discretion. If Grand Prairie authorizes Midlothian in writing to use a portion of its Joe Pool Reservoir raw water, and Midlothian agrees to treat said water, then Midlothian shall not include the Raw Water from Joe Pool Reservoir in the cost billed to Grand Prairie.
- 10.2 Volume Determination.** The volume of Grand Prairie's Raw Water that Midlothian uses from the Joe Pool Reservoir shall be based upon written agreement between the Parties for the volume to be treated.
- 10.3 Reporting.** Midlothian shall report its withdrawals of Grand Prairie's Raw Water from Joe Pool Reservoir, if any, to Grand Prairie on a monthly basis.
- 10.4 Authorization.** The Parties agree that if Grand Prairie authorizes Midlothian to use any of Grand Prairie's Raw Water in the Joe Pool Reservoir and Midlothian agrees to

treat said water, Midlothian shall be authorized to use such water only for the amount of time agreed to in writing between the Parties. Nothing in this Agreement may be construed as permanently transferring any right that Grand Prairie has to Raw Water in the Joe Pool Reservoir to Midlothian.

ARTICLE 11

Force Majeure

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

ARTICLE 12

Ownership, Liability, Indemnification, and Insurance

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

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

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

ARTICLE 13 Dispute Resolution

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

ARTICLE 14 Notice

- 14.1 Manner of Giving Notice.** Unless otherwise provided in this Agreement, any notice, communication, request, reply, advice, approval or consent herein provided or permitted to be given, made, or accepted by either Party to the other, must be in writing and may be given by personal delivery, electronic delivery, or be served by depositing the same in the United States Mail postpaid and registered or certified and addressed to the Party to be notified with return receipt requested, or by delivering the same to the Mayor/City Manager or Chief Executive Office, or by prepaid telegram,

when appropriate, addressed to the Party to be notified. Any such matter deposited in the mail in the manner hereinabove described shall become exclusively deemed to be effective, unless otherwise stated in this Agreement, from and after the earlier of actual receipt of notice or the expiration of four (4) days after it is so deposited. Any such notice given in any other manner shall be effective only if and when received by the Party to be notified.

Notice to Midlothian.

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

Notice to Grand Prairie.

City Manager
City of Grand Prairie
P.O. Box 534045
Grand Prairie, Texas 75053-4045

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

**ARTICLE 15
Miscellaneous Provisions**

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

the event any provision of this Agreement is held to be invalid, illegal, or unenforceable in any judicial action, the Parties shall, upon the request of a Party, promptly renegotiate in good faith a new provision to eliminate the invalidity and to restore this Agreement, as nearly as possible, to its original intent and effect.

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

(signature page to follow)

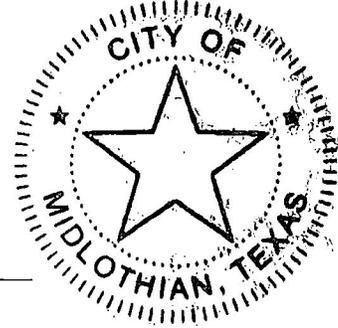
IN WITNESS WHEREOF, the Parties have executed and attested this Agreement by their officers thereunto duly authorized as of the date signed.

Executed this 14th day of September 2021

City of Midlothian

[Signature]
Chris Dick, City Manager

Date 9/14/2021



ATTEST

By [Signature]
City Secretary, City of Midlothian

City of Grand Prairie

[Signature]
Steve Dye, Deputy City Manager

Date 9/13/2021

ATTEST

By [Signature]
City Secretary, City of Grand Prairie

APPROVED AS TO FORM:

By [Signature]
City Attorney, Midlothian

By Mark E. Dempsey, Deputy City Attorney
City Attorney, Grand Prairie

Exhibit A
Delivery Point A and Midlothian Water Supply Line I

EXHIBIT A

LEGEND

- | | | |
|------------------------------|----------------|------------------|
| <i>Existing Water System</i> | | Lake |
| Wholesale Meter | MDL City Limit | MDL ETJ Boundary |
| Water Line | GRP City Limit | GRP ETJ Boundary |
| Road | Railroad | Other City Limit |
| Stream | | |

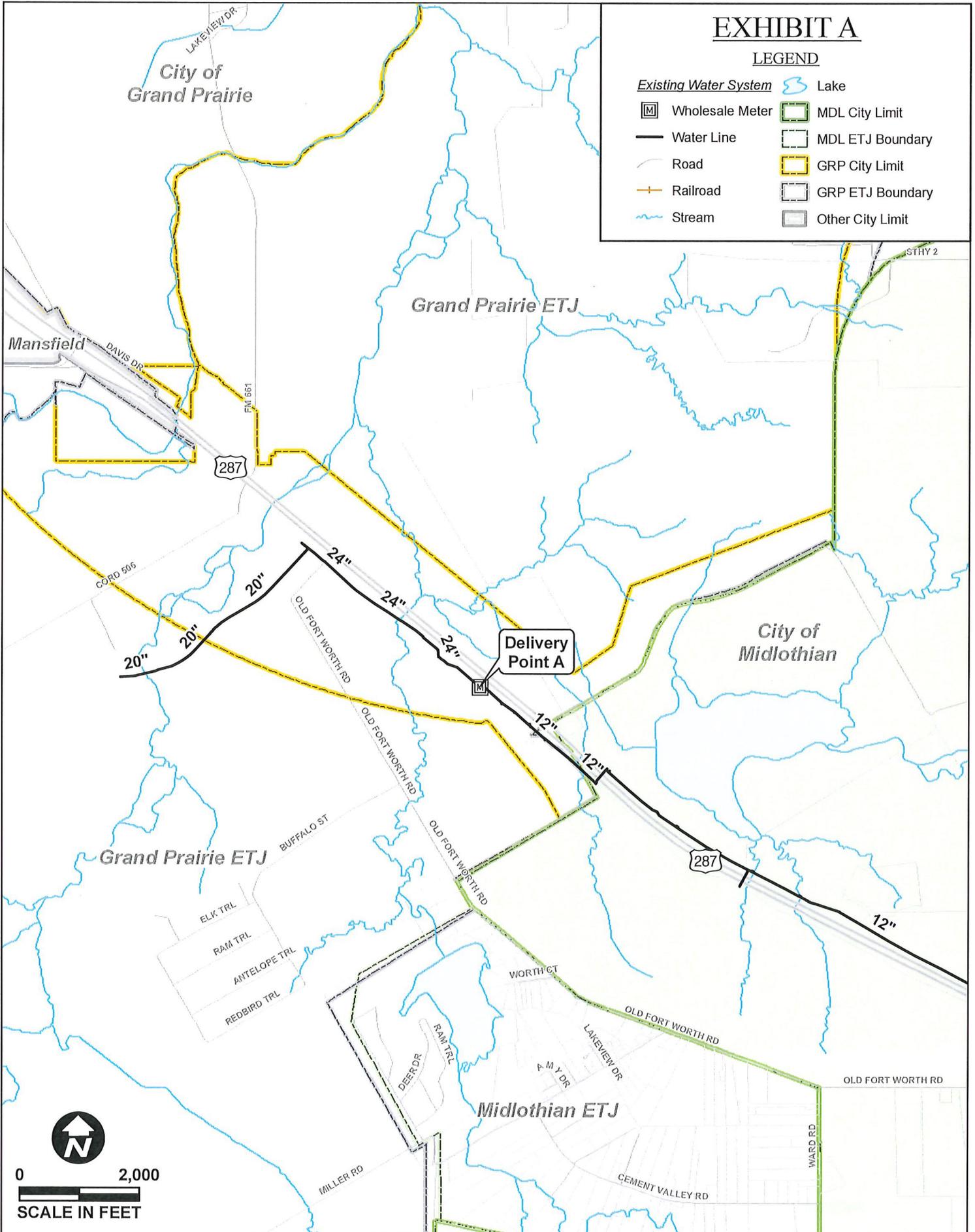


Exhibit B
Delivery Point B and Midlothian Water Supply Line II

EXHIBIT B

LEGEND

- | | | |
|------------------------------|------------------|------------------|
| <i>Existing Water System</i> | | Lake |
| Wholesale Meter | MDL City Limit | MDL ETJ Boundary |
| Water Treatment Plant | GRP City Limit | GRP ETJ Boundary |
| Water Line | Other City Limit | County Boundary |
| Road | | |
| Railroad | | |
| Stream | | |

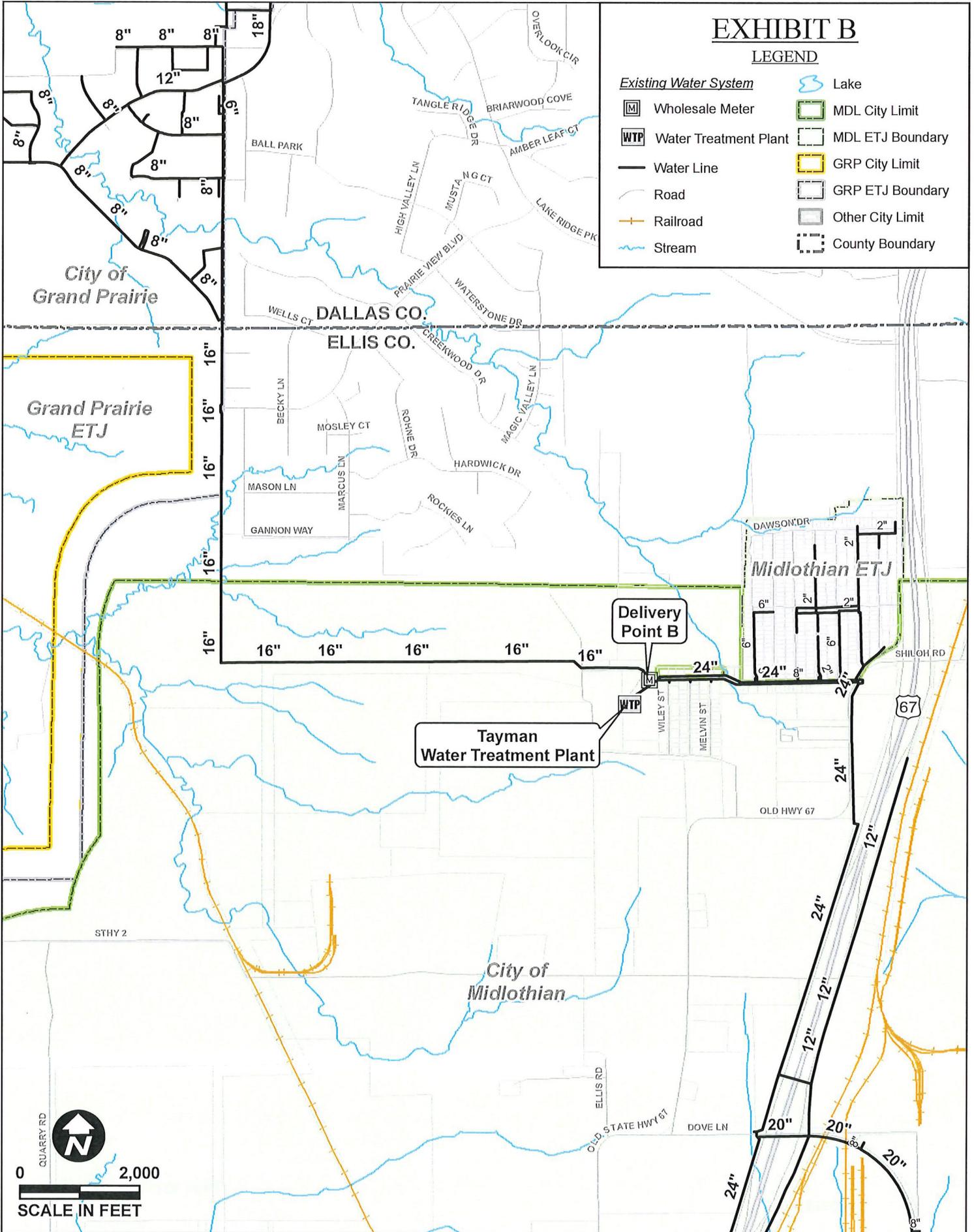


Exhibit C
West Side Supply Line

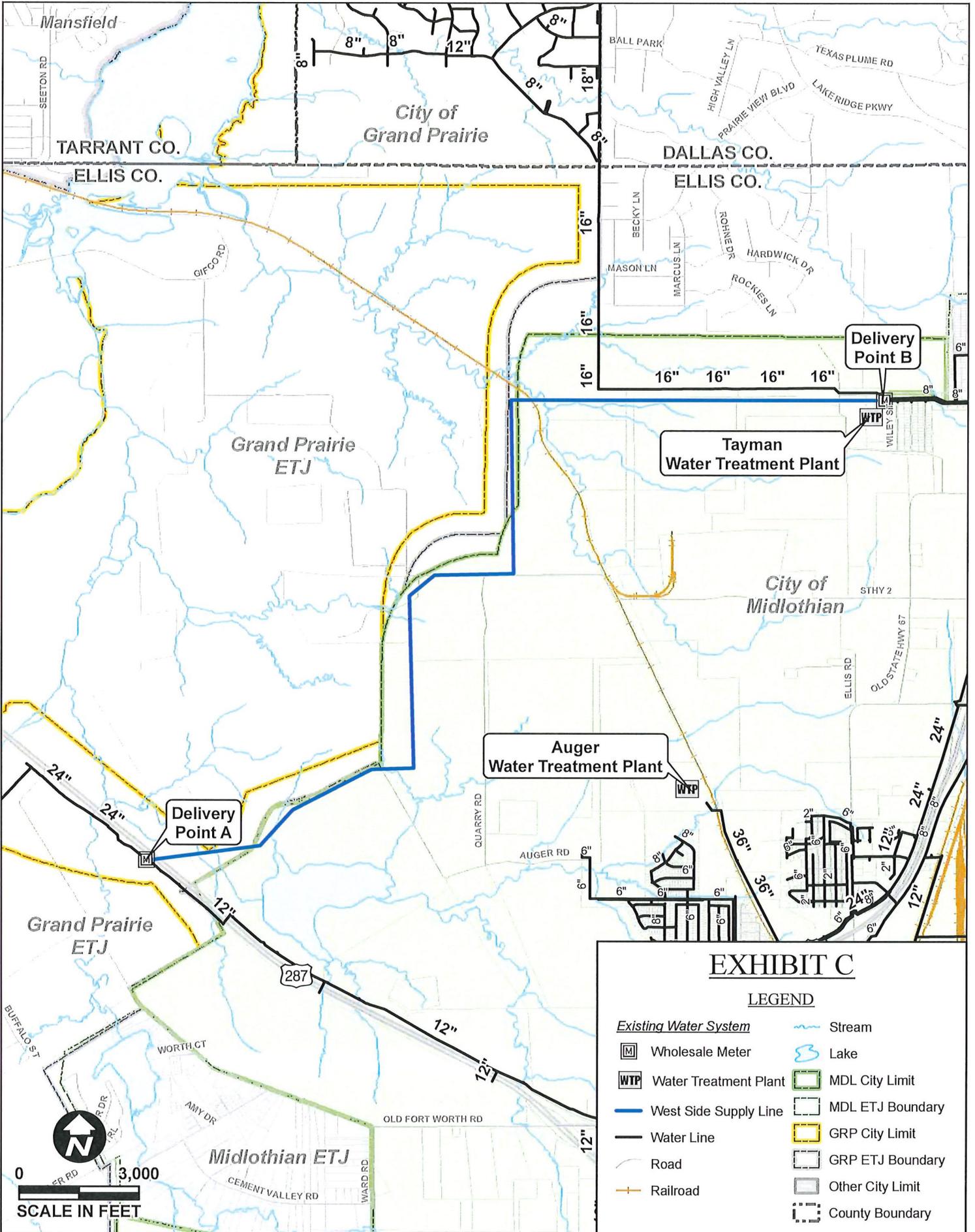


EXHIBIT C

LEGEND

- | | |
|-----------------------|------------------|
| Existing Water System | Stream |
| Wholesale Meter | Lake |
| Water Treatment Plant | MDL City Limit |
| West Side Supply Line | MDL ETJ Boundary |
| Water Line | GRP City Limit |
| Road | GRP ETJ Boundary |
| Railroad | Other City Limit |
| | County Boundary |

Exhibit D
Rate Methodology Policy

Preamble: This Policy regarding the wholesale treated water rate setting methodology will serve to govern the rate setting methodology for the Agreement for the Sale and Delivery of Treated Water to the City of Grand Prairie by the City of Midlothian (the "Agreement") for the term of the Agreement.

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

recovered through the Raw Water Rate and Grand Prairie's raw water from Joe Pool Reservoir.

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

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

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

APPENDIX A
Glossary of Terms

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

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

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

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

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

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

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

Interest Expense - Payments made for the use of borrowed funds

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

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

MGD - Million gallons per day flow rate

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

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

Rate Base - Total investment dedicated to providing utility service

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

Raw Water Costs - Costs incurred in acquiring untreated water supplies

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

**APPENDIX A - CONTINUED
GLOSSARY OF TERMS**

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

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

Treated Water - Raw water that has passed the purification process

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

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

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

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

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

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

EXHIBIT C

Department:
Public Works

Vendor Name:
City of Mansfield

Project Name:
Agreement for the sale and Delivery of Treated Water - Wholesale Customer - City of Grand Prairie

Work Order Number(s):
N/A

Account Number:
0

Contract Amount: \$0.00	Implementation Date: 4/16/2010	Termination Date:	City Council Appr. Date: 1/19/2010
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Insurer A Name: N/A	Insurer A Expiration:
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Insurer B Name:	Insurer B Expiration:
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Insurer C Name:	Insurer C Expiration:
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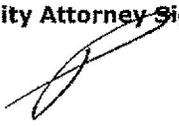
Insurer D Name:	Insurer D Expiration:
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Insurer E Name:	Insurer E Expiration:
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Return Executed Copy To:
Carmen Ard x8154

Department Manager Signature:


Date:
4/15/10

City Attorney Signature:


Date:
4/16

City Manger/Deputy City Manager Signature:


Date:
4/19/10

City Secretary Signature:


Date:
4/19/10

RESOLUTION NO. RE-2579-10

A RESOLUTION OF THE CITY OF MANSFIELD, TEXAS, AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT BETWEEN THE CITY OF MANSFIELD, TEXAS AND THE CITY OF GRAND PRAIRIE, TEXAS FOR THE SALE AND DELIVERY OF TREATED WATER BY WHOLESALE CUSTOMER CONTRACT TO THE CITY OF GRAND PRAIRIE

WHEREAS, the City of Mansfield, Texas ("City") and the City of Grand Prairie, Texas ("Grand Prairie") desire to enter into this Agreement for the Sale and Delivery of Treated Water to Grand Prairie which the City will be compensated in accordance with the contract terms; and

WHEREAS, it is deemed to be in the best interest of both the City and Grand Prairie that said Parties do enter into a mutually satisfactory agreement by means of which Grand Prairie may obtain Treated Water from the City; and

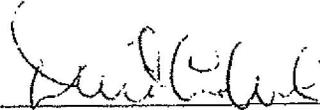
WHEREAS, the City and Grand Prairie have determined that the consideration granted herein is in the best interests of the parties as it will help to reduce costs to the citizens and taxpayers of both the City and Grand Prairie;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MANSFIELD, TEXAS:

SECTION 1.

That the City Manager is hereby authorized and directed to enter into an Agreement for the Sale and Delivery of Treated Water by Wholesale Customer Contract to the City of Grand Prairie.

PASSED AND APPROVED THIS THE 25TH DAY OF JANUARY, 2010.



David L. Cook, Mayor

ATTEST:



Vicki Collins, City Secretary

**Agreement for the Sale and
Delivery of Treated Water - Wholesale Customer –
City of Grand Prairie**

STATE OF TEXAS §
 §
COUNTY OF TARRANT §

THIS AGREEMENT (the "Agreement") entered into this 18th day of August, 2010 (the "Effective Date") by and between the City of Mansfield, a home rule municipality operating under and governed by the laws and Constitution of the State of Texas ("Mansfield"), and the City of Grand Prairie, a home rule municipality operating under and governed by the laws and Constitution of the State of Texas ("Grand Prairie") hereinafter collectively referred to as the ("Parties"), evidences a binding agreement between the Parties regarding the construction of a water transmission line and the purchase of treated water service. For good and valuable consideration and in consideration of the agreements contained in this Agreement, the adequacy, receipt, and sufficiency of which are acknowledged, the Parties hereby agree as follows:

Recitals

WHEREAS, Mansfield is a home rule municipality operating under and governed by the laws and Constitution of the State of Texas, with its corporate limits and extraterritorial jurisdiction ("ETJ") extending in portions of Ellis, Johnson, and Tarrant Counties, Texas; and

WHEREAS, Grand Prairie is a home rule municipality operating under and governed by the laws and Constitution of the State of Texas, with its corporate limits and ETJ extending in portions of Dallas, Ellis, Johnson, and Tarrant Counties, Texas; and

WHEREAS, at the present time, Mansfield has available a supply of Raw Water from which it can provide Treated Water, and it owns, operates, and maintains facilities for storing, treating and transmitting Treated Water; and

WHEREAS, it is deemed to be in the best interest of both Mansfield and Grand Prairie that said Parties do enter into a mutually satisfactory agreement by means of which Grand Prairie may obtain Treated Water from Mansfield; and

WHEREAS, Grand Prairie owns, operates and maintains a distribution system to furnish water service to the customers within its service area; and

WHEREAS, the Parties desire to share costs and cooperate in the construction of the Treated Water Transmission Line to be constructed within the corporate limits of Mansfield to provide Treated Water to Grand Prairie's water distribution system as well as provide local water service for Mansfield; and

NOW, THEREFORE, pursuant to *Chapter 791, Texas Government Code*, and as otherwise authorized and permitted by the laws of the State of Texas for and in consideration of the covenants, conditions and undertakings hereinafter described, and subject to each and every term and condition of this Agreement, the Parties contract, covenant and agree as follows:

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ARTICLE I
Findings and Purpose

- 1.1 **Recitals.** The recitals hereinabove set forth are incorporated herein for all purposes and are found to be true and correct.
- 1.2 **No Grant of Equity or Ownership.** Unless otherwise stated, no provision of this Agreement shall be construed to create any type of joint or equity ownership of any property or any partnership or joint venture. Unless otherwise stated, neither this Agreement, nor any acts of the Parties hereunder, nor Grand Prairie's payments, shall be construed as granting to or otherwise vesting in Grand Prairie any right, title, interest, or equity in the Mansfield Raw Water System nor in the Mansfield Treated Water System or any element thereof.
- 1.3 **Purpose.** This Agreement provides the terms and conditions whereby Treated Water may be purchased by Grand Prairie from Mansfield. Further, this Agreement provides for the pro-rata cost sharing of the Treated Water Transmission Line to provide Treated Water to Grand Prairie's water distribution system as well as provide local water service for Mansfield.

ARTICLE 2
Definitions and Interpretation

- 2.1 **Definitions.** The following terms and expressions used in this Agreement, unless the context indicates otherwise, shall mean:

Agreement means this "Agreement for the Sale and Delivery of Treated Water – Wholesale Customer – City of Grand Prairie" and any subsequent amendments agreed to in writing by the Parties.

AWWA means the American Water Works Association.

Business Day means any Day other than Saturdays, Sundays and Days on which banks in Grand Prairie are required or permitted to be closed for all or part of their customary hours of operation.

CCN means certificate of convenience and necessity.

Cost of Service Study means that study performed pursuant to Article 5.2(c) of this Agreement.

Cost of the System means all costs of acquiring, constructing, developing, permitting, implementing, expanding, improving, enlarging, bettering, extending, replacing, repairing, maintaining and operating the Mansfield Raw Water System and the Mansfield Treated Water System. The costs of property, interests in property, water and water rights, capitalized interest, land, easements and rights-of-way, damages to land and property, leases, treatment and other facilities, equipment, telemetry, machinery, pumps, pipes, tanks, lines, meters, taps, valves, fittings, mechanical devices, office equipment, assets, contract rights, wages and salaries, employee benefits, chemicals, stores, material, supplies, power, supervision, engineering, testing, auditing, franchises, charges, assessments, claims, insurance, engineering, financing, consultants, administrative expenses, auditing expenses, legal expenses, amounts for an operation and maintenance reserve fund, amounts for a debt service reserve fund, amounts for principal and interest on bonds issued by Mansfield to pay for the Costs of the System, amounts required for bond coverage reflective of Mansfield's policies and obligations to pay for Costs of the System, bond issuance

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expenses, amounts for working capital, appropriate general and administrative costs of Mansfield and other similar or dissimilar expenses and costs related to providing wholesale water service required for the Mansfield Raw Water System and the Mansfield Treated Water System.

Day means a 24-hour period from 12:00 a.m. to 11:59 p.m.

Demand Charge means the annualized payment amount to be paid in monthly installments for each Rate Year, calculated based on the Demand Rate applied to the Maximum Day Demand.

Demand Rate means the dollar amount per million gallons per day (MGD) applied to Grand Prairie's Maximum Day Demand to calculate the Demand Charge.

Delivery Point means the point at which Mansfield agrees to deliver, and Grand Prairie agrees to receive, Treated Water under this Agreement. The Delivery Point is the eastern right-of-way of State Highway 360 as shown on Exhibit A.

Effective Date means the date that this Agreement has been signed by both Parties.

Emergency means a bona-fide emergency condition created by unforeseeable mechanical failure, by unprecedented high rate of Treated Water usage, such as might result from a major fire or a major water main break, or by circumstances beyond the Parties' control.

Excess Demand Charge means the charge assessed against Grand Prairie for exceeding the Maximum Allowed Rate of Flow as provided in Article 5.3(d) of this Agreement.

Expiration Date means the last effective date of this Agreement as specified in Article 8.1, absent the renewal of this Agreement.

ETJ means extraterritorial jurisdiction.

Fiscal Year is the fiscal year of Mansfield from October 1 through September 30.

Initial Maximum Day Demand means the estimated daily maximum usage specified in Article 5.2(a) of this Agreement.

Initial Rates means the rates set under Article 5.2(a) of this Agreement until the recalculated rates, from the first Cost of Service Study that is completed after the Effective Date of this Agreement, become effective.

Mansfield Raw Water System means all facilities, structures, improvements, property, rights, certificates of adjudication, permits, licenses, contracts and other property of any nature whatsoever, now or hereafter owned by Mansfield, in connection with the storage, diversion, transportation, and delivery of Raw Water.

Mansfield Treated Water System means all facilities, structures, improvements, property, rights, permits, licenses, and other property of any nature whatsoever, now or hereafter owned by Mansfield, in connection with the diversion, storage, transportation, treatment, and delivery of Treated Water.

Maximum Day Demand means for each applicable Rate Year the greater of the (i) historical Maximum Day Usage of Grand Prairie during this Agreement, (ii) Requested Maximum Day Demand, or (iii) Initial Maximum Day Demand, except as provided in Article 3.1(c).

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Maximum Allowed Daily Demand means a Maximum Day Usage of 12.0 MGD unless a mutually agreed upon change is made by the Parties in writing.

Maximum Allowed Rate of Flow means the maximum allowed usage on a per minute basis, which is 1.25 times the Maximum Day Demand converted into gallons per minute (gpm) as provided in Article 5.3(d), before the assessment of the Excess Demand Charge. The Maximum Allowed Rate of Flow shall not exceed 10,417 gpm for this Agreement unless mutually agreed upon by the Parties in writing.

Maximum Day Usage means the measured daily maximum usage as determined through Meter readings.

Meter(s) means the metering facility or devices installed or to be installed at the Delivery Point to measure the amount of Treated Water delivered to Grand Prairie by Mansfield as provided in this Agreement. If necessary, installation shall include a back flow device in order to prevent back flow of water into the Mansfield Treated Water System.

Metering Point means the location at which the Meter(s) is installed.

Party means either Mansfield or Grand Prairie, and "Parties" means Mansfield and Grand Prairie, collectively.

Rate of Flow means usage on a per minute basis (i.e., gallons per minute (gpm)).

Rate Year means each twelve-month period beginning January 1 and ending December 31 of the same calendar year.

Raw Water means water that is purchased by Mansfield from Tarrant Regional Water District ("TRWD") and is in its natural state prior to treatment.

Raw Water Charge means the charge calculated by applying the Raw Water Rate to the number of gallons of Treated Water provided to Grand Prairie by Mansfield as measured by the Meter(s) and billed on a monthly basis.

Raw Water Rate means the raw water rate charged to Mansfield for Raw Water by Tarrant Regional Water District, adjusted for water loss on the Mansfield Treated Water System.

Regulatory Requirements means all applicable requirements and provisions of federal, state, and county constitutions, laws, statutes, rules, regulations and ordinances enacted or issued from time to time, including, without limitation, all applicable sections of the Texas Water Code and the rules and regulations of the Texas Commission on Environmental Quality, and the Texas Administrative Code, and all judicial and administrative orders, judgments, and decrees of any governmental authority having jurisdiction concerning the matters contained herein issued from time to time.

Requested Maximum Day Demand means the maximum daily water use requested by Grand Prairie for a given Rate Year subject to approval by Mansfield with such approval not unreasonably withheld or delayed. In no case shall the Requested Maximum Day Demand be less than the Initial Maximum Day Demand or historical Maximum Day Usage. Such request shall be submitted in writing by Grand

Prairie to Mansfield within sixty (60) days of the ensuing Rate Year. Mansfield will provide a written response to Grand Prairie within thirty (30) days of receipt of such request.

Treated Water means water treated by Mansfield so that it is potable water meeting the minimum water quality requirements for human consumption as prescribed by the Texas Commission on Environmental Quality or other appropriate regulatory agency.

Treated Water Transmission Line means the water transmission line that is owned by Mansfield from the general location from Broad Street and Matlock Road in Mansfield up to the Delivery Point, and is to be installed in the general location from Broad Street and Matlock Road in Mansfield to approximately the intersection of Davis Drive and S.H. 360 in Mansfield designated as Phase 1a and 1b as shown in Exhibit A

Treated Water Transmission Line Agreement means the certain "Agreement between the City of Mansfield and the City of Grand Prairie for the Funding and Construction of a Treated Water Transmission Line," of even date with this Agreement.

TCEQ means the Texas Commission on Environmental Quality or its successor agency(s).

Volume Charge means the charge calculated by applying the Volume Rate to the number of gallons of Treated Water provided to Grand Prairie by Mansfield as measured by the Meter(s) and billed on a monthly basis.

Volume Rate means the dollar amount per 1,000 gallons applied to Grand Prairie's metered usage of Treated Water in order to calculate the Volume Charge. The Volume Rate excludes Mansfield's raw water costs from Tarrant Regional Water District, which are captured within the Raw Water Rate.

Water means either Raw Water or Treated Water, or both Raw and Treated Water, as indicated by the context in which the word appears.

Water Conservation means those practices, techniques, and technologies that will reduce the consumption of water, reduce the loss or waste of water, improve efficiency in the use of water, and/or increase the recycling and reuse of water.

Wholesale Customer means the class of customers, including, but not limited to, Grand Prairie, to whom, under the terms of a specific agreement, Mansfield sells and provides Treated Water for re-sale.

2.2 Interpretations. The following principles shall control the interpretation of this Agreement:

- (a) Unless otherwise stated, reference to any document, other than a license, certificate of adjudication or permit, means the document as amended or supplemented from time to time.
- (b) Reference to any party or governmental regulatory agency means that entity and its successors and assigns.

- (c) Misspelling of one or more words in this Agreement shall not void the Agreement. Such misspelled words shall be read so as to have the meaning apparently intended by the Parties.
- (d) Words of any gender used in this Agreement shall be held and construed to include any other gender.
- (e) Words in the singular number shall be held to include the plural, unless the context otherwise requires.
- (f) Article and headings contained herein are for convenience and reference and are not intended to define or limit the scope of any provision of this contract.

ARTICLE 3 Water Provided Under Agreement

3.1 Treated Water.

- (a) **Delivery and Acceptance.** Subject to the completed construction of the Treated Water Transmission Line and except as limited in this Agreement, Mansfield agrees to furnish and sell to Grand Prairie Treated Water delivered at the Delivery Point that is mutually agreed upon up to the limits, and at the times, set forth in this Agreement hereto or such lesser amount as Mansfield may be able to supply in the event of an Emergency. Grand Prairie agrees to accept delivery under the conditions of this Agreement and to pay for the water in accordance with the terms herein.
- (b) **Source of Supply and Capacity.** Mansfield's agreement to make Treated Water available is limited to the extent that Raw Water, as that term is defined in this Agreement, is available and the extent to which capacity is available in the Mansfield Treated Water System.
- (c) **Additional Water.** To the extent Treated Water is available in amounts greater than the Maximum Allowed Daily Demand, Mansfield may, at its sole discretion, provide Grand Prairie with additional Treated Water subject to the charges described in Article 5. Should Mansfield elect to provide Grand Prairie with Treated Water in excess of the Maximum Allowed Daily Demand, Mansfield may terminate or reduce providing Treated Water at the excess amount by providing Grand Prairie with twenty-four (24) hours written notice of such termination or reduction. In cases where Mansfield terminates or reduces the provision of Treated Water at the amounts in excess of the Maximum Allowed Daily Demand, the Maximum Day Demand, for purposes of determining the Demand Charge, will be correspondingly adjusted to reflect the reduction of the excess Treated Water. Grand Prairie agrees that Mansfield will never be obligated during the term of this Agreement to make Treated Water available to Grand Prairie in excess of the Maximum Allowed Daily Demand. The purchase of any additional supplies of Treated Water over the Maximum Allowed Daily Demand does not guarantee that Mansfield will make Treated Water available on that basis at any time other than the timeframe Mansfield elects to provide additional supplies of Treated Water to Grand Prairie.

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- (d) **Water Pressure.** Mansfield agrees to furnish and sell to Grand Prairie Treated Water delivered under the operating pressure prevailing in the Mansfield Treated Water System at the Delivery Point that is mutually agreed upon, until Grand Prairie's Maximum Day Usage exceeds one (1) million gallons per day (MGD). Herewith, Grand Prairie shall commence construction of the necessary facilities required to provide, at such minimum pressure, Treated Water purchased from Mansfield to its distribution system as may be required or allowed by applicable law or state or federal regulation and complete the required construction within 18 months of exceeding one (1) MGD. Mansfield shall notify Grand Prairie within 30 days of Grand Prairie exceeding one (1) MGD. Notwithstanding anything in this Agreement or in the requirements of any regulatory agency to the contrary, Mansfield does not represent or guarantee to Grand Prairie that Treated Water provided to Grand Prairie under this Agreement will be provided at any specific minimum pressure at the Delivery Point, and Mansfield is under no obligation with respect thereto. **Grand Prairie understands and acknowledges that maintaining a certain water pressure in Grand Prairie's delivery system will require the use of storage or pumps on Grand Prairie's system.**
- (e) **Interruption of Service for Maintenance.** Notwithstanding anything in this Agreement or in the requirements of any regulatory agency to the contrary, Mansfield shall be entitled at any and all times to install, repair, maintain, and replace such equipment or devices or to take any other action under an Emergency (including reduction or cessation of water service to Grand Prairie) as necessary or appropriate to allow Mansfield at all times to maintain a minimum pressure as required by law at all retail service locations directly served by the Mansfield Treated Water System. Mansfield shall use commercially reasonable efforts to install, repair, maintain, and replace such equipment and devices in an effort to minimize the impact on Grand Prairie's system. Mansfield may install at the Delivery Point appropriate devices to monitor and enforce all or any of these limitations. In the event of such service interruptions, Mansfield shall make every reasonable effort to expedite the restoration of service in a timely manner.

3.2 Regulatory Requirements. Grand Prairie acknowledges and agrees that this Agreement defines the extent of Mansfield's obligations to supply Treated Water to Grand Prairie and that, except as expressly provided by this Agreement, Mansfield is under no obligation to provide Grand Prairie with a sufficient amount of Treated Water for Grand Prairie to meet its minimum production, storage, service pump, or pressure maintenance requirements, or any other requirements imposed on Mansfield by virtue of 30 Texas Administrative Code Chapters 290 or 291, or any other Regulatory Requirements.

3.3 Delivery Point. Subject to the conditions set forth herein, Mansfield agrees to divert, transport, treat, and deliver Treated Water to Grand Prairie at the Delivery Point. The location of the Delivery Point shall be mutually agreed upon by and between Grand Prairie and Mansfield, and the Delivery Point shall not be moved or relocated except by their mutual consent in writing.

3.4 Relocated Delivery Point. Requests for a relocated Delivery Point shall be submitted in writing by the requesting party. If the relocated Delivery Point is mutually agreed upon, the requesting party will be responsible for funding all costs

related to constructing the improvements, unless the parties agree on a division of costs based on mutual benefit.

- (1) If Mansfield is to construct all necessary improvements, Grand Prairie shall be responsible for reimbursing Mansfield, as agreed upon in writing, including the acquisition of any easements or right-of-way. Prior to beginning construction, the Parties will enter into a written agreement to specify the manner and timeframe for such reimbursement to Mansfield and the time for construction.
- (2) If Grand Prairie is to construct the necessary improvements for a relocated Delivery Point, Grand Prairie will submit documents to acquire rights-of-way and will submit plans for the construction of the improvements to Mansfield for approval prior to construction commencing. If Mansfield approves the documents and plans submitted, Mansfield will give Grand Prairie notice of said approval in writing within a commercially reasonable time. During the construction, Mansfield may, but is not obligated to, inspect improvements under construction at its sole cost. All costs for the construction of the improvements, including the costs for any easements and/or rights-of-way, shall be borne as agreed upon in writing. Mansfield may, but is not obligated to; make a final inspection and approval, at its sole cost, after construction of the improvements are completed and before the improvements are approved, by Mansfield, for use.

3.5 Additional Delivery Points and Delivery Line. It is anticipated that Grand Prairie may request an additional delivery point(s) and/or delivery line(s). Such request(s) shall be made in writing by Grand Prairie and Mansfield and shall provide a written response within a commercially reasonable amount of time of receipt of such request. If additional Delivery Point(s) and/or line(s) are mutually agreed upon, the Parties shall decide whether Mansfield or Grand Prairie will be responsible for constructing such improvements.

- (1) If Mansfield is to construct such necessary improvements, Grand Prairie shall be responsible for reimbursing Mansfield for the entire cost of the improvements, including the acquisition of any easements or right-of-way. Prior to beginning construction, the Parties will enter into a written agreement for GP (i) to approve the amount of anticipated construction costs and (ii) to specify the manner and timeframe for such reimbursement to Mansfield and the time for construction.
- (2) If Grand Prairie is to construct the necessary improvements for an additional Delivery Point(s) and/or delivery line(s), Grand Prairie shall submit documents to acquire rights-of-way and/or easements and shall submit plans for the construction of the improvements to Mansfield for approval prior to construction commencing; provided, however, such approval shall not be unreasonably withheld or delayed. If Mansfield approves the documents and plans submitted, Mansfield will give Grand Prairie notice of said approval in writing. During the construction of such improvements, Mansfield may, but is not obligated to, inspect improvements under construction at its sole cost. All costs

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for the construction of the improvements, including the costs for any easements and/or rights-of-way, shall be borne by Grand Prairie. Mansfield may, but is not obligated to, make a final inspection and approval, at its sole cost, after construction of the improvements are completed and before the improvements are approved, by Mansfield, for use; provided, however, such approval shall not be unreasonably withheld or delayed.

- 3.6 Improvements to Existing Delivery Point.** If Grand Prairie requests that improvements be made to a Delivery Point, Grand Prairie shall submit the request in writing to Mansfield. If Mansfield approves the request, the Parties shall then decide whether Mansfield or Grand Prairie will be responsible for constructing the improvements and shall follow the procedures set forth in Article 3.4; provided, however, such approval shall not be unreasonably withheld or delayed...
- 3.7 Responsibilities for Water Line that Connects to the Delivery Point.** Grand Prairie shall be responsible for the construction and associated construction costs of the water line that connects to Grand Prairie's side of the Delivery Point of the Treated Water Transmission Line. Grand Prairie shall maintain ownership of said water line for the term of this Agreement and shall be responsible for the maintenance and repair of said water transmission line.
- 3.8 Wheeling of Water Through Treated Water Transmission Line.** Grand Prairie shall be restricted from the wheeling of Water from a third-party through the Treated Water Transmission Line.
- 3.9 Valves at Delivery Point.** All valves releasing water from the Mansfield Treated Water System to Grand Prairie shall be solely operated and maintained by Mansfield. Grand Prairie shall not obstruct or block access to those valves.
- 3.10 Property of Mansfield.** Any acquired easements and/or rights-of-way shall name Mansfield as a grantee for the portion of the easement and/or right-of-way on Mansfield's side of the Delivery Point. Mansfield shall not charge rental or other fees to Grand Prairie for the use of such right-of-ways or easements. Upon the completion of construction and final approval by Mansfield of any new, relocated or improved Delivery Point, the constructed improvements and metering device and appurtenances shall become the property of Mansfield.

ARTICLE 4

Metering and Rate of Flow Control

- 4.1 Treated Water Measurement and Control.** Mansfield shall install at its sole cost, a Meter(s) and appropriate valves, back flow prevention, flow controllers, and other appropriate equipment at the Delivery Point to measure and control the amount of Treated Water delivered to Grand Prairie under the terms of this Agreement. Said Meter shall be specified by Mansfield and meet appropriate AWWA standards. Said Meter(s) shall be installed and tested prior to actual water delivery. The Meter and related equipment shall be solely owned, operated, and maintained by Mansfield.
- 4.2 Rate-of-Flow Controllers.** The rate at which Treated Water is withdrawn by Grand Prairie from the Mansfield System shall be regulated by rate-of-flow controllers. The rate of withdrawal shall be controlled so that the maximum rate shall not exceed the Maximum Allowed Rate of Flow without a specific written request by Grand Prairie to Mansfield. Notwithstanding anything in this Agreement to the contrary, approval

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of a request to increase the rate of flow and the length of time the request will be met, will be at Mansfield's sole discretion. Mansfield will respond to the request within 96 hours of receiving the request. If Mansfield approves the request, Mansfield shall make the adjustments within 48 hours of responding to the request. Rate of Flow setting shall be solely operated and maintained by Mansfield.

4.3 Calibration of Meters.

- (a) **Annual Testing.** For Meters that require calibration, Mansfield shall routinely test for accuracy at its sole cost. Meters will be serviced and tested per manufacture's recommendations, or as necessary. Copies of the results of such tests and all related information shall be provided to Grand Prairie within 30 days of such calibration. Grand Prairie shall have access to the Meter(s) at all reasonable times; provided, however, that any reading, calibration or adjustment to such Meter(s) shall be done by employees or agents of Mansfield, or other mutually approved third party calibration agent, in the presence of representatives of Grand Prairie and Mansfield, if so requested by Grand Prairie. Mansfield shall provide Grand Prairie with 72 hours prior written notice of such reading, calibration or adjustment. Mansfield shall retain the right to test the Meter(s) more frequently than once each twelve (12) month period; provided; such additional tests are at Mansfield's sole cost.
- (b) **Inaccuracy.** Upon any calibration, if it is determined that the accuracy envelope of such Meter(s) is found to be lower than ninety-five percent (95%) or higher than one hundred five percent (105%) expressed as a percentage of the full scale of the Meter(s), or Meter(s) fail to perform to AWWA water metering standards (whichever is more restrictive), then the registration of the flow as determined by such defective Meter(s) shall be corrected for a period extending back to the time such inaccuracy began, if such time is ascertainable; or, if such time is not ascertainable, then for a period extending back one-half (1/2) of the time elapsed since the date of the last calibration, but in no event further back than a period of six (6) months. In the event it is determined that there are inaccuracies with any Meter, Mansfield shall debit or credit Grand Prairie's invoice in the subsequent month, as appropriate, to reflect Grand Prairie's prior overpayments or underpayments. Mansfield shall debit or credit Grand Prairie's account in an amount equal to the difference between the amount actually paid by Grand Prairie and the amount that should have been paid by Grand Prairie, as determined by the corrected registration of the flow of the inaccurate Meter during the period of inaccuracy as determined in this subsection. The Meter(s) shall be properly sealed, and the seals shall not be broken unless representatives of both Grand Prairie and Mansfield have been notified and given a reasonable opportunity to be present.
- (c) **Meter out of Service - No Readings.** If the Meter(s) used to determine the flow of Treated Water to Grand Prairie is out of service or out of repair so that the amount of Treated Water metered cannot be ascertained or computed from the reading thereof, the Treated Water delivered during the period such Meter(s) is out of service or out of repair shall be estimated and agreed upon by Grand Prairie and Mansfield upon the basis of the best data available. The basis for estimating such flow includes, but is not limited to, extrapolation of past patterns of flow for said Meter(s) under similar conditions. In the event

that Grand Prairie and Mansfield cannot agree on the extrapolated estimate of Treated Water volume delivered before the payment due date, Grand Prairie shall make payment to Mansfield based on the same month in the previous year on or before the payment due date. After making such payment, Grand Prairie may request that the matter be submitted to non-binding mediation as provided herein. Mansfield may also request that the matter be submitted to non-binding mediation, as hereinafter provided.

4.4 Meter Reading.

- (a) Mansfield shall read all Meter(s) provided for herein at monthly intervals, and Grand Prairie and Mansfield shall have free access to read these respective Meter(s) daily, if either Party so desires. It shall be the duty of both Grand Prairie and Mansfield to give immediate notice, each to the other, should any Meter(s) be found to not be functioning properly, and, upon such notice, repairs to such Meter(s) shall be made promptly.
- (b) Grand Prairie shall have access to records on the Meter(s) readings during reasonable business hours and shall be furnished a copy of readings upon request.

4.5 Additional Testing of the Meter(s). Grand Prairie shall have the right to request Mansfield to test any Meter(s), but no more frequently than once per month. Upon any such request, Mansfield agrees to perform its testing and calibration of the Meter(s) with notice to Grand Prairie, and the Parties shall be entitled to jointly observe any testing, calibration, and adjustments that are made to the Meter(s), in the event such modifications shall be necessary. For such additional testing requests, Mansfield shall give Grand Prairie notice forty-eight (48) hours in advance of the time when any such testing shall occur. Grand Prairie shall pay the cost of any such additional testing request for any Meter(s) if the test shows that such Meter(s) is accurate (within five percent (5%) registration), but Mansfield shall pay the costs of such additional test if the results indicate that such Meter(s) is not accurate (in excess of five percent (5%) registration).

ARTICLE 5 Fees, Billing, and Payment

5.1 Charges for Water.

- (a) **Treated Water.** Grand Prairie will pay to Mansfield the fees and charges for the Treated Water delivered by Mansfield that may include Late Fees to be applied to the following: Demand Charge; Volume Charge; Raw Water Charge; and Excess Demand Charge.

5.2 Water Rates.

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

Volume Rate - \$0.95 per 1,000 gallons

Demand Rate - \$135,718 per MGD

The Initial Maximum Day Demand is 0.4 MGD.

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Upon the Effective Date of this Agreement and until Tarrant Regional Water District adjusts its raw water rate charged to Mansfield, the Raw Water Rate shall be:

Raw Water Rate - \$0.71816 per 1,000 gallons

- (b) **Cost of Service Study and Subsequent Rates.** Grand Prairie will be charged a two-part rate, consisting of a Volume Rate and a Demand Rate, based on Grand Prairie's treated water consumption and Maximum Day Demand. The Volume Rate and the Demand Rate may be annually recalculated in a Cost of Service Study, but no less than every five (5) years, with the recalculated Volume Rate and Demand Rate effective on January 1 following the completion of the Cost of Service Study. In addition, Grand Prairie shall be charged a Raw Water Rate consisting of the raw water rate charged to Mansfield for Raw Water by TRWD, adjusted for water loss on the Mansfield Treated Water System. The Raw Water Rate shall be adjusted as TRWD adjusts its raw water rate charged to Mansfield and shall be passed through to Grand Prairie as is, adjusted for water loss on the Mansfield Treated Water System, without further surcharge by Mansfield.
- (c) **Rate Methodology.** The rates subsequent to the Initial Rates, excluding the Raw Water Rate, that Grand Prairie pays to Mansfield for Treated Water shall be calculated in a Cost of Service Study in accordance with the methodology described below. The rate methodology set forth in the principles below is hereby specifically agreed to between Mansfield and Grand Prairie.
1. The "Cash Basis" methodology for rate setting;
 2. The "Base - Extra Capacity" cost allocation methodology, as sanctioned by the American Water Works Association;
 3. The Cost of Service Study shall be based on Mansfield's Budget for the Fiscal Year in which the recalculated rates will become effective and the Costs of the System, excluding raw water costs charged to Mansfield by TRWD that are recovered through the Raw Water Rate;
 4. The allocation for the Demand Rate will be based on the Maximum Day Demand, adjusted for water loss on the Mansfield Treated Water System;
 5. The allocation for the Volume Rate shall be based on historical water consumption for the Delivery Point(s), adjusted for known and measurable changes, adjusted for water loss on the Mansfield Treated Water System.

5.3 Billing and Payment.

- (a) **Volume Charge.** Each month during the term of this Agreement, Mansfield shall read the Meter(s) measuring Treated Water being provided to Grand Prairie. The number of gallons of Treated Water measured by the Meter(s) shall be multiplied by the Volume Rate to determine the Volume Charge. Mansfield shall prepare and deliver to Grand Prairie a statement showing the Volume Charge for all Treated Water delivered to Grand Prairie, in addition to the monthly Demand Charge. Payment shall be made by the 30th day after receipt of the statement.

- (b) **Raw Water Charge.** Each month during the term of this Agreement, Mansfield shall read the Meter(s) measuring Treated Water being provided to Grand Prairie. The numbers of gallons of Treated Water measured by the Meter(s) will be multiplied by the Raw Water Rate to determine the Raw Water Charge. The billing and payment for the Raw Water Charge shall be made in accordance with the billing and payment for the Volume Charge in Article 5.3(a).
- (c) **Demand Charge.** The Demand Charge shall be paid in monthly installments with the payment for the Volume Charge and Raw Water Charge. The Maximum Day Demand shall be multiplied times the Demand Rate to determine the Demand Charge, plus applicable meter reading and billing costs.
- (d) **Excess Demand Charge.** Once Grand Prairie's Maximum Day Usage exceeds two (2) MGD, Grand Prairie may then become subject to Excess Demand Charges. The Maximum Day Usage that occurs within the Rate Year in which Grand Prairie exceeds two (2) MGD shall establish the Maximum Day Demand used to determine the initial Maximum Allowed Rate of Flow. Subsequent Maximum Allowed Rate of Flow limitations shall be adjusted to reflect Grand Prairie's Maximum Day Demand. If during the Rate Year, Grand Prairie's actual Rate of Flow exceeds the Maximum Allowed Rate of Flow, Grand Prairie shall pay to Mansfield the Excess Demand Charge. The Excess Demand Charge shall be calculated by subtracting Grand Prairie's then in effect Maximum Day Demand from Grand Prairie's actual Rate of Flow (converted to MGD) to determine the Excess Demand. The Excess Demand, stated in MGD, shall be multiplied by the Demand Rate and then multiplied by a factor of 1.25 times. Upon exceeding the then current Maximum Allowed Rate of Flow, a new Maximum Allowed Rate of Flow will be established for the Rate Year. The newly established Maximum Allowed Rate of Flow shall be subject to any future Excess Demand Charges if the newly established Maximum Allowed Rate of Flow is exceeded during the Rate Year. If during the Rate Year Grand Prairie requests an increase in demand, to be in effect during that Rate Year, above the then in effect Maximum Allowed Rate of Flow, Grand Prairie will be levied an Excess Demand Charge. Grand Prairie shall be provided the Excess Demand Charge billing with full payment due within thirty (30) days from receipt of invoice. The Excess Demand Charge shall be on a per occurrence basis and not applied as an on going charge and shall not be applicable in the event of negligence or operator error on the part of Mansfield or in the event of equipment failure on equipment controlled by Mansfield. It is agreed that the Excess Demand Charge and adjustment to the Maximum Day Demand that would normally be applicable shall not apply for Emergency withdrawals provided that Mansfield is notified in writing within 48 hours of the occurrence of an Emergency condition. In any event, the Raw Water Charge and Volume Charge for all Treated Water delivered shall be due and payable as described elsewhere herein.

Example – Actual Rate of Flow Exceeds Maximum Allowed Rate of Flow

Excess Demand Calculation

Maximum Day Demand		4.0 MGD
Rate of Flow Margin	x	<u>1.25</u>

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Maximum Daily Rate of Flow		5.0 MGD
Conversion to gpm	divided by	<u>1440</u>
Maximum Allowed Rate of Flow		3472 gpm

Actual Rate of Flow		4167 gpm
Conversion to MGD	x	1440
Actual Rate of Flow Converted to MGD		6.0 MGD

Excess Demand (6.0 MGD – 4.0 MGD) = 2.0 MGD

Excess Demand Charge

Demand Rate per MGD		\$135,718
Excess Demand		2.0 MGD
Excess Demand Charge Factor	x	<u>1.25</u>
Excess Demand Charge		\$339,295

Example – Requested Maximum Day Demand Increase During Rate Year

Excess Demand Calculation

Requested Maximum Day Demand in Effect	4.0 MGD
Newly Requested Maximum Day Demand	5.0 MGD

Excess Demand (5.0 MGD – 4.0 MGD) = 1.0 MGD

Excess Demand Charge

Demand Rate per MGD		\$135,718
Excess Demand		1.0 MGD
Excess Demand Charge Factor	x	<u>1.25</u>
Excess Demand Charge		\$169,648

- (e) **Late Fees.** If Grand Prairie is late in the payment of any charge or fee due and payable to Mansfield under this Agreement, late payments shall bear per annum interest at a rate equal to the lesser of two percentage points (2%) above the Prime Interest Rate as published in the Wall Street Journal on the day said statement becomes delinquent, or the maximum allowed by law to be charged to Grand Prairie. If any charges remain unpaid at the expiration of thirty (30) days after receipt of the statement, Grand Prairie shall be in default

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under this Agreement, and Mansfield may invoke the remedies specified herein or otherwise available by law.

5.4 Billing Questions and Disputes.

- (a) **Statement Dispute; Protest.** If Grand Prairie has a protest or dispute concerning a statement, Grand Prairie shall notify Mansfield in writing within ten (10) days of receipt of said statement. Grand Prairie shall pay the portion of the statement that is not being disputed or protested. Upon written notification, the portion of the statement under dispute or protest (provided the dispute or protest is made in good faith and is not unreasonable) shall be set aside until resolved and will not be subject to the penalties (such as Late Fees and Excess Demand Charge) stated herein. If Mansfield is not notified in writing, with such notice being postmarked within ten (10) days of Grand Prairie's receipt of said statement, said protest or dispute shall be considered waived.

The Parties agree to negotiate in good faith to resolve the dispute. The Parties shall agree to submit the dispute to non-binding mediation as provided in Article 12.1 of this Agreement.

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

ARTICLE 6

Treated Water Transmission Line

- 6.1 **Treated Water Transmission Line Construction.** The Parties agree to enter into the Treated Water Transmission Line Agreement, which shall address the responsibilities of the Parties related to the design, construction, and maintenance of the Treated Water Transmission Line.
- 6.2 **Capacity.** The Treated Water Transmission Line will have a capacity of 21.0 MGD.
- 6.3 **Pro-rata Capacity.**
- (a) **Mansfield.** Mansfield shall be entitled to 9.0 MGD, or 43.0%, of the Treated Water Transmission Line capacity.
- (b) **Grand Prairie.** Grand Prairie shall be entitled to 12.0 MGD, or 57.0%, of the Treated Water Transmission Line capacity.
- 6.4 **Treated Water Transmission Line Operation.** Mansfield shall operate and maintain the Treated Water Transmission Line. Maintenance and future capital costs, which are no attributable to increasing capacity of the Treated Water Transmission Line, that occur after the construction of the Treated Water Transmission Line and that are specific to the Treated Water Transmission Line shall be shared based on the pro-rata capacity specified in Article 6.3.
- 6.5 **Future Treated Water Transmission Lines.** Cost sharing arrangements and operational responsibilities for the future treated water transmission lines shall be established through either written agreement separate from this Agreement or as an amendment to the Agreement.

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ARTICLE 7
Restrictions and Conditions

- 7.1 **Resale of Treated Water.** Grand Prairie and Mansfield agree that the Treated Water supplied to Grand Prairie by Mansfield shall be used solely by Grand Prairie to meet the reasonable water supply needs of (i) Grand Prairie's retail potable water customers located within Grand Prairie's boundaries, ETJ, or service area defined by Grand Prairie's CCN, as currently authorized or as may be amended in the future, whichever is more expansive, (ii) Grand Prairie's wholesale customers, located within its corporate limits and ETJ, and (iii) Johnson County Special Utility District.
- 7.2 **Amendment to Certificate of Convenience and Necessity.** Grand Prairie agrees that during the term of this Agreement it will not amend its Water CCN to increase its service area within the ETJ of Mansfield without the prior written consent of Mansfield.
- 7.3 **Water Conservation and Demand Management.**
- (a) **Water Conservation.** Grand Prairie shall cooperate with and assist Mansfield and TRWD in their efforts to promote Water Conservation. This may include the development of any conservation or rationing plans by either Mansfield, TRWD, or Grand Prairie that may be necessary or appropriate to address operational constraints, whether or not the same are required by any state or federal regulatory agency. Additionally, upon the development and distribution of model drought contingency or water conservation plans by TRWD, Grand Prairie agrees to implement any such drought contingency or water conservation plan, or substitute plan approved by TRWD, within a reasonable amount of time from receipt of the model plan. Grand Prairie agrees to notify TRWD in writing of any deviation from the model plan and obtain TRWD's consent to such proposed deviation. Furthermore, Grand Prairie agrees to include the foregoing provision in all future contracts for resale of Treated Water. Grand Prairie shall provide a copy of any drought contingency or water conservation plan adopted by Grand Prairie to Mansfield and TRWD within 30 days from the Effective Date.
- (b) **Demand Management.** When Mansfield or TRWD shall manage Water demand through rationing the use of Water to its retail customers, then a proportional rationing of Water supplied to Grand Prairie by Mansfield shall be instituted, at Mansfield's option. Rationing does not relieve Grand Prairie from its obligation to pay the monthly Demand Charge, unless such rationing extends for a continuous period exceeding 90 days. At such time rationing exceeds a continuous 90 day period, Grand Prairie's monthly Demand Charge will be proportionally adjusted to reflect its reduced demand instituted through rationing measures. Upon Mansfield's removal of such rationing measures, the monthly Demand Charge will be adjusted to reflect the removal of the rationing measures.
- (c) **Temporary Rationing.** Where an Emergency may dictate temporary conservation or rationing requirements for either Mansfield or Grand Prairie, either Party may implement any measures considered appropriate by it to alleviate the Emergency. If Grand Prairie implements measures to alleviate an Emergency, Grand Prairie shall notify Mansfield in writing within five (5) days of implementing such measures. Action taken under this subsection does

not relieve Grand Prairie from its obligation to pay the monthly Demand Charge.

- 7.4 **Federal and State Laws.** This Agreement is subject to all applicable federal and state laws and any applicable permits, amendments, orders, or regulations of any state or federal governmental authority having or asserting jurisdiction, but nothing contained herein shall be construed as a waiver of any right to question or contest any such law, order, rule or regulation in any forum having jurisdiction. Grand Prairie agrees to abide by any changes in this Agreement made necessary by any new, amended, or revised state or federal regulation.
- 7.5 **Support of Mansfield on Permits and Governmental Agency Approvals.** Grand Prairie shall use commercially reasonable efforts to support and assist Mansfield in obtaining permits and approvals from governmental agencies in order to protect, repair, maintain, replace, add to, supplement and/or enlarge the Mansfield Raw Water System and/or the Mansfield Treated Water System. Such support and assistance shall include, but is not limited to: providing information to Mansfield when requested by Mansfield in order to facilitate any permit or approval; providing written and oral statements of support and assistance or testimony, information, and evidence if appropriate and if requested by Mansfield in order to obtain any permit or approval; and taking all such other action as may be appropriate to support and assist Mansfield in obtaining any permit or approval.

ARTICLE 8

Term of Agreement and Extension

- 8.1 **Term of Agreement.** Unless terminated as provided in this Agreement or the Treated Water Transmission Line Agreement, this Agreement shall commence upon the Effective Date and shall remain in effect for a term of forty (40) years.
- 8.2 **Renewal of Agreement.**
- (a) Grand Prairie shall have the option to renew this Agreement for a quantity of water and at a rate as may be mutually agreed in writing by the Parties. In the absence of renewal, and except as specifically provided to the contrary, this Agreement and the obligations of the Agreement shall end on the Expiration Date. Grand Prairie expressly acknowledges that it has no right or entitlement to Raw Water or Treated Water from Mansfield after the expiration of this Agreement except to the extent that this Agreement is renewed as provided herein.
 - (b) Grand Prairie is required to give notice of its intent to renew this Agreement, at least five (5) years prior to the Expiration Date. Mansfield and Grand Prairie expressly agree that Grand Prairie's failure to provide notice of intent to renew on or before five (5) years prior to the Expiration Date of this Agreement shall constitute Grand Prairie's determination not to renew.
 - (c) If at least five (5) years prior to the Expiration Date of this Agreement Grand Prairie has not provided Mansfield notice that it intends to renew, Grand Prairie shall provide Mansfield evidence that Grand Prairie has secured an alternative and sufficient water supply. This requirement is expressly enforceable by Mansfield.

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- (d) If this Agreement is not renewed, after expiration of this Agreement, Grand Prairie shall nonetheless pay Mansfield for all Raw Water Charges and Volume Charges for Treated Water delivered pursuant to this Agreement, along with all applicable Demand and Excess Demand Charges, as well as penalties such as Late Fees, under the terms of this Agreement.

ARTICLE 9

Termination and Default

- 9.1 Termination by Mutual Consent.** This Agreement may be terminated in whole or in part by the mutual written consent of Grand Prairie and Mansfield. In the event of termination of this Agreement by such mutual consent, all rights, powers, and privileges of Grand Prairie hereunder shall cease and terminate without necessity of further action. Grand Prairie shall make no claim of any kind whatsoever against Mansfield, its agents or representatives, by reason of such termination or any act incident thereto. If the Parties agree to terminate this Agreement, Grand Prairie shall nonetheless pay Mansfield for all Raw Water Charges and Volume Charges for Treated Water delivered prior to the termination of this Agreement, along with all applicable Demand and Excess Demand Charges as well as penalties such as Late Fees under the terms of this Agreement. The provisions of this section survive termination of this Agreement.
- 9.2 Default by Grand Prairie.** In the event Grand Prairie is in default under the terms of this Agreement, Mansfield shall give Grand Prairie written notice of such default. If Grand Prairie's default is not cured after the expiration of thirty (30) days after the receipt of such written notification, then Mansfield may, upon twenty (20) days written notification to Grand Prairie, temporarily suspend the delivery of Treated Water to Grand Prairie. If after the first day of suspension, Grand Prairie remains in default for a continuous one hundred eighty (180) day period, Mansfield may, upon written notice to Grand Prairie, terminate this Agreement.
- (a) Mansfield shall advise Grand Prairie in writing immediately upon acceptance of the cure of any breach, and such acceptance shall not be unreasonably withheld or delayed.
- (b) If Mansfield terminates this Agreement, Grand Prairie shall nonetheless pay Mansfield for all Raw Water Charges and Volume Charges for Treated Water delivered prior to the termination of this Agreement, along with all applicable Demand and Excess Demand Charges, as well as penalties such as Late Fees under the terms of this Agreement, and shall be obligated to pay said charges during the time Grand Prairie is in default and during which time this Agreement is in effect. The provisions of this subsection survive termination of this Agreement.
- (c) In the event of termination of this Agreement under this Article 9.2, all rights, powers, and privileges of Grand Prairie hereunder shall cease and terminate. Grand Prairie shall make no claim of any kind whatsoever against Mansfield, its agents or representatives, by reason of such termination or any act incident thereto, provided Mansfield acted reasonably and such termination was not unreasonable, arbitrary, and capricious. The provisions of this subsection survive termination of this Agreement.
- 9.3 Default by Mansfield.** In the event Mansfield is in default under the terms of this Agreement, Grand Prairie shall give Mansfield written notice of such default. If

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Mansfield's default is not cured after the expiration of thirty (30) days after such written notification is given to Mansfield, and if the uncured default relates directly to payments due by Grand Prairie hereunder that are disputed in good faith by Grand Prairie, then, as its sole and exclusive remedy, Grand Prairie may temporarily suspend payment of any disputed funds, but not any other funds, then due or to become due in the future under the terms of this Agreement to Mansfield, and place the disputed funds in an interest bearing escrow account at a nationally recognized banking institution in Tarrant County, Texas, until such default is cured. In no event shall Mansfield be liable to Grand Prairie for any special, indirect, incidental, consequential, or punitive damages. In the event Grand Prairie is awarded damages in a final, non-appealable judgment, then such damages shall be offset against all sums due or to become due to Mansfield hereunder until Grand Prairie's damages are fully compensated.

ARTICLE 10 Force Majeure

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

ARTICLE 11 Ownership, Liability, Indemnification, and Insurance

- 11.1 Responsibility for Damages for Water.** Mansfield shall be the owner of and responsible for the Treated Water only to the Delivery Point(s). After the Treated Water has passed through the Delivery Point(s), it becomes the property and responsibility of Grand Prairie. Unless otherwise provided in this Agreement, responsibility for damages arising from the improper treatment, transportation, and delivery of all Treated Water provided under this Agreement shall remain with Mansfield to the Delivery Point(s). Upon passing through the Delivery Point(s),

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

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

ARTICLE 12 Dispute Resolution

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

ARTICLE 13 Notice

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

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

13.2 Notice to Mansfield.

City Manager
City of Mansfield
1200 East Broad Street
Mansfield, Texas 76063

13.3 Notice to Grand Prairie.

City Manager
City of Grand Prairie
P.O. Box 534045
Grand Prairie, Texas 75053-4045

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

ARTICLE 14
Miscellaneous Provisions

14.1 Governing Law. This Agreement shall be governed by the applicable law of the State of Texas and due performance by each Party or any action arising under this Agreement shall lie in Tarrant County, Texas. Jurisdiction and venue shall be in Tarrant County, Texas, and each of the Parties submit to personal jurisdiction in the state district courts in such county.

14.2 No Waiver. Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to any of the Parties nor to create any legal rights or claim on behalf of any third party. No Party waives, modifies, or alters to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas of the United States.

14.3 Entire Agreement. This Agreement and any Exhibits hereto embody the entire agreement and understanding of the Parties hereto and supersede any and all prior agreements, arrangements and understandings relating to the matters provided for herein. No amendment, waiver of compliance with any provision or condition hereof or consent pursuant to this Agreement shall be effective unless evidenced by an instrument in writing signed by the Party against whom enforcement of any amendment, waiver or consent is sought. This Agreement may not be amended or modified except in writing executed by all Parties and authorized by their respective governing bodies.

14.4 Partial Invalidity. If any provision of this Agreement is held to be invalid, illegal, or unenforceable in any judicial action, the remaining provisions will be unaffected. In the event any provision of this Agreement is held to be invalid, illegal, or unenforceable in any judicial action, the Parties shall, upon the request of a Party, promptly renegotiate in good faith a new provision to eliminate the invalidity and to restore this Agreement, as nearly as possible, to its original intent and effect.

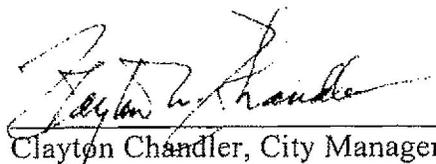
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- 14.5 **Duty to Review and Revise.** The Parties will review and revise this Agreement to ensure compliance with the federal and state laws and rules and regulations as necessary.
- 14.6 **Survival.** Any provision that by its terms survives the termination of this Agreement shall bind the Parties' legal representatives, heirs, and assigns as set forth herein.
- 14.7 **Assignment.** This Agreement shall not be assignable by either Party without the prior written consent of the other Party nor in contravention of any other provisions contained herein.
- 14.8 **Benefits.** This Agreement shall bind and the benefits thereof shall inure to the respective Parties hereto, their heirs, legal representative, executors, administrators, successors, and assigns. This Agreement shall not be construed as creating any rights in any third party or any duty to any third party.
- 14.9 **Multiple Copies.** This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall be considered fully executed as of the date when all Parties have executed an identical counterpart, notwithstanding that all signatures may not appear on the same counterpart.
- 14.10 **Deadlines.** To the extent that the date for any payment or notice due hereunder by either Party shall fall on a Day that is not a Business Day, such deadline for payment or notice, as the case may be, shall be automatically extended to the next following Business Day.

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

Executed this 18th day of August 2010.

City of Mansfield


 Clayton Chandler, City Manager

Date 08-18-10

ATTEST

By Dicki Collins
 City Secretary City of Mansfield

City of Grand Prairie

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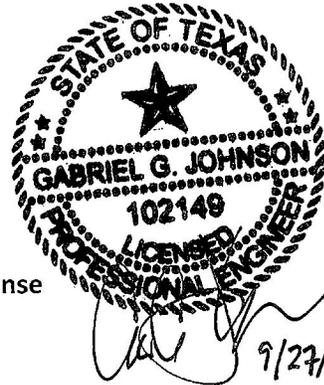
Exhibit 2

**Gabriel Johnson, PE, PH, CFM, GISP
Sealed Memorandum**



MEMORANDUM

To: Public Utility Commission of Texas
From: Gabe Johnson, PE, PH, CFM, GISP
Date: September 27, 2022
Subject: PUC Docket No. 53698 – CCN Decertification Response



Please see the response below concerning the City of Grand Prairie’s (City) response to the CCN Decertification (PUC Docket No. 53698) of the area within the Grand Prairie’s City Limits and ETJ, generally bounded by Joe Pool Lake to the west, the BNSF Railroad to the south, Koscher Drive to the north, and Grand Prairie City Limits to the east. The attached Figure 1 presents the approximate extent of the AM’s proposed CCN Decertification area (Area).

The City rejects the AM’s proposed CCN Decertification. The City historically has been and currently is committed to provide water service to future development within the Area. The City has included the Area within its water service area for engineering planning studies since the 2006 Water Master Plan and Impact Fee study. The City has a well-documented Capital Improvements Plan to provide water service to this Area, and these plans have been supported and approved by City Council. The attached Figure 2 presents the most recent Capital Improvements Plan for the City’s South Sector water system, where a majority of the AM’s proposed development falls within.

Water Supply

The City purchases treated surface water from the City of Midlothian and the City of Mansfield to serve existing water customers near the Area. The City has an agreement with the City of Midlothian to increase supply if needed. The City has been approved by the Texas Commission on Environmental Quality (TCEQ) to blend the water supply from the City of Mansfield and the City of Midlothian to provide water service operational flexibility to customers in the South Sector water system.

Service Pumping and Storage Capacity

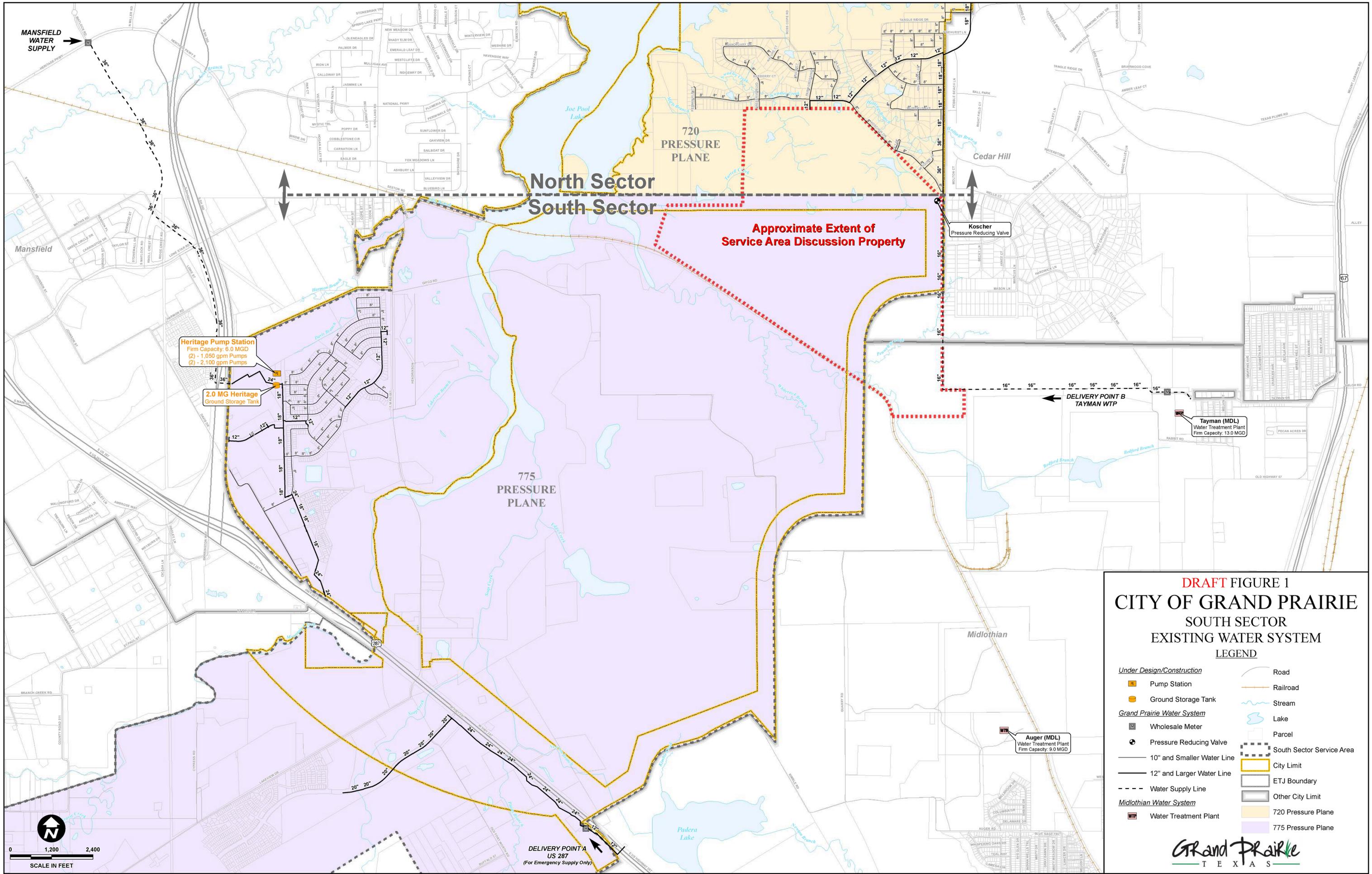
The City’s Capital Improvements Plan was developed to serve future growth in the South Sector water system by maintaining compliance with the TCEQ rules and regulations for public water systems in Chapter 290 of the Texas Administrative Code. The South Sector service area can be shown in Figure 2.

- Service Pumping:
o The City is required to have a service pumping capacity of 0.6 gpm per connection and the ability to meet peak hourly demands with the largest pump out of service.

- The City does not need to re-pressurize the water supplied from the City of Midlothian through Delivery Point B (Tayman Water Treatment Plant). The water supply pressures exceed the service pressures within the City's North Sector water system, requiring a pressure reducing valve.
- The City's Capital Improvement Plan includes a pump station to re-pressurize the water supplied from the City of Midlothian through the future Delivery Point C (Auger Water Treatment Plant). The latest Capital Improvements Plan includes a 4.5 MGD (firm capacity) pump station, which will have the capacity to serve approximately 5,200 connections.
- The City has designed and is in the process of constructing a pump station (known as the Heritage Pump Station) to re-pressurize the water supplied from the City of Mansfield. As shown in the City's Capital Improvements Plan, the pump station will have an ultimate firm capacity of 12.5 MGD, which will have capacity to serve approximately 14,400 connections.
- Total Storage Capacity:
 - The City is required to have a total storage capacity of 200 gallons per connection.
 - The City has 28.0 MG of total water storage capacity in the 720 Pressure Plane of the North Sector water system, which can serve approximately 140,000 connections. The City currently serves approximately 31,173 connections in the 720 Pressure Plane.
 - The City has designed and is in the process of constructing a 2.0 MG ground storage tank at the Heritage Pump Station. The City's Capital Improvement Plan includes an additional 4 MG of ground storage tank capacity and 2.5 MG of elevated storage capacity in the 775 Pressure Plane of the South Sector water system. The ultimate 8.5 MG of total water storage capacity in the 775 Pressure Plane will be able to serve approximately 42,500 connections. The City currently serves approximately 101 connections in the 775 Pressure Plane.
- Elevated Storage Capacity:
 - The City is required to have an elevated storage capacity of 100 gallons per connection.
 - The City's Capital Improvement Plan includes 2.5 MG of elevated storage capacity in the 775 Pressure Plane, which will be able to serve approximately 25,000 connections. The City currently serves approximately 101 connections in the 775 Pressure Plane.

Water Distribution System

The City's Capital Improvements Plan includes large diameter water lines for extending water service throughout the City's service area, including this Area. Hydraulic water modeling was performed to evaluate the future water distribution system to maintain the City and TCEQ design requirements for minimum pressure, fire flow, velocity, and headloss. On-site, small diameter water lines are typically determined per development basis and are typically finalized during the platting process.

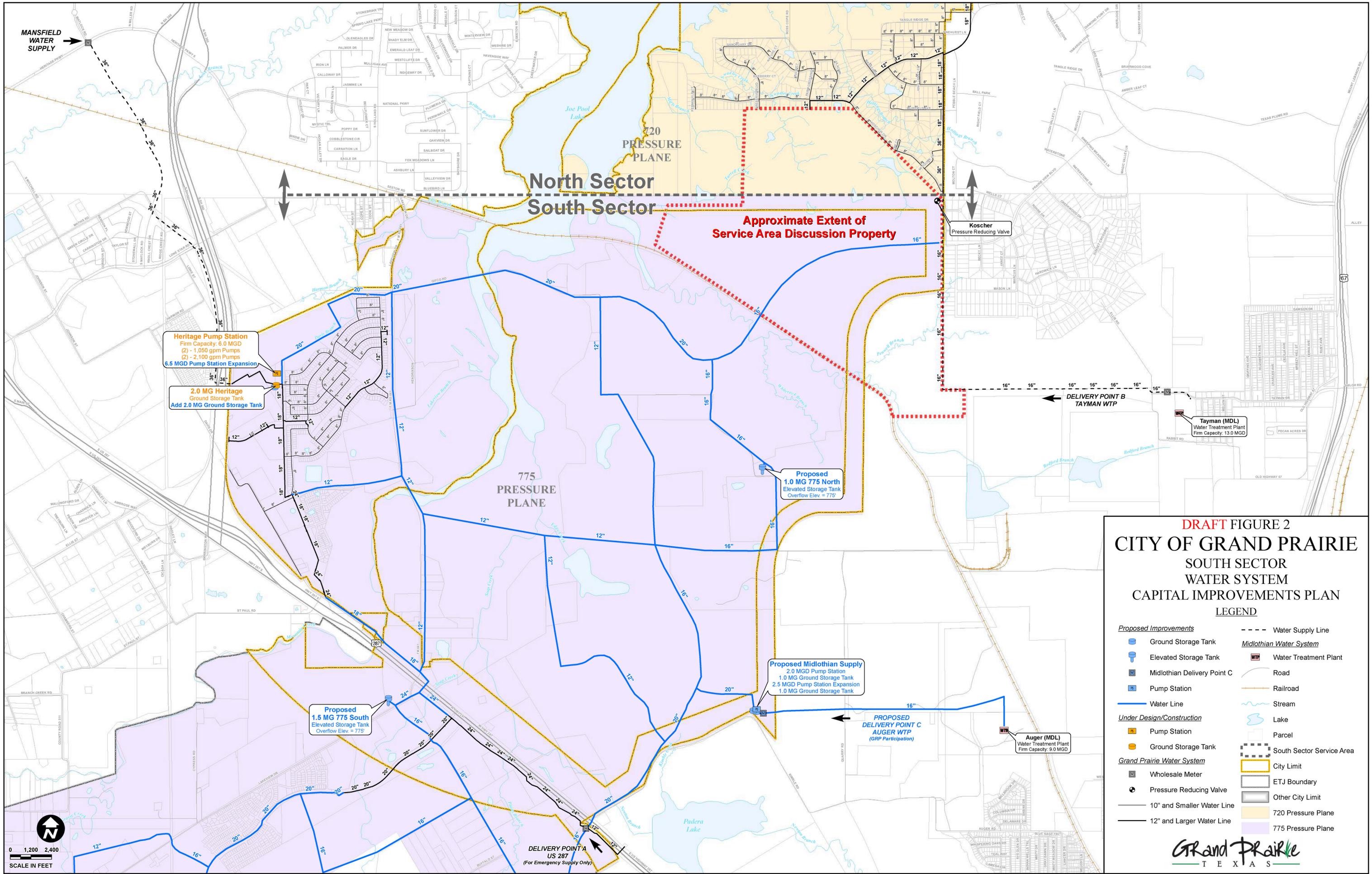


DRAFT FIGURE 1
CITY OF GRAND PRAIRIE
SOUTH SECTOR
EXISTING WATER SYSTEM
LEGEND

- | | |
|-----------------------------------|-----------------------------|
| Under Design/Construction | — Road |
| ☐ Pump Station | — Railroad |
| ☐ Ground Storage Tank | ~ Stream |
| Grand Prairie Water System | ☪ Lake |
| ☐ Wholesale Meter | ▭ Parcel |
| ⊙ Pressure Reducing Valve | ▭ South Sector Service Area |
| — 10" and Smaller Water Line | ▭ City Limit |
| — 12" and Larger Water Line | ▭ ETJ Boundary |
| - - - Water Supply Line | ▭ Other City Limit |
| Midlothian Water System | ▭ 720 Pressure Plane |
| ☐ Water Treatment Plant | ▭ 775 Pressure Plane |



Created by Paces and Nichols, Inc.
 20/10/2022
 Location: 1170_WF_Planarock_DELIVERABLES_South_Sector_NearTerm_CIP/Fig1a_1-AMP_South_Sector_EA_W_System.mxd
 User: Mandy_Schwartz
 Date: 11/20/2022 3:39:04 PM
 User Name: 02499



DRAFT FIGURE 2
CITY OF GRAND PRAIRIE
SOUTH SECTOR
WATER SYSTEM
CAPITAL IMPROVEMENTS PLAN
LEGEND

- | | |
|--|---------------------------|
| Ground Storage Tank | Water Supply Line |
| Elevated Storage Tank | Midlothian Water System |
| Midlothian Delivery Point C | Water Treatment Plant |
| Pump Station | Road |
| Water Line | Railroad |
| Pump Station | Stream |
| Ground Storage Tank | Lake |
| Under Design/Construction Pump Station | Parcel |
| Under Design/Construction Ground Storage Tank | South Sector Service Area |
| Grand Prairie Water System Wholesale Meter | City Limit |
| Grand Prairie Water System Pressure Reducing Valve | ETJ Boundary |
| 10" and Smaller Water Line | Other City Limit |
| 12" and Larger Water Line | 720 Pressure Plane |
| | 775 Pressure Plane |



Created by Preece and Nichols, Inc. on 11/19/2024. Location: I:\11\WWS_PlanArea\CD\DELIVERABLES\2024_South_Sector_NearTerm_CIP\Fig_2_Amp_South_Sector_W_CIP.mxd. User Name: C2499

Exhibit 3

**City of Grand Prairie's
Business Records Affidavit of Records Custodian
Rashad J. Jackson**

DOCKET NO. 53698

PETITION OF AM BUSINESS	§	
TRUST 2021-001, A FOREIGN	§	
TRUST BASED IN UTAH	§	PUBLIC UTILITY COMMISSION
REGISTERED TO DO BUSINESS	§	
IN TEXAS, TO AMEND THE CITY	§	OF TEXAS
OF GRAND PRAIRIE’S WATER	§	
CERTIFICATE OF CONVENIENCE	§	
AND NECESSITY NO. 10105	§	
IN ELLIS COUNTY BY	§	
STREAMLINED EXPEDITED	§	
RELEASE	§	

**CITY OF GRAND PRAIRIE’S
BUSINESS RECORDS AFFIDAVIT OF RECORDS CUSTODIAN
RASHAD J. JACKSON**

BEFORE ME, the undersigned authority, on this day personally appeared Rashad J. Jackson, who, being by me duly sworn, deposed as follows:

1. My name is Rashad J. Jackson. I am over 21 years of age, of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated:

2. I am the Planning and Development Director for the City of Grand Prairie (the “City”) and am familiar with the manner in which its records are created and maintained by virtue of my duties and responsibilities.

3. Attached hereto are 13 (thirteen) pages of business records of the City which were created by the City or have been filed with or otherwise submitted to the City, which the City considers to be public information and records of the City.

4. It is the regular practice of the City to make these types of records at or near the time of each act, event, condition, or opinion set forth in the record.

5. It is the regular practice of the City for these types of records to be made by, or from information transmitted by, persons with knowledge of the matters set forth in them.