This Agenda is posted pursuant to Chapter 551, Texas Government Code

# Matters to Come Before a Meeting of the Board of Directors of Tarrant Regional Water District

To Be Held the 17<sup>th</sup> Day of June 2025 at 9:00 a.m. Front Doors to the Main Admin Building at 800 East Northside Drive Will Open to the Public at 8:30 a.m. and Close Fifteen (15) Minutes After the Meeting Adjourns

TRWD Board Room 800 East Northside Drive Fort Worth, Texas 76102

PLEASE BE ADVISED THAT A QUORUM OF THE BOARD OF DIRECTORS OF TRWD WILL CONVENE ON THE ABOVE DATE AND TIME FOR THE PURPOSE OF CONSIDERING AND ACTING UPON THE MATTERS SET FORTH IN THIS AGENDA. THE LINK TO VIEW AND LISTEN TO THE MEETING VIA INTERNET IS <a href="https://www.trwd.com/boardvideos">https://www.trwd.com/boardvideos</a>. A RECORDING OF THE MEETING WILL ALSO BE AVAILABLE AT HTTPS://WWW.TRWD.COM/BOARDVIDEOS.

# 1. Pledges of Allegiance

### 2. Public Comment

Citizens may present public comment at this time, limited to a total time of three (3) minutes per speaker, unless the speaker addresses the Board through a translator, in which case the limit is a total time of six (6) minutes. Each proposed speaker must have completed and submitted a speaker card prior to the commencement of the meeting, identifying any agenda item number(s) and topic(s) the speaker wishes to address with the Board. By law, the Board may not deliberate, debate, or take action on public comment but may place the item on a future agenda.

- 3. Election of Officers for the TRWD Board of Directors Leah King, Board President
- 4. Consider Approval of the Minutes from the Meetings Held on May 14, 2025 and May 20, 2025
- 5. Consider Approval of Consent Agenda
  All items listed on the consent agenda are considered to be regular, routine,
  and ministerial items that require little or no discussion. Therefore, in the
  interest of efficiency there will be no separate discussion of these items and
  the board will act on them through one motion and vote. If a board member
  wishes for an item to be discussed and considered individually, upon the

board member's request the item will be removed from the consent agenda and considered separately.

- Consider Approval of Raw Water Contract with the City of Ennis
- Consider Approval of Raw Water Contract with the City of Waxahachie
- Consider Approval of Raw Water Contract with Freestone Power Generation
- Consider Approval of Raw Water Contract Third Amendment with Rockett Special Utility District
- Consider Approval of Raw Water Contract Second Amendment with East Cedar Creek Fresh Water Supply District
- Consider Approval of Raw Water Contract First Amendment with the City of Mabank
- Consider Approval of Raw Water Contract Renewal with the City of Weatherford
- Consider Approval of Authorization to Acquire Real Property Interests in the T. Hobbs Survey, Abstract Number 806, in the City of Fort Worth, Tarrant County, Texas
- 6. Consider Approval of Contact Amendment with CDM Smith, Inc. for Design of Joint Booster Pump Station Number 2 and Application Engineering Services of the Integrated Pipeline Project Ed Weaver, IPL Program Manager
- 7. Consider Approval of Contract Amendment with Freese and Nichols, Inc. for Design of Joint Booster Pump Station Number 2 Reservoir Project and Program Management Services for Integrated Pipeline Project Phase 4 and 5 Ed Weaver, IPL Program Manager
- 8. Consider Approval of Contract Amendment with CH2M Hill Engineers Inc. for Pump Station Design for Richland-Chambers Lake Pump Station of the Integrated Pipeline Project Ed Weaver, IPL Program Manager
- Consider Approval of Contract Amendment with Plus Six Engineering, LLC. for Program Wide Management Support Services for Phases 4 and 5 of the Integrated Pipeline Project - Ed Weaver, IPL Program Manager
- 10. Consider Award of Contract to Termomeccanica Pompe (Trillium Flow Technologies) for Purchase of Procurement Package 13 Pumps, Motors, and Drives for Lake Palestine Pump Station of the Integrated Pipeline Project Ed Weaver, IPL Program Manager
- 11. Consider Approval of Contract with C1S Group, Inc. for Dechlorination Improvements at Arlington and Benbrook Outlets Jason Gehrig, Infrastructure Engineering Director

- 12. Consider Approval of Contract Amendment with Quiddity Engineering, LLC for Engineering Services Related to the Construction Phase of Improvements to District Outlet Dechlorination Facilities at Lakes Arlington and Benbrook Jason Gehrig, Infrastructure Engineering Director
- 13. Consider Approval of Contract with DMI Corp. for Joint Booster Pump Station 3 Cooling Tower Improvements Construction Jason Gehrig, Infrastructure Engineering Director
- 14. Consider Approval of Contract with Shermco, Inc. for Electric Motor Rehabilitation Services Darrell Beason, Chief Operations Officer
- 15. Panther Island Canal and Bridge Construction Update Susan Alanis, Program Director, Panther Island
- 16. Consider Approval of Amendment to the Master Resolution to Authorize the Issuance and Payment of up to \$400,000,000 Aggregate Principal Amount of the Water Revenue Bonds Extendable Commercial Paper Mode Sandy Newby, Chief Financial Officer
- 17. Consider Approval of Resolution Authorizing the Issuance, Sale, and Delivery of Tarrant Regional Water District, a Water Control and Improvement District, Water Revenue ECP Series A Refunding Bonds, Pledging Revenues for the Payment of the Bonds, Approving an Official Statement, and Authorizing Other Instruments and Procedures Relating Thereto Sandy Newby, Chief Financial Officer
- 18. Consider Approval of Request for Property Tax Exemption Under Texas Property Tax Code Section 11.1825 From Owner of a Rent-Restricted Apartment Complex Stephen Tatum, General Counsel
- 19. Consider Board Appointments for Tax Increment Financing Districts Stephen Tatum, General Counsel
- 20. Consider Approval of Annual Insurance Renewal for Property, Casualty, and Workers' Compensation Insurance Lines of Coverage with Texas Water Association Risk Management Fund Jennifer Mitchell, Director of Risk Management and Internal Audit
- 21. Consider Approval of Contract with Satellite Shelters, Inc for Lease of Temporary Office Buildings in the Operations Compound Mick Maguire, Chief Administrative Officer
- 22. Consider Approval of Contract with Guidehouse Inc. for Workday Adaptive Planning Deployment Mick Maguire, Chief Administrative Officer

### 23. Presentations

- Integrated Water Supply Plan Rachel Ickert, Chief Engineering Officer
- Conservation Update Jennifer Owens, Environmental Services Director
- Central City USACE Construction Contractor Selection and Timing Kate Beck, Central City Flood Control Program Director

### 24. Executive Session under Texas Government Code:

Section 551.071 of the Texas Government Code, for Private Consultation with its Attorney about Pending or Contemplated Litigation or on a Matter in which the Duty of the Attorney to the Governmental Body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas Clearly Conflicts with this Chapter; and

Section 551.072 of the Texas Government Code, to Deliberate the Purchase, Exchange, Lease or Value of Real Property; and

Section 551.074 of the Texas Government Code, Regarding Personnel Matters

- 25. Future Agenda Items
- 26. Schedule Next Board Meeting
- 27. Adjourn

### TARRANT REGIONAL WATER DISTRICT

### **AGENDA ITEM 3**

**DATE:** June 17, 2025

SUBJECT: Election of Officers for the TRWD Board of Directors

FUNDING: N/A

### **DISCUSSION:**

TRWD Board Governance Policy 3.6 states that at the first Board meeting after qualification of Directors following an election, the Board shall elect from its membership a President, Vice President, and Secretary and such other officers or assistant officers the Board deems necessary.

Nominations for officers may be taken from the floor at the Board meeting prior to the vote. After nominations have been closed, Board members shall cast their vote. When there is only one nominee for an office, the chair can declare that the nominee is elected, effecting the election by unanimous consent or acclamation. An election to an office shall become final immediately.

This item was reviewed by the Administration and Policy Committee on June 13, 2025.

# Submitted By:

Stephen Tatum General Counsel

# MINUTES OF A MEETING OF THE BOARD OF DIRECTORS OF TARRANT REGIONAL WATER DISTRICT HELD ON THE 14<sup>th</sup> DAY OF MAY 2025 AT 9:00 A.M.

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The call of the roll disclosed the presence of the Directors as follows:

Present
James Hill
Mary Kelleher
C.B. Team
Paxton Motheral

Absent Leah King

Also present were Dan Buhman, John Farris, Ellie Garcia, Zach Hatton, Natasha Hill, Rachel Ickert, Sandy Newby, and Stephen Tatum of the Tarrant Regional Water District (District or TRWD).

1.

All present were given the opportunity to join in reciting the Pledges of Allegiance to the U.S. and Texas flags.

2.

Public comment was received from Eric Crile, who spoke regarding Tarrant Appraisal District.

3.

Stephen Tatum, General Counsel, presented to the Board of Directors the official returns of the election for three (3) Directors conducted by the District on May 3, 2025. The Directors, acting as canvassing authority for the election, publicly examined and did formally canvass the election returns in accordance with Chapter 67 of the Texas Election Code. Out of 480,442 registered voters, there were 37,605 ballots cast by qualified voters

registered within the TRWD boundaries. The tabulation reflects that Leah King, Skylar O'Neal and Johnathan Killebrew were duly elected to the Board, and Mr. Tatum recommended that the Board certify them as duly elected members of the Board of Directors of Tarrant Regional Water District, and declare the election results to be as follows:

<u>Candidate</u> :	Votes Received:	Percentage:	
Leah King	22,298	30.89%	
Skylar O'Neal	20,172	27.94%	
Johnathan Killebrew	15,763	21.84%	
Andrew Brinker	13,954	19.33%	

Director Motheral moved to approve the results of the May 3, 2025 election.

Director Team seconded the motion and the votes were 4 in favor, 0 against.

4.

Director Team moved to place an item regarding TRWD Board of Directors participation in the Tarrant Appraisal District Board Appointment process on a future agenda. Director Hill seconded the motion and the votes were 4 in favor, 0 against.

5.

The next board meeting was scheduled for May 20, 2025.

6.

There being no further business before the Board of Directors, the meeting was adjourned.

President	Secretary

# MINUTES OF A MEETING OF THE BOARD OF DIRECTORS OF TARRANT REGIONAL WATER DISTRICT HELD ON THE 20<sup>th</sup> DAY OF MAY 2025 AT 9:00 A.M.

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The call of the roll disclosed the presence of the Directors as follows:

Present
Leah King
James Hill
Mary Kelleher
C.B. Team
Paxton Motheral

Also present were Dan Buhman, Jacob Asay, Airin Barnett, Darrell Beason, Lisa Cabrera, Steve Christian, Ellie Garcia, Jason Gehrig, Zach Hatton, Zachary Huff, Rachel Ickert, Laramie LaRue, Mick Maguire, Sandy Newby, Mark Olson, Stephen Tatum, Kirk Thomas, and Ed Weaver of the Tarrant Regional Water District (District or TRWD).

1.

All present were given the opportunity to join in reciting the Pledges of Allegiance to the U.S. and Texas flags.

2.

Public comment was received from Eric Crile, who spoke regarding Tarrant Appraisal District.

3.

Director Hill moved to approve the minutes from the meeting held on April 15, 2025.

Director Kelleher seconded the motion, and the votes were 5 in favor, 0 against. It was accordingly ordered that these minutes be placed in the permanent files of the District.

4.

Director Motheral moved to approve a contract amendment in an amount not-to-

exceed \$4,787,638 with AECOM Technical Services, Inc. for program wide services including initial site surveys and preliminary geotechnical sampling, testing, analyses, and local permitting to support engineering design of Integrated Pipeline Project Phase 4. The current contract value is \$10,597,516.10. The total amount of this amendment brings the revised contract value to the not-to-exceed amount of \$15,385,154.10. In addition, the General Manager or his designee is granted authority to execute all documents associated with the contract amendment. Funding for this item is included in the Bond Fund. Director Team seconded the motion, and the votes were 5 in favor, 0 against.

5.

With the recommendation of management, Director Hill moved to approve a contract in an amount not-to-exceed \$132,500,000 with McKee Utility Contractors, LLC. for the Cedar Creek Section 2 Pipeline Replacement Phase 1B Construction. Funding for this item is included in the Bond Fund. Director Kelleher seconded the motion, and the votes were 5 in favor, 0 against.

6.

With the recommendation of management, Director Motheral moved to approve a contract in an amount not-to-exceed \$487,325 with ETTL Engineers and Consultants for materials testing for Cedar Creek Section 2 Pipeline Replacement Phase 1B. Since the construction contractor is proposing to use multiple crews concurrently, the District has elected to contract both ETTL Engineers and Consultants and Kleinfelder, Inc. for providing materials testing services. Funding for this item is included in the Bond Fund. Director Kelleher seconded the motion, and the votes were 5 in favor, 0 against.

With the recommendation of management, Director Team moved to approve a contract in an amount not-to-exceed \$198,730 with Kleinfelder, Inc. for materials testing for Cedar Creek Section 2 Pipeline Replacement Phase 1B. Since the construction contractor is proposing to use multiple crews concurrently, the District has elected to contract both Kleinfelder, Inc. and ETTL Engineers and Consultants for providing materials testing services. Funding for this item is included in the Bond Fund. Director Motheral seconded the motion, and the votes were 5 in favor, 0 against.

8.

With the recommendation of management, Director Kelleher moved to approve a contract amendment in an amount not-to-exceed \$320,315 with CP&Y, Inc. dba STV Engineering for additional engineering services for the design of chemical building structural improvements at the Cedar Creek Lake Pump Station. The current contract value is \$5,346,528. The total amount of this amendment brings the revised contract value to \$5,666,843. Funding for this item is included in the Bond Fund. Director Hill seconded the motion, and the votes were 5 in favor, 0 against.

9.

With the recommendation of management, Director Motheral moved to approve a contract amendment in an amount not-to-exceed \$295,390 with CDM Smith for engineering design of six electro-hydraulic actuators at the Cedar Creek Lake Pump Station and to relocate input/output points for the existing Alerton cooling controls system to the programmable logic controller system being upgraded at the Richland-Chambers and Cedar Creek Lake Pump Stations. The current contract value is \$5,947,925. The total

amount of this amendment brings the revised contract value to \$6,243,315. Funding for this item is included in the Bond Fund. Director Kelleher seconded the motion, and the votes were 5 in favor, 0 against.

10.

With the recommendation of management, Director Motheral moved to approve a contract amendment in an amount not-to-exceed \$17,446.00 with Schnabel Engineering, LLC for additional services to replace piezometer concrete surface pads. The current contract value is \$142,021.25. The total amount of this amendment brings the revised contract value to \$159,467.25. Funding for this item is included in the Fiscal Year 2025 Revenue Fund Budget. Director Kelleher seconded the motion, and the votes were 5 in favor, 0 against.

11.

With the recommendation of management, Director Team moved to approve a contract amendment in an amount not-to-exceed \$276,000 with Freese and Nichols, Inc. for additional professional services required to complete the Eagle Mountain Dam - Original Services Spillway Evaluation (Phase II). The current contract value is \$174,687. The total amount of this amendment brings the revised contract value to \$450,687. Funding for this item is included in the FY2025 General Fund Budget and the proposed Fiscal Year 2026 General Fund Budget. Director Motheral seconded the motion, and the votes were 5 in favor, 0 against.

12.

With the recommendation of management, Director Team moved to approve a contract in an amount not-to-exceed \$190,900 with Kimley-Horn and Associates, Inc. for trail safety signage and striping design and construction services. Funding for this item is

included in the Fiscal Year 2025 General Fund Budget. Director Motheral seconded the motion, and the votes were 5 in favor, 0 against.

The Board of Directors recessed for a break from 9:30 a.m. to 9:32 a.m.

13.

The Board next held an Executive Session commencing at 9:32 a.m. under Section 551.071 of the Texas Government Code to Consult with Legal Counsel on a Matter in Which the Duty of Counsel Under the Texas Disciplinary Rules of Professional Conduct Clearly Conflicts with Chapter 551, Texas Government Code; and Section 551.072 of the Texas Government Code to Deliberate the Purchase, Exchange, Lease or Value of Real Property.

Upon completion of the executive session at 9:36 a.m., the President reopened the meeting.

14

With the recommendation of management, Director Hill moved to accept a donation of a permanent easement across a 0.0932-acre tract of land located in the Felix Mulliken Survey, Abstract No. 1045, Tarrant County, Texas to be used for public purposes. Section 49.229 of the Texas Water Code authorizes TRWD to accept grants and gifts upon such terms as the Board considers appropriate. In addition, the General Manager, or his designee, is granted authority to execute all documents necessary to complete this transaction and to pay reasonable and necessary expenses relating to same. Funding for this item is included in the Fiscal Year 2025 Special Projects/Contingency Fund. Director Kelleher seconded the motion, and the votes were 5 in favor, 0 against.

#### **LEGAL DESCRIPTION**

**BEING** a 0.0932 acre (4,062 square foot) tract of land situated in the Felix Mulliken Survey, Abstract No. 1045, Tarrant County, Texas, and being a portion of Commerce Street, a 70-foot right-of-way, and a portion of Block 44, North Fort Worth Addition, an addition to the City of Fort Worth according to the plat recorded in Volume 63, Page 149, Plat Records, Tarrant County, Texas, and being more particularly described as follows:

**COMMENCING** at a point in the east line of a called 11.897 acre tract of land described in the Deed without Warranty to Tarrant Regional Water District, recorded in Instrument No. D209336857, Official Public Records, Tarrant County, Texas, and being in the north line of said Block 44, and being in the south right-of-way line of 10th Street, a 60-foot right-of-way, and being at the northwest corner of a called 0.286 acre tract of land described in the Warranty Deed with Vendor's Lien to Keith M. Jensen, recorded in Instrument No. D205284705, said Official Public Records, from which a 3/8-inch iron rod found bears North 04°05'33" East, a distance of 0.31 feet;

**THENCE** South 04°05'34" West, along said east line, a distance of 299.26 feet to a 5/8-inch iron rod found (disturbed) at the intersection of the westerly line of a called 1.303 acre tract of land described in the Special Warranty Deed to Transform 1012 N. Main Street, recorded in Instrument No. D222007048 and the east right-of-way line of Main Street, a 100-foot right-of-way;

**THENCE** South 30°07'24" East, along the said east right-of-way line and west line of said 1.303 acre tract, a distance of 202.67 feet to the southwest corner of Lot 4, said Block 44;

**THENCE** North 59°52'36" East, departing said east right-of-way line and along the south line of said Lot 4, a distance of 42.46 feet to the **POINT OF BEGINNING**;

THENCE North 50°18'32" East, departing said south line, a distance of 119.96 feet to a point for corner;

**THENCE** North 33°27'16" East, a distance of 53.80 feet to a point for corner;

**THENCE** North 29°16'50" East, a distance of 30.29 feet to a point for corner, from which a 2-inch iron pipe found at the southeast corner of Lot 15, Block 43, said North Fort Worth Addition bears North 14°11'23" East, a distance of 336.40 feet:

**THENCE** South 30°07'24" East, a distance of 59.30 feet to a point for corner;

**THENCE** South 59°52'36" West, passing at a distance of 35.00 feet the southeast corner of Lot 21, said Block 44, and continuing along the south line of said Lot 21 for a total distance of 192.54 feet to the **POINT OF BEGINNING** and containing 4,062 square feet or 0.0932 acres of land, more or less. NOTES

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202). A survey plat of even survey date herewith accompanies this metes and bounds description.

The undersigned, Registered Professional Land Surveyor, hereby certifies that the foregoing description accurately sets out the metes and bounds of the easement tract.

JOSHUA D. WARGO
REGISTERED PROFESSIONAL
LAND SURVEYOR NO. 6391
801 CHERRY STREET,
UNIT 11 SUITE 1300
FORT WORTH, TEXAS 76102
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josh.wargo@kimley-horn.com

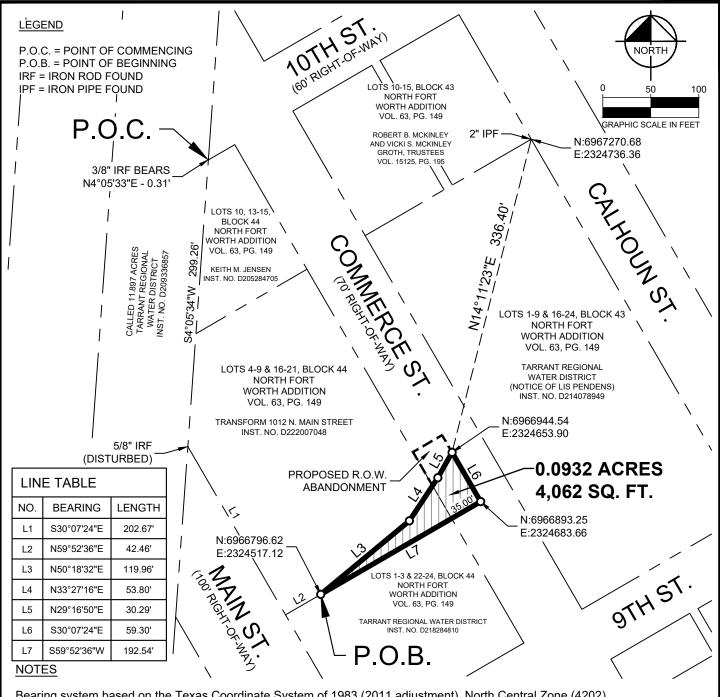
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EASEMENT
FELIX MULLIKEN SURVEY
ABSTRACT NO. 1045
CITY OF FORT WORTH
TARRANT COUNTY, TEXAS



 Scale
 Drawn by
 Checked by
 Date
 Project No.
 Sheet No.

 N/A
 SB
 JDW
 12/19/2024
 061059016
 1 OF 2



Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202). Coordinates have been scaled to surface values using a surface adjustment factor of 1.000137529. A metes and bounds description of even survey date herewith accompanies this survey plat.

The undersigned, Registered Professional Land Surveyor, hereby certifies that this survey plat accurately sets out the metes and bounds of the easement tract.

JOSHUA D. WARGO REGISTERED PROFESSIONAL LAND SURVEYOR NO. 6391 801 CHERRY STREET, UNIT 11 SUITE 1300 FORT WORTH, TEXAS 76102 PH. 817-335-6511 josh.wargo@kimley-horn.com PRELIMINARY

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SURVEY DOCUMENT

EASEMENT
FELIX MULLIKEN SURVEY
ABSTRACT NO. 1045
CITY OF FORT WORTH
TARRANT COUNTY. TEXAS

**Kimley** » Horn

Fort Worth, Texas 76102 FIRM # 10194040

www.kimley-horn.com

<u>Scale</u> <u>Drawn by</u> <u>Che</u>

<u>Date</u> 12/19/2024

061059016 Sheet No. 2 OF 2

President King motioned to approve submission of a written request by June 1, 2025, to the Chief Appraiser of the Tarrant Appraisal District (TAD) for TRWD to participate in the process to appoint members to the Board of Directors of TAD, and to participate in other TAD matters as allowed by the Texas Tax Code. Director Hill seconded the motion, and the votes were 5 in favor, 0 against.

16.

President King presented Vice President James Hill and Secretary Mary Kelleher with gifts of appreciation in recognition of their eight years of service on the TRWD Board of Directors.

17.

Vice President Hill administered the Oath of Office to Leah King. President King administered the Oath of Office to Skylar O'Neal and Johnathan Killebrew, and they assumed their duties as Directors immediately. Vice President Hill and Secretary Kelleher, whose terms expired and whose seats were filled by the election of Directors O'Neal and Killebrew, officially stepped down from the Board.

18.

### Presentations

- Water Resources presented by Rachel Ickert, Chief Engineering Officer
- Legislative Update presented by Stephen Tatum, General Counsel

19.

There were no future agenda items approved.

The next board meeting	was scheduled	for June	17, 2025.
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21.

There being no further busine	ess before the Board of Directors, the meeting wa
adjourned.	
President	Secretary

# TARRANT REGIONAL WATER DISTRICT AGENDA ITEM 5

**DATE:** July 17, 2025

**SUBJECT: Consider Approval of Consent Agenda** 

**RECOMMENDATION:** 

Management recommends approval of the Consent Agenda.

Item: Consider Approval of Raw Water Contract with the City of Ennis

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**Reviewed by:** Construction and Operations Committee

The Trinity River Authority (TRA) and The Tarrant Regional Water District (District) entered into an Additional Party Raw Water Contract-Municipal for the provision of water to the City of Ennis on July 9, 2002 ("2002 Contract"), amended September 19, 2017 ("2017 First Amendment").

The 2002 Contract authorized that the City of Ennis may receive an annual not-to-exceed volume of 3,988 acre-feet per year (3.56 million gallons per day (MGD)) from the Cedar Creek and Richland Chambers Pipelines as a supplemental source to Ennis' contracted water in Lake Bardwell. The presented 2025 Contract is intended to establish a direct contractual relationship between TRWD and the City of Ennis, rather than this water being contracted through TRA. This new contract will establish a new 30-year term; however, the remainder of the material terms are unchanged. There is no buy-in associated with this contract as Ennis paid a buy-in through TRA on the 2002 Contract.

**Item:** Consider Approval of Raw Water Contract with the City of Waxahachie

Reviewed by: Construction and Operations Committee

Trinity River Authority ("TRA") and Tarrant Regional Water District ("District") entered into two Additional Party Raw Water contracts executed December 3, 1991 and July 19, 1993, known as the 1991 and 1993 Ellis County Contracts. These contracts were subsequently amended on December 2, 2015 ("First Amendment") and October 25, 2017 ("Second Amendment") (collectively "Ellis County Contracts"). Waxahachie is a party to said contracts and, at the request of TRA, the Ellis County Contracts are to be terminated, requiring Waxahachie to enter into a direct contract with TRWD.

The Ellis County Contracts authorized that the City of Waxahachie may withdraw an annual not-to-exceed volume of 5,488.56 acre-feet per year (4.9 million gallons per day (MGD)) from the Cedar Creek and Richland-Chambers Pipelines as a supplemental source to Waxahachie's water rights in Lake Waxahachie and their contracted water in

Lake Bardwell. The presented 2025 Contract is intended to establish a direct contractual relationship between TRWD and the City of Waxahachie, rather than this water being contracted through TRA. This new contract will establish a new 30-year term and, beginning October 1, 2025, a minimum take-or-pay volume of 1.47 MGD. The contract volume remains the same. There is no buy-in associated with this contract, as Waxahachie paid a buy-in as a party to the Ellis County Contracts.

Item: Consider Approval of Raw Water Contract with Freestone Power

Generation

Reviewed by: Construction and Operations Committee

Trinity River Authority ("TRA") and Tarrant Regional Water District ("District") entered into an Additional Party Raw Water Contract-Industrial for the provision of water to Freestone Power Generation ("Freestone") on December 5, 2000 ("2000 Contract"), amended November 16, 2001 ("2001 First Amendment").

The 2000 Contract and 2001 First Amendment authorized that Freestone may withdraw an annual not-to-exceed volume of 6,722 acre-feet per year (6.001 million gallons per day (MGD)) from Richland-Chambers Reservoir. The presented 2025 Contract is intended to establish a direct contractual relationship between TRWD and Freestone, rather than this water being contracted through TRA. This new contract will establish a new term of 20 years with the option for up to two (2) five-year extensions if District is notified two years in advance of the expiration. Additionally, this contract lowers Freestone's contract minimum take-or-pay from 6.001 MGD to 4.5 MGD.

Item: Consider Approval of Raw Water Contract Third Amendment with

Rockett Special Utility District

**Reviewed by:** Construction and Operations Committee

Rockett SUD is an existing TRWD municipal customer with a tap on the Cedar Creek and Richland-Chambers Pipelines. On November 30, 2015, an Additional Party Municipal contract between Rockett SUD and TRWD was executed, titled 2015 Additional Party Raw Water Supply Contract-Municipal ("2015 Contract"). The 2015 Contract authorized an annual not-to-exceed volume of 11,257.43 acre-feet per year (10.05 million gallons per day (MGD)) from the Cedar Creek and Richland-Chambers Pipelines.

On November 9, 2022, a First Amendment to the 2015 Contract was executed to increase Rockett SUD's annual not-to-exceed volume to 11.85 MGD. On May 23, 2024, a Second Amendment to the 2015 Contract was executed to increase Rockett SUD's annual not-to-exceed volume 12.025 MGD.

The presented Third Amendment is to increase Rockett SUD's annual not-to-exceed volume by 0.271 MGD (from 12.025 to 12.296 MGD) to serve the City of Palmer. The City

of Palmer is a current customer of Rockett SUD, and this volume increase represents an assignment of water from the 1991 and 1993 Ellis County Water Supply Contracts ("Ellis County Contracts") to which Palmer was a party. There is no buy-in premium associated with this increase as the buy-in was paid by Palmer as a party to the Ellis County Contracts. Additionally, the presented Third Amendment increases Rockett SUD's minimum volume requirement by 1.19 MGD (from 2.5 MGD to 3.69 MGD). The remainder of the terms of the 2015 Contract (as amended) will remain unchanged.

Item: Consider Approval of Raw Water Contract Second Amendment with East

Cedar Creek Fresh Water Supply District

**Reviewed by:** Construction and Operations Committee

East Cedar Creek Fresh Water Supply District (ECCFWSD) is an existing TRWD municipal customer with two intakes on Cedar Creek Reservoir. On October 16, 1995, an Additional Party Municipal contract between ECCFWSD and TRWD was executed, titled 1995 Additional Party Raw Water Supply Contract-Municipal ("1995 Contract") and amended to extend the term on March 15, 2006 ("2006 Amendment").

The 1995 Contract authorized that ECCFWSD may withdraw an annual not-to-exceed volume of 1,155 acre-feet per year (1.03 million gallons per day (MGD)) from Cedar Creek Reservoir. The 1995 Contract established an initial contract term of 20 years, and the 2006 Amendment extended the term to 55 years, setting an expiration date of October 16, 2050.

The presented Second Amendment is to incorporate and clarify an agreement between ECCFWSD and the City of Trinidad, dated March 18, 2003, and amended October 19, 2006, which allows ECCFWSD to use up to 750 AFY of the City of Trinidad's pre-existing water right in Cedar Creek, a tributary of the Trinity River which feeds Cedar Creek Reservoir, with no charge from TRWD. In addition, TRWD is using this opportunity to update the contract with new standard language for Section 7-Purpose and Place of Use. The remainder of the terms of the 1995 Contract and 2006 Amendment will remain unchanged.

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Item: Consider Approval of Raw Water Contract First Amendment with the

City of Mabank

Reviewed by: Construction and Operations Committee

Mabank is an existing TRWD Municipal customer on Cedar Creek Reservoir. On October 3, 2024, TRWD Management received plans for improvements to Mabank's Water Treatment Plant and Pump Station. TRWD staff reviewed the plans and notified Mabank of our approval to proceed.

The 2015 Additional Party Raw Water Supply Contract-Municipal ("2015 Contract")

authorized that Mabank may withdraw an annual not-to-exceed volume of 1,870 acre-feet per year (1.669 million gallons per day (MGD)) from Cedar Creek Reservoir at a maximum diversion rate of 3,231.58 gallons per minute (gpm).

The presented 2025 First Amendment will increase the maximum diversion rate to 7,200 gpm, which will be the final pump station capacity when all proposed improvements are completed. The remainder of the terms of the 2015 Contract will remain unchanged.

Item: Consider Approval of Raw Water Contract Renewal with the City of

Weatherford

**Reviewed by:** Construction and Operations Committee

The City of Weatherford is an existing TRWD municipal customer on Benbrook Reservoir. On June 26, 2001, an Additional Party Contract-Municipal between the City of Weatherford ("Weatherford") and TRWD was executed ("2001 Contract"). The 2001 Contract was amended on June 20, 2006 ("2006 First Amendment").

The 2001 Contract and 2006 First Amendment authorized that Weatherford may withdraw an annual not-to-exceed volume of 1,783.22 acre-feet per year (1.592 million gallons per day (MGD)) from Benbrook Reservoir for wholesale water sales only. The 2001 Contract established an initial contract term of 30 years and expires on June 26, 2031.

The presented 2025 Contract renewal will establish a 30-year term expiring in 2055. This renewal removes reference to Parker County Utility District No.1 and Parker County Special Utility District, who are no longer parties to the 2001 Contract. There is no buy-in associated with this contract, as Weatherford bought in for this volume with the 2001 Contract.

Item: Consider Approval of Authorization to Acquire Real Property

Interests in the T. Hobbs Survey, Abstract Number 806, in the City

of Fort Worth, Tarrant County, Texas

**Funding:** Fiscal Year 2025 Revenue Fund

Reviewed by: Real Estate Committee

Management requests authority to acquire the following described tract, which is necessary for the public use and purpose of construction and operation of the future operations site. Management requests that General Manager of TRWD or his designee be authorized to take all steps which may be reasonably necessary to complete the acquisition of the real property interests described below, including, but not limited to, the authority to pay all customary, reasonable and necessary closing and related costs.

A permanent drainage easement interest across a 3,081 square foot (0.071 acre) tract of

land situated in the J.T. Hobbs Survey, Abstract Number 806, City of Fort Worth, Tarrant County, Texas and being a portion of the remainder of a called 63.863-acre tract of land situated in said Hobbs Survey, conveyed to Meacham Capital Partners, LLC by the Special Warranty Deed recorded in Instrument Number D218275695, Official Public Records, Tarrant County, Texas

Based upon current plans, the acquisition of the foregoing easement is necessary for the public use and purpose of construction and operation of the future operations site.

# CONSENT AND ACKNOWLEDGMENT BY TRINITY RIVER AUTHORITY OF TEXAS

On July 9, 2002 Tarrant Regional Water District ("District") and Trinity River Authority of Texas ("TRA") entered into an Agreement ("2002 Agreement") for District to supply raw water to the City of Ennis ("Ennis") via TRA which was Amended on September 19, 2017 ("2017 First Amendment").

TRA hereby consents and acknowledges that Ennis and District wish to enter into a direct contractual relationship ("2025 Direct Contract") that will effectively terminate the 2002 Agreement and 2017 First Amendment and release the City of Ennis from all obligations of the same, effective as of the date of the 2025 Direct Contract.

TRA consents and acknowledges that terminating the 2002 Agreement & 2017 First Amendment will extinguish any and all rights and claims TRA has to the water under said Agreements, and that District shall be permitted to utilize the raw water received pursuant to the 2002 Agreement and 2017 First Amendment for any purpose whatsoever including but not limited to municipal use, non-municipal use, industrial use, domestic use, or for any other type of use or resale to any third party.

TRA warrants and represents that (1) it is not aware of any default or breach by Ennis relative to the 2002 Agreement and 2017 First Amendment and (2) there are no sums due TRA from Ennis in connection with the 2002 Agreement and 2017 First Amendment.

TRA warrants and represents that the person executing this Consent and Acknowledgement has the legal authority to do so on behalf of TRA, and that such binding authority has been granted by proper order, resolution, ordinance, or other authorization of the entity. District is fully entitled to rely on this warranty and representation.

TRINITY RIVER AUTHORITY

5300 S. Collins St.

Arlington, Texas 76018

Attn: General Manager

By:

Kevin Ward

General Manager

Date:

# Tarrant Regional Water District Additional Party Raw Water Supply Contract Municipal

City of Ennis
Cedar Creek and Richland Chambers Pipelines

# TABLE OF CONTENTS

RECITALS	1
AGREEMENT	2
SECTION 1. Amendatory Contract	2
SECTION 2. Permits for Construction	3
SECTION 3. Term.	3
SECTION 4. Volume.	3
SECTION 5. Point(s) of Delivery	4
SECTION 6. Facilities for Diverting Water.	5
SECTION 7. Purpose and Place of Use.	6
SECTION 8. Losses.	6
SECTION 9. Texas Commission on Environmental Quality Rules	7
SECTION 10. Regulatory Requirements	7
SECTION 11. Water Conservation Plans.	8
SECTION 12. Water Quality	8
SECTION 13. Wastewater Treatment	9
SECTION 14. Payments by Purchaser.	11
A. Determination of Annual Payment	11
B. Minimum Amount	12
C. Determination of Adjusted Annual Payment.	12
D. Dispute	13
SECTION 15. Rate.	14
SECTION 16. Measurement.	14
SECTION 17. Source and Adequacy of Supply	16
SECTION 18. Additional Source of Supply	18
SECTION 19. Pledge of Revenue	19
SECTION 20. Raw Water Quality	20
SECTION 21. Return Flows.	20
SECTION 22. Title.	21
SECTION 23. Other Charges.	22
SECTION 24. Default in Payments.	22

	SECTION 25.	Termination.	. 23
	SECTION 26.	Waiver and Agreement.	. 23
	SECTION 27.	Remedies.	. 23
	SECTION 28.	Indemnity.	. 24
	SECTION 29.	Force Majeure.	. 25
	SECTION 30.	Non-Assignability.	. 26
	SECTION 31.	No Third-Party Beneficiaries.	. 26
	SECTION 32.	Relationship of the Parties.	. 26
	SECTION 33.	Sole Agreement.	. 26
	SECTION 34.	Severability.	. 27
	SECTION 35.	Notices.	. 27
	SECTION 36.	Place of Performance.	. 27
	SECTION 37.	Approval of Contracts	. 28
	SECTION 38.	Duplicate Originals.	. 28
E	xhibit 1 Location	on Map of Point of Delivery and Service Area	. 30

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

This Additional Party Raw Water Supply Contract ("Agreement") is made and entered into by and between **TARRANT REGIONAL WATER DISTRICT**, a Water Control and Improvement District ("District"), a conservation and reclamation district and political subdivision of the State of Texas, and **THE CITY OF ENNIS** ("Purchaser"), a municipality of the State of Texas.

# **RECITALS**

- District owns or has the right to use and sell water from the System as defined in that certain contract between District and the City of Fort Worth, City of Arlington, City of Mansfield, and Trinity River Authority of Texas, dated September 1, 1982 ("Amendatory Contract"). For purposes of this Agreement, the "Project" is defined as water sourced from the Cedar Creek and Richland Chambers Reservoirs and associated pipelines. The sale of water to Purchaser, in addition to being subject to the Amendatory Contract, is also subject to the provisions of Certificate of Adjudication Number(s) 08-4976 and 08-5035.
- Purchaser wants to purchase, and District is willing to sell, raw water from the Project for municipal and non-municipal retail and wholesale purposes subject to the terms and conditions of this Agreement.
- 3. Purchaser will divert water from the Project, subject to all applicable rules and regulations of District and state and federal agencies.

4. Purchaser owns and operates water and wastewater treatment facilities that provide service

in the Trinity River Basin. The provisions of this Agreement are only intended to apply to

facilities that use water supplied under this Agreement or discharge wastewater resulting

from the use of water supplied under this Agreement.

5. This Agreement only applies to water sourced and/or obtained from District.

6. On July 9, 2002 District and Trinity River Authority (TRA) entered into an Agreement

("2002 Agreement") for District to supply raw water to the City of Ennis via TRA which

was Amended on September 19, 2017 ("2017 First Amendment"). This new Agreement is

intended to supercede the 2002 Agreement and 2017 Amendment and create a direct

contractual relationship between District and Purchaser.

**AGREEMENT** 

For and in consideration of the mutual promises, covenants, obligations, and benefits

described in this Agreement, District and Purchaser agree as follows:

SECTION 1. AMENDATORY CONTRACT

This Agreement is entered into pursuant to Section 3(B)(a) of the Amendatory Contract,

and the rights and obligations of District and Purchaser under this Agreement shall be subject to,

and be interpreted consistent with, the terms and conditions of the Amendatory Contract. The

Amendatory Contract is incorporated into this Agreement by reference as if quoted verbatim in

this section. The Initial Contracting Parties (as identified in the Amendatory Contract) shall, within

the limits permitted by law, have absolute priority over Purchaser's right to purchase water from

District in accordance with this Agreement.

### **SECTION 2. PERMITS FOR CONSTRUCTION**

Purchaser may have to obtain federal, state, and local permits or easements to construct and maintain, at Purchaser's expense, a raw water intake structure. It is Purchaser's responsibility to obtain and comply with any such permit or easement. Failure to obtain or comply with such permit or easement under this section may, at District's sole discretion, be grounds for terminating this Agreement without liability to Purchaser. Purchaser specifically recognizes that it will have to apply for and be granted a permit or easement to construct and maintain a raw water intake structure on land and water owned and controlled by District. When granted by District, this permit will be incorporated into this Agreement by reference as if quoted verbatim in this section.

## **SECTION 3. TERM.**

This Agreement shall be effective on the date it is signed by District's authorized representative ("Effective Date"), as shown on the signature page of this Agreement, and shall continue in effect for a period of 30 years from the effective date unless this Agreement is terminated sooner because the Amendatory Contract is terminated, District and Purchaser both agree to terminate this Agreement, or this Agreement is terminated pursuant to its terms. Purchaser has the option and responsibility to request a renewal contract, in writing, 12 months prior to expiration of this Agreement. Such written approval shall not be unreasonably delayed, withheld, or denied. Purchaser acknowledges that the Project's primary purpose is to provide water for municipal water supply and is subordinate to the rights of the Initial Contracting Parties as those terms are defined in the Amendatory Contract, and that Purchaser's entitlement to water under this Agreement ends upon termination of this Agreement.

## **SECTION 4. VOLUME.**

Subject to the limitations and conditions described in this Agreement, the Amendatory Contract, Certificate of Adjudication Number(s) 08-4976 and 08-5035, District agrees to sell

Purchaser up to 3,988 acre-feet per annum of raw water from the Project at the Point(s) of Delivery described in this Agreement. The average volume to be furnished will be determined, in part, by past usage and future quantities that District will review periodically. District may request updated usage projections and Purchaser is required to provide the same within a timely manner. Purchaser may not divert more than 3,988 acre-feet (3.56 MGD) in an Annual Payment Period, as defined in Section 14, without prior written approval of District.

## SECTION 5. POINT(S) OF DELIVERY.

Purchaser's raw water will be delivered from the Project at the Point of Delivery herein established. A vicinity map showing the Point of Delivery is attached as Exhibit 1 to this Agreement. Purchaser shall provide the location of the Point of Delivery in Digital Format, which for purposes of this Agreement means in GIS format (shapefile, geodatabase) or Google Earth format (KMZ, KML), projected to the following Tarrant Regional Water District data standards: Projection: Lambert Conformal Conic, Coordinate System: Texas State Plane, Zone 5351, Units: Feet, Datum: NAD83. The diversion shall be accomplished by facilities with a maximum combined diversion rate of 14,833 gallons per minute. Purchaser shall provide, at Purchaser's expense, the facilities required to divert and transport raw water to Purchaser's place of treatment and/or use. If Purchaser wishes to add or change the location of a Point of Delivery, Purchaser shall deliver to District the location of the proposed additional or relocated Point of Delivery in Digital Format and on a reproducible vicinity map with a graphic description of the location of the proposed additional or relocated Point of Delivery. Upon District's written approval of the additional or relocated Point of Delivery, this Agreement will be modified by attaching the map to this Agreement as an exhibit. Upon filing this Agreement, as modified, with the Texas Commission on Environmental Quality or its successor agency (Commission), the modification shall become effective upon regulatory approval of the location of the additional or relocated Point of Delivery.

**SECTION 6. FACILITIES FOR DIVERTING WATER.** 

All facilities required for the taking of water under this Agreement from a watercourse or

District reservoir shall be appropriately marked and lighted in the interest of the safety of persons

using the watercourse or reservoir surface or shore. The detailed plans and specifications for such

facilities shall be submitted to District and approved by District in writing before such facilities

are installed, and any changes thereafter made in the nature, type, or location of such facilities shall

be made only after District's prior written approval. In addition, Purchaser shall provide plans and

specifications to District in Digital Format.

All facilities and property of Purchaser used by Purchaser or relating to the use or diversion

of the water contemplated by this Agreement are subject to water damage by reason of their

location near a raw water transmission system owned or used by District. Purchaser acknowledges

the possibility of water damage and assumes the risk of such an occurrence. To the greatest extent

allowed by law, Purchaser will hold District harmless for any claims asserted by Purchaser or by

others growing out of the operation by Purchaser of the facilities used and employed by it in

connection with this Agreement.

Purchaser agrees that its use of the facilities to be constructed under this Agreement, if any,

and its operations under this Agreement shall not cause or in any way result in the pollution of

reservoirs and other water bodies within District Watersheds. District Watersheds are defined as

areas that drain, either directly or indirectly, into a reservoir owned, controlled, or used by District,

or watercourses that are used by District in providing water to its customers. Purchaser agrees to

correct any practice of Purchaser which District deems likely to result in such pollution within

thirty (30) days from the receipt by Purchaser of written notice from District to do so.

**SECTION 7. PURPOSE AND PLACE OF USE.** 

Purchaser shall use raw water purchased from District under this Agreement for municipal

and non-municipal retail and wholesale purposes only and within the area served by Purchaser's

municipal water system, which area is shown by the vicinity map attached as Exhibit 1 to this

Agreement. In addition, Purchaser shall notify District of changes to Purchaser's service area by

providing said changes in Digital Format. Upon receipt of said changes, this Agreement will be

modified with an Amendment to include a vicinity map with the added territory.

Purchaser may not provide retail or wholesale water service outside the boundary of the

District service area using water originating from District without prior written approval of

District. Such written approval shall not be unreasonably delayed, withheld, or denied. If Purchaser

wishes to extend its municipal water system service area outside the boundary of the District's

service area, Purchaser shall deliver to District a reproducible vicinity map that shows the proposed

added territory. Upon approval by the District, this Agreement will be modified with an

Amendment to include the approved vicinity map as Exhibit 1. Upon filing this Agreement, as

modified, with the Commission, and providing District the changed information in Digital Format,

Purchaser may use the water within the added territory.

**SECTION 8. LOSSES.** 

If Purchaser's diversion, now or in the future, requires a release of water from a District

reservoir or pipeline, District agrees to bear the cost of transportation and evapotranspiration losses

incident to the downstream sale of water from the reservoir or pipeline to Purchaser's point of

diversion of water.

# SECTION 9. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY RULES.

The effectiveness of this Agreement is dependent upon District and Purchaser complying with the rules of the Commission, specifically including the rules codified as Texas Administrative Code, Title 30, §§ 295.101 and 297.101-.108 as of the effective date of this Agreement. Purchaser will file a signed copy of this Agreement with the Executive Director of the Commission as required by the rules of the Commission. Purchaser may continue diverting raw water from the Project unless Purchaser has received written notification from the Commission that a copy of this Agreement has been received by the Commission but not accepted for filing. If this Agreement was not accepted for filing by the Commission, Purchaser will notify District within ten (10) business days. Purchaser shall submit written reports to the Commission as required by Commission rules, with a copy to District, on forms provided by the Commission, indicating the total amount of water taken under this Agreement each month. Purchaser also shall submit to District written reports each month indicating the total amount of water diverted under this Agreement each month.

# SECTION 10. REGULATORY REQUIREMENTS.

This Agreement is subject to all applicable federal, state, and local laws and any applicable ordinances, rules, orders, and regulations of any local, state, or federal governmental authority having jurisdiction. However, nothing contained in this Agreement shall be construed as a waiver of any right to question or contest any law, ordinance, order, rule, or regulation in any forum having jurisdiction, and District and Purchaser each agree to make a good faith effort to support proposed laws and regulations which would be consistent with the performance of this Agreement in accordance with its terms.

**SECTION 11. WATER CONSERVATION PLANS.** 

Purchaser shall cooperate with and assist District in its efforts 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. District's obligations

under this Agreement shall be subject to Purchaser preparing and implementing a water

conservation plan or water conservation measures, as well as implementing any water conservation

plans and drought contingency plans adopted by District and required or approved by the

Commission, the Texas Water Development Board, or any other federal, state, or local regulatory

authority with power to require or approve water conservation and drought contingency plans.

Prior to the execution of this agreement, Purchaser shall submit to the District its water

conservation plan or water conservation measures and update the water conservation plan every

five years in accordance with Commission guidelines or more often as requested in writing by the

District.

If District authorizes Purchaser to resell District water, Purchaser shall require through a

contract condition that any successive user of District water must implement water conservation

measures that comply with the State's, District's, and Purchaser's water conservation plans,

programs, and rules.

**SECTION 12. WATER QUALITY.** 

Purchaser shall cooperate with and assist District in its efforts to develop and implement

plans, programs, and rules to maintain and improve the quality of the water flowing into or

impounded within reservoirs owned or used by District; to maintain the existing uses of the water

impounded in reservoirs owned or used by District for public water supply, contact recreation, and

high quality aquatic habitat; and to decrease the effects of eutrophication and siltation upon the

storage capacity and uses of reservoirs owned or used by District. Such plans, programs, and rules

may include, but are not limited to, matters involving water conservation; water quality;

construction, operation, and regulation of wastewater collection, treatment, and disposal facilities;

siting and operation of solid waste transfer and disposal facilities; non-point source pollution

control; generation, storage, transportation, and disposal of hazardous substances; sedimentation

due to construction activities; improper farming practices; and highly erodible soil.

Purchaser agrees that, in areas within its jurisdiction, it will require and enforce compliance

with Commission rules relating to Construction Standards for On-Site Sewage Facilities found in

30 TEX. ADMIN. CODE Chapter 285. Purchaser further agrees to ensure that construction activities

within its jurisdiction comply with the Commission's Storm Water Pollution Protection Plans

(SWPPP) found in Texas Water Code Chapter 26. Purchaser also further agrees to require and

enforce compliance with any stricter standards that may be imposed by any other applicable state

or federal laws or regulations. Purchaser shall notify District if they impose stricter standards than

the current Commission (or any successor agency) standards.

**SECTION 13. WASTEWATER TREATMENT** 

By signing this Agreement, Purchaser stipulates and agrees that District is potentially

aggrieved or affected by any actions taken by Purchaser relating to the collection, treatment, and

disposal of wastewater. If Purchaser proposes to modify or amend its permit(s), if any, or obtain

additional or new permit(s) which authorize the construction of wastewater treatment facilities or

the disposal of treated effluent, Purchaser shall inform District of Purchaser's plans and provide

District with a comprehensive assessment of the individual and cumulative effect of Purchaser's

proposed activities on surface water and groundwater quality and such additional information as

District may reasonably require. Purchaser shall provide notice of its proposed plans of renewal,

modification, or amendment to District at least sixty (60) days before Purchaser submits an

application to the Commission or other regulatory authority.

If Purchaser seeks to modify or amend a permit from the Commission or other regulatory

authority to discharge effluent which, in the District's reasonable opinion, degrades the water

quality of District's surface water or ground water, District will notify Purchaser, and the parties

will make reasonable efforts to address or resolve the matter. If the parties are unable to resolve

the issue, District reserves the right to seek remedy up to and including termination of this

Agreement, if the Purchaser's discharge contains constituents greater than allowed by the

Commission for the receiving waters. District may terminate this Agreement, without liability to

Purchaser, if a court, or federal or state regulatory authority with jurisdiction to regulate

Purchaser's collection, treatment, and disposal of wastewater within a District watershed enters an

order of any type which includes an express or implied finding that Purchaser violated applicable

statutes, rules, orders, or permits for a period of four (4) months or for a shorter period if the

noncompliance causes an actual or potential hazard to public health and safety or severe adverse

impact on or to the uses of a receiving stream or of groundwater and Purchaser did not remediate

said violations within four (4) months from notice of the violation.

By signing this Agreement, Purchaser consents and authorizes District's employees or

agents exhibiting proper credentials to enter upon Purchaser's premises or other premises under

the control of Purchaser where an effluent source is located or in which any records are required

to be kept under the terms and conditions of Purchaser's permit or the Commission's (or any

successor agency) rules, at any reasonable times, to copy any records required to be kept under the

terms and conditions of Purchaser's permit or the Commission's (or any successor agency) rules,

to inspect any monitoring equipment or monitoring method required in Purchaser's permit or the

Commission's (or any successor agency) rules, to sample any discharge, and to perform an

enforcement and/or operation and maintenance inspection of Purchaser's facility or facilities.

Contemporaneously with the filing by Purchaser of any notifications, self-reporting data,

sludge disposal records, or other records and reports required by the rules, orders, or permits of

the Commission, Purchaser shall deliver a copy of the signed document to District.

Purchaser shall install and maintain adequate safeguards to prevent the discharge of

untreated or inadequately treated wastewater from its collection, treatment, and disposal facilities

during electrical power failures and equipment failures or repairs by means of alternate power

sources, standby generators, adequate spare parts, or retention facilities.

**SECTION 14. PAYMENTS BY PURCHASER.** 

As consideration for the water supply to be provided to Purchaser under this Agreement,

Purchaser agrees to pay District, at the time and in the manner provided by this Agreement,

Purchaser's proportionate share of District's Annual Requirement as determined under the

Amendatory Contract. Purchaser's proportionate share shall equal Purchaser's Annual Payment

after adjustment, as described below. Purchaser's Annual Payment shall be calculated as follows:

A. Determination of Annual Payment.

The term "Annual Payment" means the amount of money to be paid to District by Purchaser

during each Annual Payment Period as defined in the Amendatory Contract. An Annual Payment

Period is from October 1 until September 30 of the following year. Purchaser shall make monthly

payments based on actual raw water usage multiplied by the District's Standard Rate as defined in

Section 15 herein, in effect on the first (1st) day of the applicable Annual Payment Period. Payment

and a report of the amount of water used are due by the tenth (10th) day of the following month.

For example, water usage for the month of January should be submitted no later than February

10<sup>th</sup>.

**B.** Minimum Amount

For the purpose of calculating the minimum amount of each Annual Requirement for which

Purchaser is unconditionally liable, without offset or counterclaim related to this agreement,

Purchaser, during each Annual Payment Period, shall be deemed to have taken and used the

minimum annual average daily amount of Project water (regardless of whether or not such

amount is or was actually taken or used) specified for Purchaser as follows:

Beginning on Effective Date of the Agreement, and during each Annual Payment Period

thereafter, an amount for Purchaser, expressed in MGD, equal to the greater of:

a. 0.25 MGD (280.036 acre-feet), or

b. the average annual MGD use actually taken from the Project by Purchaser during

the period of the immediately preceding five (5) consecutive Annual Payment Periods. Until the

water use for five (5) consecutive Annual Periods has been established, the average annual MGD

use actually taken from the Project will be the average of water use from the Project in the

preceding Annual Payment Periods.

C. Determination of Adjusted Annual Payment.

The term "Adjusted Annual Payment" means the Annual Payment, as adjusted during or

after each Annual Payment Period, as provided by this Agreement. At the close of each Annual

Payment Period, District shall determine, with the cooperation of Purchaser, the actual amount of

water diverted and used by Purchaser during the Annual Payment Period. District shall calculate

Purchaser's Adjusted Annual Payment by multiplying District's audited Standard Rate applicable

to the Annual Payment Period in accordance with this Agreement times the greater of either:

I. the actual amount of water diverted and used from the Project expressed in thousands of

gallons; or

II. Purchaser's minimum amount of water applicable during the Annual Payment Period as

determined in accordance with this Agreement, expressed in thousands of gallons.

The difference, if any, between the Annual Payment paid by Purchaser during the Annual

Payment Period and the Adjusted Annual Payment, when determined, shall be applied as a credit

or debit to Purchaser's account with District and shall be credited or debited in one-twelfth (1/12th)

increments to Purchaser's next twelve (12) monthly payments, or as otherwise agreed upon

between District and Purchaser, provided that the total amount of the credit or debit shall be made

within the next twelve (12) months.

D. Dispute.

If Purchaser at any time disputes the amount to be paid by it to District, Purchaser 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 Purchaser should have

been less or more, District shall promptly revise and reallocate Purchaser's Annual Payment in a

manner that Purchaser or District will recover the amount due.

If a court, the Commission, or any federal or state regulatory authority finds that District's

rates or policies for delivering water to Purchaser under this Agreement are unreasonable or

otherwise unenforceable, District has the option to terminate this Agreement without liability to

Purchaser. By signing this Agreement, Purchaser stipulates and agrees that District and its other

customers will be prejudiced if Purchaser avoids the obligation to pay the rates for water specified

in this Agreement while accepting the benefits of obtaining water from District. Nothing in this

Agreement shall be construed as constituting an undertaking by District to furnish water to

Purchaser except pursuant to the terms of this Agreement. If Purchaser initiates or participates in

any proceeding regarding District's rates and policies under this Agreement and advocates a

position that is adverse to District and District prevails, Purchaser shall pay District for its

expenses, including attorneys' fees, in the proceeding within fifteen (15) days after District's

demand for payment. Purchaser stipulates and agrees that the rates and policies specified in this

Agreement at the Effective Date of this Agreement, are just, reasonable, and without

discrimination.

SECTION 15. RATE.

Pursuant to the Amendatory Contract and the discussion below, Purchaser specifically

agrees to pay the rate per 1,000 gallons (U.S. Standard Liquid Measure) of water equal to District's

Standard Rate, which for any given year shall be the rate charged by District to the Initial

Contracting Parties for water sales in effect on the first (1st) day of such year pursuant to Section

4 of the Amendatory Contract.

Failure to pay any payment due District shall be sufficient grounds for District to exercise

any remedy available to District under this Agreement.

**SECTION 16. MEASUREMENT.** 

Purchaser shall provide, operate, maintain, and read meters which shall record water taken

by Purchaser from District at Purchaser's Diversion Point(s). Water shall be measured through

conventional types of approved meter(s). Purchaser shall provide for District's approval the plans

and specifications of the metering equipment and the method for determining the amount of water

diverted from the Project for Purchaser's use. Purchaser shall keep accurate records of all

measurements of water required under this Agreement, and the measuring device(s) and such

records shall be open for District inspection at all times. District shall have access to Purchaser's

metering equipment at all reasonable times. This access shall include authorization for District to

install, inspect, adjust, or test measuring and recording equipment. Upon written request of

District, Purchaser will give District copies of such records or permit District to have access to the

same in Purchaser's office during reasonable business hours. If requested in writing by District and

not more than once in each calendar month, on a date as near the end of such calendar month as

practical, Purchaser shall calibrate its raw water meter(s) in the presence of a District

representative, and District and Purchaser shall jointly observe any adjustments that shall be

necessary. If District shall in writing request Purchaser to calibrate its raw water meter(s),

Purchaser shall give District notice of the time when any such calibration is to be made and, if a

representative of District is not present at the time set, Purchaser may proceed with the calibration

and adjustment in the absence of any representative of District.

If, upon any test of the raw water meter(s), the percentage of inaccuracy of such metering

equipment is found to be in excess of two percent (2%), registration thereof shall be corrected for

a period extending back to the time when such inaccuracy began, if such time is ascertainable. If

such time is not ascertainable, then registration thereof shall be corrected for a period extending

back one-half (1/2) of the time elapsed since the last date of calibration, but in no event further

back than a period of six (6) months. If any meter(s) are out of service or out of repair so that the

amount of water delivered cannot be ascertained or computed from the reading thereof, the water

delivered through the period such meter(s) are out of service or out of repair shall be estimated and

agreed upon by District and Purchaser upon the basis of the best data available, and, upon written

request by District, Purchaser shall install new meter(s) or repair existing meter(s) within a

reasonable time not to exceed one hundred eighty (180) days. Upon Purchaser's refusal to install

new meter(s) or repair existing meter(s) or after one hundred eighty (180) days following District's

request to do so, District, at its option, may install new meters or repair existing meters at

Purchaser's cost. District shall recover its cost of labor and materials by billing Purchaser in twelve

(12) equal monthly installments on or before the tenth (10th) day of each month. If District and

Purchaser fail to agree on the amount of water delivered during such period, the amount of water

delivered may be estimated by:

(a) correcting the error if the percentage of the error is ascertainable by calibration tests or

mathematical calculation; or

(b) estimating the quantity of delivery by deliveries during the preceding periods under

similar conditions when the meter or meters were registering accurately.

All books and records pertaining to this Agreement shall be open and available for copying,

inspection, and audit by District.

SECTION 17. SOURCE AND ADEQUACY OF SUPPLY.

Water supplied by District to Purchaser under this Agreement shall be water stored by

District in the Project and from no other source, unless District, at its sole discretion, decides to

supply water from another source available to District. District will use its best efforts to remain

in a position to furnish raw water sufficient for the reasonable demands of Purchaser. District's

agreement to provide water to Purchaser shall not be deemed a guarantee on District's part that any

particular quantity of water will be available, and the quantity of water taken shall at all times be

subject to the right of District to reduce said quantity of water as District, in its sole judgment, may

deem necessary in order to meet District's commitments under the Amendatory Contract, comply

with any order of any court or administrative body having appropriate jurisdiction, reduce

flooding, or prevent injury.

District has adopted a Water Conservation and Drought Contingency and Emergency

Demand Management Plan. With respect to water provided to Purchaser under this agreement, if

Purchaser fails to implement District's and its own emergency demand management plans when

trigger conditions occur, District's General Manager is authorized to institute rationing pursuant to

the Amendatory Contract and any other applicable wholesale water contracts, including this

Agreement, as well as to enforce any contractual, statutory, or common law remedies available to

District necessary to protect the public welfare. District water made available to Purchaser when

Purchaser is not in compliance with District's Water Conservation and Drought Contingency and

Emergency Demand Management Plan will be reduced to the amount of water that District's

General Manager estimates would be necessary to satisfy Purchaser's demand if Purchaser was

operating in compliance with both District's and Purchaser's emergency demand management

plans.

District's rights to maintain and operate the reservoirs owned or used by District and its

water transportation facilities and at any and all times in the future to impound and release waters

thereby in any lawful manner and to any lawful extent District may see fit is recognized by

Purchaser, and, except as otherwise provided herein, there shall be no obligation hereunder upon

District to release or not to release any impounded waters at any time or to maintain any waters at

any specified level.

Purchaser acknowledges that the delivery of water to Purchaser through District's pipelines

is subject to and dependent on adequate pipeline operational capacity and efficiency. Therefore,

Purchaser agrees to maintain sufficient storage or an alternative supply of raw water to supply

Purchaser's demand for raw water without taking water under this Agreement for a period of sixty (60) days.

## **SECTION 18. ADDITIONAL SOURCE OF SUPPLY**

If, at any time during the term of this Agreement, the District is or will become unable to supply all of the raw water requirements of Purchaser for any reason and Purchaser determines that it is necessary to procure or use raw water from sources other than the District, then Purchaser shall give written notice to District of its intention and desire to procure raw water from sources other than District. Within thirty (30) days of the receipt by District of such written notice, District shall advise Purchaser in writing whether it agrees that Purchaser should procure raw water from sources other than District. In the event that District agrees that it is necessary for Purchaser to procure raw water from other sources, Purchaser may proceed to procure such raw water from other sources at its sole cost, and without any liability for damages accruing in favor of or against District by reason thereof. If Purchaser procures water additional to that supplied by District under this Agreement, then Purchaser shall nevertheless continue to take from District and pay for all raw water thereafter available to Purchaser from the Project up to the full raw water requirements of Purchaser. If District disagrees with Purchaser's written notice concerning the adequacy of the supply of raw water to be furnished by District, then District, within said thirty (30) day period, shall so advise Purchaser and the Advisory Committee (a body created under the Amendatory Contract) and thereafter the Advisory Committee shall make its recommendations to the parties within sixty (60) days after receipt of such notice. Purchaser shall at all times have the right to secure water from any possible source in an emergency when District is unable to deliver water from the Project for reasons described in the force majeure clause of this Agreement.

**SECTION 19. PLEDGE OF REVENUE** 

Purchaser represents and covenants that all payments to be made by it under this

Agreement shall constitute reasonable and necessary "operating expenses" of its system as defined

in Tex. Gov't. Code Ann. §§ 1502.056-.058 (Vernon 2000), and that all such payments will be

made from the revenues of its water system. Purchaser represents and has determined that the

water supply to be obtained from the Project is absolutely necessary and essential to the present

and future operation of its water system and is the only available and adequate source of supply of

water. Accordingly, all payments required by this Agreement to be made by Purchaser shall

constitute reasonable and necessary operating expenses of Purchaser's system or systems as

described above, and the obligation to make such payments from revenues of such system or

systems shall have priority over any obligation to make any payments from such revenues, whether

of principal, interest, or both, with respect to all bonds heretofore or hereafter issued by Purchaser.

Purchaser agrees throughout the term of this Agreement to continuously operate and

maintain its water system and to fix and collect such rates and charges for water services to be

supplied by its water system as will produce revenues in an amount equal to at least (i) all of its

payments under this Agreement and (ii) all other amounts as required by the provisions of the

ordinances or resolutions authorizing its revenue bonds or other obligations now or hereafter

outstanding.

Unless otherwise specifically provided in writing by subsequent agreement between

District and Purchaser, District shall never have the right to demand payment by Purchaser of any

obligation assumed or imposed on it under this Agreement from funds raised or to be raised by

taxation, it being expressly understood by District and Purchaser that all payments due by

Purchaser are to be made from the revenues and income received by Purchaser from the ownership

and operation of its water system.

**SECTION 20. RAW WATER QUALITY.** 

The water which district offers to sell to Purchaser is non-potable, raw, and untreated.

Purchaser has satisfied itself that such water is suitable for its needs. District expressly disclaims

any warranty as to the quality of the raw water or suitability of the raw water for its intended

purpose. District expressly disclaims the warranties of merchantability and fitness. Purchaser

agrees that any variation in the quality or characteristics of the raw water offered for sale as

provided by this agreement shall not entitle purchaser to avoid or limit its obligation to make

payments provided for by this agreement. There are no warranties which extend beyond the

description contained in this agreement.

**SECTION 21. RETURN FLOWS.** 

Purchaser acknowledges that some of the water supplied to it by District may be returned

to watercourses in the Trinity River Basin as return flows, which for purposes of this Agreement,

are termed System Return Flows. District and Purchaser believe that the most economical means

for meeting some of the future demands of District's customers may involve the use of return flows

to extend or enhance the yield of the System. In this regard, District will, with Purchaser's

cooperation, study the potential benefits to the System that can be realized through the use of return

flows. In anticipation that District will determine that use of return flows is both feasible and

economical, Purchaser agrees that other than for purposes of liability, District retains title to all

system water, and has the right, subsequent to Purchaser's use of System water, to make whatever

reuse of the water District deems necessary. Purchaser will receive no compensation, credit, or

offset for making System Return Flows available to District.

To the extent that Purchaser resells Project water to others, Purchaser shall include

language in any contract for resale of Project water assigning System Return Flows to the District

and requiring cooperation with the District in making System Return Flows available to District.

Similarly, to the extent that Purchaser does not treat its wastewater, Purchaser shall include

language in any wastewater treatment contract assigning System Return Flows to District and

requiring cooperation with District in making System Return Flows available to District. Neither

Purchaser nor its customers will be entitled to consideration or credit of any type, either in

exchange of water, money, or other consideration, for the System Return Flow assigned back to

the District.

Use of System Return Flows by Purchaser initiated prior to the effective date of this

Agreement are exempt from this section provided Purchaser provides the District with plans and

specifications of the existing reuse project and any other information reasonably requested by the

District within ninety days of the effective date of this Agreement. If Purchaser proposes to engage

in a new reuse project using System Return Flows, it shall provide the District with sufficient

information to allow the District to evaluate whether the proposed reuse project will significantly

increase the water rate for District customers or decrease the yield of the District Reuse Project.

Subsequent to evaluation by the District, the project will be approved by the District unless the

District determines that the project will increase the District's water rates or decrease the yield of

the District Reuse Project without a corresponding decrease in the demand for raw water from the

District.

**SECTION 22. TITLE.** 

Title for liability purposes to all water supplied hereunder to Purchaser shall be in District

up to the Point(s) of Delivery, at which point title for liability purposes shall pass to Purchaser.

While title for liability purposes remains in a party, to the greatest extent allowed by law, that party

hereby agrees to save and hold the other party harmless from all claims, demands, and causes of

action which may be asserted by anyone on account of the transportation and delivery of said

water.

**SECTION 23. OTHER CHARGES.** 

In the event that any sales or use taxes, or taxes, assessments, or charges of any similar

nature, are imposed on diverting, storing, delivering, gathering, impounding, taking, selling, using,

or consuming the water received by Purchaser from the Project, the amount of the tax, assessment,

or charge shall be borne by Purchaser, in addition to all other charges, and whenever District shall

be required to pay, collect, or remit any tax, assessment, or charge on water received by Purchaser,

then Purchaser shall promptly pay or reimburse District for the tax, assessment, or charge in the

manner directed by District.

SECTION 24. DEFAULT IN PAYMENTS.

All amounts due and owing to District by Purchaser shall, if not paid when due, bear

interest at the interest rate set out in the STATE OF TEXAS PROMPT PAYMENT ACT, TEXAS

GOVERNMENT CODE, CHAPTER 2251, or any successor statute, from the date when due until paid,

provided that such rate shall never be usurious or exceed the maximum rate permitted by law. If

any amount due and owing by Purchaser to District is placed with an attorney for collection,

Purchaser shall pay to District, in addition to all other payments provided for by this Agreement,

including interest, District's collection expenses, including court costs and attorneys' fees. District

shall, to the extent permitted by law, suspend delivery of water from the Project to Purchaser if

Purchaser remains delinquent in any payments due hereunder for a period of sixty (60) days and

shall not resume delivery of water while Purchaser is so delinquent and may, at its option, terminate

this Agreement without further liability to Purchaser. District shall pursue all legal remedies

against Purchaser to enforce and protect the rights of District, District customers, and the holders

of District's bonds. It is understood that the foregoing provisions are for the benefit of the holders

of District's bonds.

**SECTION 25. TERMINATION.** 

If District decides to terminate this Agreement, as provided by this Agreement, District

shall deliver written notice of the decision to Purchaser. Purchaser shall discontinue taking water

from District or its facilities and physically seal Purchaser's diversion facilities within one hundred

eighty (180) days after District delivers written notice to Purchaser.

**SECTION 26. WAIVER AND AGREEMENT.** 

Failure to enforce or the waiver of any provision of this Agreement or any breach or

nonperformance by District or Purchaser shall not be deemed a waiver by Purchaser or District of

the right in the future to demand strict compliance and performance of any provision of this

Agreement. Regardless of any provision contained in this Agreement to the contrary, any right or

remedy or any default under this Agreement, except the right of District to receive the Annual

Payment which shall never be determined to be waived, shall be deemed to be conclusively waived

unless asserted by a proper proceeding at law or in equity within two (2) years plus one (1) day

after the occurrence of the default.

No officer or agent of District or Purchaser is authorized to waive or modify any provision

of this Agreement. No modifications to or rescission of this Agreement may be made except by a

written document signed by District's and Purchaser's authorized representatives.

**SECTION 27. REMEDIES.** 

It is not intended hereby to specify (and this Agreement shall not be considered as

specifying) an exclusive remedy for any default, but all such other remedies (other than

termination) existing at law or in equity may be availed of by any party hereto and shall be cumulative. Recognizing, however, that 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 specific performance, in addition to any other legal or equitable remedies (other than termination) which also may be available to District.

## **SECTION 28. INDEMNITY.**

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

INSPECTION, ADJUSTING, OR TESTING OF MEASURING AND RECORDING EQUIPMENT INVOLVING PURCHASER'S DIVERSION OF DISTRICT WATER, AS WELL AS ANY CLAIM THAT MAY ARISE FROM ANY CONDITION OF PURCHASER'S FACILITIES, SEPARATE OPERATIONS BEING CONDUCTED ON PURCHASER'S FACILITIES, OR THE IMPERFECTION OR DEFECTIVE CONDITION, WHETHER LATENT OR PATENT, OF ANY MATERIAL OR EQUIPMENT SOLD, SUPPLIED, OR FURNISHED BY DISTRICT. THIS INDEMNIFICATION AND RELEASE SHALL SURVIVE TERMINATION OR EXPIRATION OF THE AGREEMENT.

### **SECTION 29. FORCE MAJEURE.**

If, for any reason of force majeure, either District or Purchaser shall be rendered unable, wholly or in part, to carry out its obligation under this Agreement, other than the obligation of Purchaser to make the payments required under the terms of this Agreement, then if the party shall give notice of the reasons in writing to the other party within a reasonable time after the occurrence of the event or cause relied on, the obligation of the party giving the notice, so far as it is affected by the "force majeure," shall be suspended during the continuance of the inability then claimed, but for no longer period. The term "force majeure," as used in this Agreement, shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemy, orders or actions of any kind of government of the United States or of the State of Texas, or any civil or military authority, insurrections, riots, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, explosions, breakage or accident to dams, machinery, pipelines, canals, or other structures, partial or entire failure of water supply, including pollution (accidental or intentional), and any inability on the part of District to deliver water, or of Purchaser to receive water, on account of any other cause not reasonably within the control of the party claiming the inability.

## **SECTION 30. NON-ASSIGNABILITY.**

Purchaser understands and agrees that any assignment of rights or delegation of duties under this Agreement is void without the prior written consent of District. Such written consent shall not be unreasonably delayed, withheld, or denied.

#### SECTION 31. NO THIRD-PARTY BENEFICIARIES.

This Agreement shall inure only to the benefit of the parties hereto and third persons not privy hereto shall not, in any form or manner, be considered a third-party beneficiary of this Agreement. Each party hereto shall be solely responsible for the fulfillment of its customer contracts or commitments, and District shall not be construed to be responsible for Purchaser's contracts or commitments by virtue of this Agreement or any provision contained herein.

## **SECTION 32. RELATIONSHIP OF THE PARTIES.**

This Agreement is by and between District and Purchaser and is not intended, and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association as between District and Purchaser nor between District and any officer, employee, contractor, or representative of Purchaser. No joint employment is intended or created by this Agreement for any purpose. Purchaser agrees to so inform its employees, agents, contractors, and subcontractors who are involved in the implementation of or construction under this Agreement.

### **SECTION 33. SOLE AGREEMENT.**

Except for the Amendatory Contract, this Agreement constitutes the sole and only agreement of Purchaser and District and supersedes any prior understanding or oral or written agreements between District and Purchaser respecting the subject matter of this Agreement, including any oral or written agreement with District that Purchaser obtained by assignment.

## **SECTION 34. SEVERABILITY.**

The provisions of this Agreement are severable, and if, for any reason, any one or more of the provisions contained in this Agreement shall be held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall remain in effect and be construed as if the invalid, illegal, or unenforceable provision had never been contained in the Agreement.

## **SECTION 35. NOTICES.**

All notices, payments, and communications (collectively "notices") required or allowed by this Agreement shall be in writing and be deemed to have been given and received (a) by hand-delivery or courier; or (b) on the third business day after depositing the notice in the United States mail, postage prepaid, registered or certified, with return receipt requested, and addressed to the party to be notified; or (c) when sent by email to RawWaterContracts@trwd.com and upon the receipt by the Purchaser of written confirmation by the District; provided, however, that an automated email confirmation of delivery or read receipt shall not constitute such confirmation. Each party will be entitled to assume, in the absence of any knowledge to the contrary, that any person signing any notice or other written communication issued in respect of this Agreement on behalf of a party is an Authorized Person of that party. Either party may change its physical or email address by giving written notice of the change to the other party at least fifteen (15) days before the change becomes effective.

#### **SECTION 36. PLACE OF PERFORMANCE.**

All acts performable under the terms of this Agreement and all amounts due under this Agreement, including but not limited to payments due under this Agreement or damages for the breach of this Agreement, shall be paid and be due in Tarrant County, Texas, said Tarrant County, Texas, being the place of performance agreed to by the parties to this Agreement. In the event that

any legal proceeding is brought to enforce this Agreement or any provision hereof, the same shall

be brought in Tarrant County, Texas or the appropriate Federal District Court.

**SECTION 37. APPROVAL OF CONTRACTS** 

The Parties recognize that to attain certain goals of this Agreement several of its provisions

must be included in contracts that Purchaser will execute with its wholesale customer(s) or

incorporated into that contract by reference. Purchaser agrees that any contract between Purchaser

and any other party will incorporate this Agreement by reference; will include a provision allowing

for all or part of Purchaser's interest in such contract to be assigned to District; and will, in

conjunction with Purchaser's liability under this Agreement, constitute an unconditional obligation

to make the payments to District required under this Agreement. Purchaser hereby agrees that no

contract will be offered to a customer or potential customer of Purchaser until the contract has

been reviewed and approved by District. District agrees that approval will not be unreasonably

withheld for any reason other than non-compliance with the requirements of this Agreement

including this section or non-compliance with the requirements of the Amendatory Contract.

**SECTION 38. DUPLICATE ORIGINALS.** 

Purchaser and District, acting under the authority of their respective governing bodies, shall

authorize the execution of this Agreement in several counterparts, each of which shall be an

original.

Each party represents and warrants that the person or persons executing this Agreement

has the legal authority to do so on behalf of their respective party, and that such binding authority

has been granted by proper order, resolution, ordinance, or other authorization of the entity. The

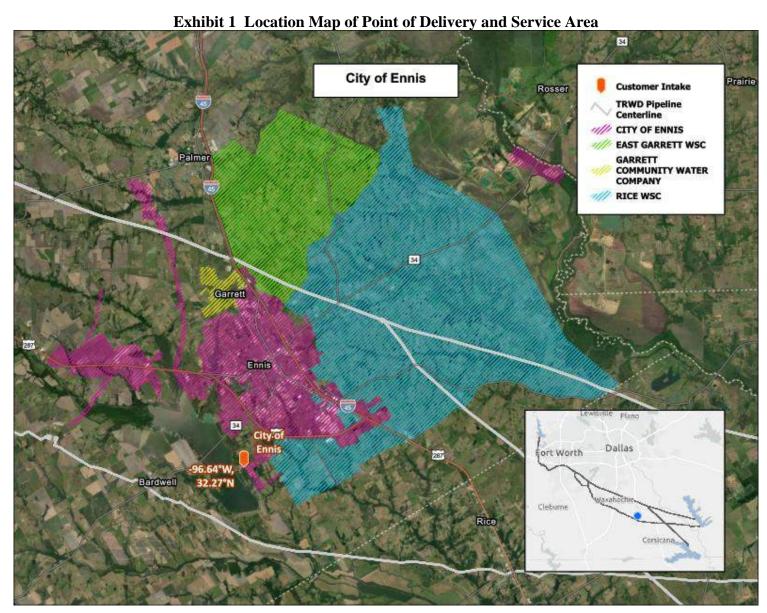
other party is fully entitled to rely on this warranty and representation in entering into this

Agreement.

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

TARRANT REGIONAL WATER DISTRICT, A Water Control and Improvement District 800 East Northside Drive Fort Worth, TX 76102-1016 Attn.: General Manager

BY:	
	Dan Buhman
	General Manager
DATE:	
	Ennis 20, Ennis TX 75120 Office of the Mayor
BY:	Kameron K. Raburn Mayor
DATE:	•



## Tarrant Regional Water District Additional Party Raw Water Supply Contract Municipal

City of Waxahachie
Cedar Creek & Richland Chambers Pipelines

## TABLE OF CONTENTS

RECITALS
AGREEMENT3
SECTION 1. Amendatory Contract
SECTION 2. Permits for Construction
SECTION 3. Term. 4
SECTION 4. Volume
SECTION 5. Point(s) of Delivery5
SECTION 6. Facilities for Diverting Water
SECTION 7. Purpose and Place of Use. 6
SECTION 8. Losses
SECTION 9. Texas Commission on Environmental Quality Rules
SECTION 10. Regulatory Requirements
SECTION 11. Water Conservation Plans
SECTION 12. Water Quality9
SECTION 13. Wastewater Treatment
SECTION 14. Payments by Purchaser
A. Determination of Annual Payment. 12
B. Minimum Amount
C. Determination of Adjusted Annual Payment
D. Dispute
SECTION 15. Rate
SECTION 16. Measurement
SECTION 17. Source and Adequacy of Supply
SECTION 18. Additional Source of Supply
SECTION 19. Pledge of Revenue
SECTION 20. Raw Water Quality
SECTION 21. Return Flows. 21
SECTION 22. Title. 22
SECTION 23. Other Charges
SECTION 24. Default in Payments
SECTION 25. Termination.

SECTION 26.	Waiver and Agreement.	. 24
SECTION 27.	Remedies.	. 24
SECTION 28.	Indemnity.	. 25
SECTION 29.	Force Majeure.	. 26
SECTION 30.	Non-Assignability.	. 26
SECTION 31.	No Third-Party Beneficiaries.	. 27
SECTION 32.	Relationship of the Parties.	. 27
SECTION 33.	Sole Agreement.	. 27
SECTION 34.	Severability.	. 27
SECTION 35.	Notices.	. 28
SECTION 36.	Place of Performance.	. 28
SECTION 37.	Approval of Contracts	. 28
SECTION 38.	Duplicate Originals.	. 29
SECTION 39.	No Waiver of Sovereign Immunity	. 29
Exhibit 1 Location of Point(s) of Delivery		
Exhibit 2 TRA C	Consent and Acknowledgement	. 32

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

This Additional Party Raw Water Supply Contract ("Agreement") is made and entered into by and between **TARRANT REGIONAL WATER DISTRICT**, a Water Control and Improvement District ("District"), a conservation and reclamation district and political subdivision of the State of Texas, and **CITY OF WAXAHACHIE** ("Purchaser"), a municipality.

## RECITALS

- District owns or has the right to use and sell water from the System as defined in that certain contract between District and the City of Fort Worth, City of Arlington, City of Mansfield, and Trinity River Authority of Texas, dated September 1, 1982 ("Amendatory Contract"). For purposes of this Agreement, the "Project" is defined as Cedar Creek & Richland Chambers Pipelines and the sale of water to Purchaser, in addition to being subject to the Amendatory Contract, is also subject to the provisions of Certificate of Adjudication Number(s) 08-4976 AND 08-5035. Purchaser wants to purchase, and District is willing to sell, raw water from the Project subject to the terms and conditions of this Agreement.
- 2. Purchaser will divert water from the Project, subject to all applicable rules and regulations of District and state and federal agencies.
- 3. On December 3, 1991 District and Trinity River Authority (TRA) entered into an Agreement ("1991 Agreement") for District to supply raw water to the Ellis County Regional Water Supply Project via TRA. Participants included Ellis County Control and

Improvement District No 1, now known as the City of Waxahachie ("Waxahachie") (2.15MGD), and Nash-Forreston (0.25 MGD). On July 19, 1993 District and TRA entered into a second Agreement ("1993 Agreement") for District to supply additional water to the Ellis County Regional Water Supply Project via TRA, which included 1.5 MGD for use by the Department of Energy (DOE) for the Superconducting Supercollider Project (SCSCP). In 1996, the DOE abandoned the SCSCP and TRA allocated that water to entities contracted under the 1991 and 1993 Agreements. As a result, Waxahachie was allocated 2.5 MGD for a new total volume of 4.65 MGD.

- 4. On March 19, 2012, Nash-Forrestion assigned their 0.25 MGD allotted under the 1991 Agreement to Waxahachie and TRA acknowleged this assignment bringing Waxahachie's total volume to 4.9 MGD. Additional Amendments to the Ellis County Regional Water Supply Project occurred on December 2, 2015 ("2015 First Amendment") and September 15, 2017 ("2017 Second Amendment") that did not impact Waxahachie's contrated volume. The Ellis County Regional Water Supply Project did not come to fruition so TRA and TRWD are collaborating to terminate the 1991 and 1993 Agreements. As a result, Waxahachie has requested this Agreement to create a direct contractual relationship between District and Purchaser for a maximum volume of 4.9 MGD.
- 5. By executing this Agreement, Waxahachie acknowledges all rights and obligations under the 1991 Agreement, 1993 Agreement, 2015 First Amendment, and 2017 Second Amendment are extinguished. TRA acknowledges and agrees to Waxahachie's desire for a direct contract with TRWD as shown in Exhibit 2 of this Agreement.
- **6.** This Agreement only applies to water sourced and/or obtained from District.

7. Because this is a transfer of contracted water from one entity to another and the buy-in

premium attributable to this contract has been paid and received, there will not be an

additional buy-in premium charged to Waxahachie unless and until there is a future

increase to the contracted volume.

**AGREEMENT** 

For and in consideration of the mutual promises, covenants, obligations, and benefits

described in this Agreement, District and Purchaser agree as follows:

**SECTION 1. AMENDATORY CONTRACT** 

This Agreement is entered into pursuant to Section 3(B) (a) of the Amendatory Contract,

and the rights and obligations of District and Purchaser under this Agreement shall be subject to,

and be interpreted consistent with, the terms and conditions of the Amendatory Contract. The

Amendatory Contract is incorporated into this Agreement by reference as if quoted verbatim in

this section. The Initial Contracting Parties (as identified in the Amendatory Contract) shall, within

the limits permitted by law, have absolute priority over Purchaser's right to purchase water from

District in accordance with this Agreement.

**SECTION 2. PERMITS FOR CONSTRUCTION** 

Purchaser may have to obtain federal, state, and local permits or easements to construct

and maintain, at Purchaser's expense, a raw water intake structure. It is Purchaser's responsibility

to obtain and comply with any such permit or easement. Failure to obtain or comply with such

permit or easement under this section may, at District's sole discretion, be grounds for terminating

this Agreement without liability to Purchaser. Purchaser specifically recognizes that it will have

to apply for and be granted a permit or easement to construct and maintain a raw water intake

structure on land and water owned and controlled by District. When granted by District, this permit

will be incorporated into this Agreement by reference as if quoted verbatim in this section.

**SECTION 3. TERM.** 

This Agreement shall be effective on the date it is signed by District's authorized

representative ("Effective Date"), as shown on the signature page of this Agreement, and shall

continue in effect for a period of 30 years from the effective date unless this Agreement is

terminated sooner because the Amendatory Contract is terminated, District and Purchaser both

agree to terminate this Agreement, or this Agreement is terminated pursuant to its terms. Purchaser

has the option and responsibility to request a renewal contract, in writing, 12 months prior to

expiration of this Agreement. Such written approval shall not be unreasonably delayed, withheld,

or denied. Purchaser acknowledges that the Project's primary purpose is to provide water for

municipal water supply and is subordinate to the rights of the Initial Contracting Parties as those

terms are defined in the Amendatory Contract, and that Purchaser's entitlement to water under this

Agreement end upon termination of this Agreement.

**SECTION 4. VOLUME.** 

Subject to the limitations and conditions described in this Agreement, the Amendatory

Contract, Certificate of Adjudication Number(s) 08-4976 and 08-5035, District agrees to sell

Purchaser up to 5488.56 acre-feet per annum of raw water from the Project at the Point(s) of

Delivery described in this Agreement. The average volume to be furnished will be determined, in

part, by past usage and future quantities that District will review periodically. District may request

updated usage projections and Purchaser is required to provide the same within a timely manner.

Purchaser may not divert more than 5488.56 acre-feet (4.9 MGD) in an Annual Payment Period,

as defined in Section 14, without prior written approval of District.

#### **SECTION 5. POINT(S) OF DELIVERY.**

Purchaser's raw water will be delivered from the Project at the Point of Delivery herein established. A vicinity map showing the Point of Delivery is attached as Exhibit 1 to this Agreement. Purchaser shall provide the location of the Point of Delivery in Digital Format, which for purposes of this Agreement means in GIS format (shapefile, geodatabase) or Google Earth format (KMZ, KML), projected to the following Tarrant Regional Water District data standards: Projection: Lambert Conformal Conic, Coordinate System: Texas State Plane, Zone 5351, Units: Feet, Datum: NAD83. The diversion shall be accomplished by facilities with a maximum combined diversion rate of 39,975 gallons per minute. Purchaser shall provide, at Purchaser's expense, the facilities required to divert and transport raw water to Purchaser's place of treatment and/or use. If Purchaser wishes to add or change the location of a Point of Delivery, Purchaser shall deliver to District the location of the proposed additional or relocated Point of Delivery in Digital Format and on a reproducible vicinity map with a graphic description of the location of the proposed additional or relocated Point of Delivery. Upon District's written approval of the additional or relocated Point of Delivery, this Agreement will be modified by attaching the map to this Agreement as an exhibit. Upon filing this Agreement, as modified, with the Texas Commission on Environmental Quality or its successor agency (Commission), the modification shall become effective upon regulatory approval of the location of the additional or relocated Point of Delivery.

## SECTION 6. FACILITIES FOR DIVERTING WATER.

All facilities required for the taking of water under this Agreement from a watercourse or District reservoir shall be appropriately marked and lighted in the interest of the safety of persons using the watercourse or reservoir surface or shore. The detailed plans and specifications for such facilities shall be submitted to District and approved by District in writing before such facilities are installed, and any changes thereafter made in the nature, type, or location of such facilities shall

be made only after District's prior written approval. In addition, Purchaser shall provide plans and

specifications to District in Digital Format.

All facilities and property of Purchaser used by Purchaser or relating to the use or diversion

of the water contemplated by this Agreement are subject to water damage by reason of their

location near a raw water transmission system owned or used by District. Purchaser acknowledges

the possibility of water damage and assumes the risk of such an occurrence. To the greatest extent

allowed by law, Purchaser will hold District harmless for any claims asserted by Purchaser or by

others growing out of the operation by Purchaser of the facilities used and employed by it in

connection with this Agreement.

Purchaser agrees that its use of the facilities to be constructed under this Agreement, if any,

and its operations under this Agreement shall not cause or in any way result in the pollution of

reservoirs and other water bodies within District Watersheds. District Watersheds are defined as

areas that drain, either directly or indirectly, into a reservoir owned, controlled, or used by District,

or watercourses that are used by District in providing water to its customers. Purchaser agrees to

correct any practice of Purchaser which District deems likely to result in such pollution within

thirty (30) days from the receipt by Purchaser of written notice from District to do so.

**SECTION 7. PURPOSE AND PLACE OF USE.** 

Purchaser shall use raw water purchased from District under this Agreement for municipal

purposes only and within the area served by Purchaser's municipal water system, which area is

shown by the vicinity map attached as Exhibit 1 to this Agreement. In addition, Purchaser shall

notify District of changes to Purchaser's service area by providing said changes in Digital Format.

Upon receipt of said changes, this Agreement will be modified with an Amendment to include a

vicinity map with the added territory.

Purchaser may not provide retail or wholesale water service outside the boundary of the District service area using water originating from District without prior written approval of District. Such written approval shall not be unreasonably delayed, withheld, or denied. If Purchaser wishes to extend its municipal water system service area outside the boundary of the District's service area, Purchaser shall deliver to District a reproducible vicinity map that shows the proposed added territory. Upon approval by the District, this Agreement will be modified with an Amendment to include the approved vicinity map as Exhibit 1. Upon filing this Agreement, as modified, with the Commission, and providing District the changed information in Digital Format,

## SECTION 8. LOSSES.

Purchaser may use the water within the added territory.

If Purchaser's diversion, now or in the future, requires a release of water from a District reservoir or pipeline, District agrees to bear the cost of transportation and evapotranspiration losses incident to the downstream sale of water from the reservoir or pipeline to Purchaser's point of diversion of water.

# SECTION 9. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY RULES.

The effectiveness of this Agreement is dependent upon District and Purchaser complying with the rules of the Commission, specifically including the rules codified as Texas Administrative Code, Title 30, §§ 295.101 and 297.101-.108 as of the effective date of this Agreement. Purchaser will file a signed copy of this Agreement with the Executive Director of the Commission as required by the rules of the Commission. Purchaser may continue diverting raw water from the Project unless Purchaser has received written notification from the Commission that a copy of this Agreement has been received by the Commission but not accepted for filing. If this Agreement was not accepted for filing by the Commission, Purchaser will notify District within ten (10)

business days. Purchaser shall submit written reports to the Commission as required by

Commission rules, with a copy to District, on forms provided by the Commission, indicating the

total amount of water taken under this Agreement each month. Purchaser also shall submit to

District written reports each month indicating the total amount of water diverted under this

Agreement each month.

SECTION 10. REGULATORY REQUIREMENTS.

This Agreement is subject to all applicable federal, state, and local laws and any applicable

ordinances, rules, orders, and regulations of any local, state, or federal governmental authority

having jurisdiction. However, nothing contained in this Agreement shall be construed as a waiver

of any right to question or contest any law, ordinance, order, rule, or regulation in any forum having

jurisdiction, and District and Purchaser each agree to make a good faith effort to support proposed

laws and regulations which would be consistent with the performance of this Agreement in

accordance with its terms.

SECTION 11. WATER CONSERVATION PLANS.

Purchaser shall cooperate with and assist District in its efforts 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. District's obligations

under this Agreement shall be subject to Purchaser preparing and implementing a water

conservation plan or water conservation measures, as well as implementing any water conservation

plans and drought contingency plans adopted by District and required or approved by the

Commission, the Texas Water Development Board, or any other federal, state, or local regulatory

authority with power to require or approve water conservation and drought contingency plans.

Prior to the execution of this agreement, Purchaser shall submit to the District its water

conservation plan or water conservation measures and update the water conservation plan every

five years in accordance with Commission guidelines or more often as requested in writing by the

District.

If District authorizes Purchaser to resell District water, Purchaser shall require through a

contract condition that any successive user of District water must implement water conservation

measures that comply with the State's, District's, and Purchaser's water conservation plans,

programs, and rules.

**SECTION 12. WATER QUALITY.** 

Purchaser shall cooperate with and assist District in its efforts to develop and implement

plans, programs, and rules to maintain and improve the quality of the water flowing into or

impounded within reservoirs owned or used by District; to maintain the existing uses of the water

impounded in reservoirs owned or used by District for public water supply, contact recreation, and

high quality aquatic habitat; and to decrease the effects of eutrophication and siltation upon the

storage capacity and uses of reservoirs owned or used by District. Such plans, programs, and rules

may include, but are not limited to, matters involving water conservation; water quality;

construction, operation, and regulation of wastewater collection, treatment, and disposal facilities;

siting and operation of solid waste transfer and disposal facilities; non-point source pollution

control; generation, storage, transportation, and disposal of hazardous substances; sedimentation

due to construction activities; improper farming practices; and highly erodible soil.

Purchaser agrees that, in areas within its jurisdiction, it will require and enforce compliance

with Commission rules relating to Construction Standards for On-Site Sewage Facilities found in

30 TEX. ADMIN. CODE Chapter 285. Purchaser further agrees to ensure that construction activities

within its jurisdiction comply with the Commission's Storm Water Pollution Protection Plans

(SWPPP) found in Texas Water Code Chapter 26. Purchaser also further agrees to require and

enforce compliance with any stricter standards that may be imposed by any other applicable state

or federal laws or regulations. Purchaser shall notify District if they impose stricter standards than

the current Commission (or any successor agency) standards.

**SECTION 13. WASTEWATER TREATMENT** 

By signing this Agreement, Purchaser stipulates and agrees that District is potentially

aggrieved or affected by any actions taken by Purchaser relating to the collection, treatment, and

disposal of wastewater. If Purchaser proposes to modify or amend its permit(s), if any, or obtain

additional or new permit(s) which authorize the construction of wastewater treatment facilities or

the disposal of treated effluent, Purchaser shall inform District of Purchaser's plans and provide

District with a comprehensive assessment of the individual and cumulative effect of Purchaser's

proposed activities on surface water and groundwater quality and such additional information as

District may reasonably require. Purchaser shall provide notice of its proposed plans of renewal,

modification, or amendment to District at least sixty (60) days before Purchaser submits an

application to the Commission or other regulatory authority.

If Purchaser seeks to modify or amend a permit from the Commission or other regulatory

authority to discharge effluent which, in the District's reasonable opinion, degrades the water

quality of District's surface water or ground water, District will notify Purchaser, and the parties

will make reasonable efforts to address or resolve the matter. If the parties are unable to resolve

the issue, District reserves the right to seek remedy up to and including termination of this

Agreement. District may terminate this Agreement, without liability to Purchaser, if a court, or

federal or state regulatory authority with jurisdiction to regulate Purchaser's collection, treatment,

and disposal of wastewater within a District watershed enters an order of any type which includes

an express or implied finding that Purchaser violated applicable statutes, rules, orders, or permits

for a period of four (4) months or for a shorter period if the noncompliance causes an actual or

potential hazard to public health and safety or severe adverse impact on or to the uses of a receiving

stream or of groundwater.

By signing this Agreement, Purchaser consents and authorizes District's employees or

agents exhibiting proper credentials to enter upon Purchaser's premises or other premises under

the control of Purchaser where an effluent source is located or in which any records are required

to be kept under the terms and conditions of Purchaser's permit or the Commission's (or any

successor agency) rules, at any reasonable times, to copy any records required to be kept under the

terms and conditions of Purchaser's permit or the Commission's (or any successor agency) rules,

to inspect any monitoring equipment or monitoring method required in Purchaser's permit or the

Commission's (or any successor agency) rules, to sample any discharge, and to perform an

enforcement and/or operation and maintenance inspection of Purchaser's facility or facilities.

Contemporaneously with the filing by Purchaser of any notifications, self-reporting data,

sludge disposal records, or other records and reports required by the rules, orders, or permits of

the Commission, Purchaser shall deliver a copy of the signed document to District.

Purchaser shall install and maintain adequate safeguards to prevent the discharge of

untreated or inadequately treated wastewater from its collection, treatment, and disposal facilities

during electrical power failures and equipment failures or repairs by means of alternate power

sources, standby generators, adequate spare parts, or retention facilities.

SECTION 14. PAYMENTS BY PURCHASER.

As consideration for the water supply to be provided to Purchaser under this Agreement,

Purchaser agrees to pay District, at the time and in the manner provided by this Agreement,

Purchaser's proportionate share of District's Annual Requirement as determined under the Amendatory Contract. Purchaser's proportionate share shall equal Purchaser's Annual Payment

after adjustment, as described below. Purchaser's Annual Payment shall be calculated as follows:

A. Determination of Annual Payment.

The term "Annual Payment" means the amount of money to be paid to District by Purchaser

during each Annual Payment Period as defined in the Amendatory Contract. An Annual Payment

Period is from October 1 until September 30 of the following year. Purchaser shall make monthly

payments based on actual raw water usage multiplied by the District's Standard Rate as defined in

Section 15 herein, in effect on the first (1st) day of the applicable Annual Payment Period. Payment

and a report of the amount of water used are due by the tenth (10th) day of the following month.

For example, water usage for the month of January should be submitted no later than February

10<sup>th</sup>.

B. Minimum Amount

For the purpose of calculating the minimum amount of each Annual Requirement for which

Purchaser is unconditionally liable, without offset or counterclaim related to this agreement,

Purchaser during each Annual Payment Period shall be deemed to have taken and used the

minimum annual average daily amount of Project water (regardless of whether or not such

amount is or was actually taken or used) specified for Purchaser as follows:

I. During the period commencing with the Effective Date of this Agreement and

ending on September 30, 2025, the minimum amount shall be 0 MGD.

II. Beginning October 1, 2025, and until the Purchaser's diversion of water from the

Project is equal to or greater than 1.47 MGD in an Annual Payment Period, the

minimum amount shall be equal to the greater of:

- a. actual annual use taken from the Project by Purchaser, or
- b. the average annual MGD use actually taken from the Project by Purchaser during the period of the immediately preceding five (5) consecutive Annual Payment Periods.
- III. During the Annual Payment Period where the Purchaser's first diversion of water from the Project is equal to or greater than 1.47 MGD, and during each Annual Payment Period thereafter, the minimum amount shall be equal to the greater of:
  - a. 1.47 MGD (1646.57 acre-feet), or
  - b. the average annual MGD use actually taken from the Project by Purchaser during the period of the immediately preceding five (5) consecutive Annual Payment Periods.

## C. Determination of Adjusted Annual Payment.

The term "Adjusted Annual Payment" means the Annual Payment, as adjusted during or after each Annual Payment Period, as provided by this Agreement. At the close of each Annual Payment Period, District shall determine, with the cooperation of Purchaser, the actual amount of water diverted and used by Purchaser during the Annual Payment Period. District shall calculate Purchaser's Adjusted Annual Payment by multiplying District's audited Standard Rate applicable to the Annual Payment Period in accordance with this Agreement times the greater of either:

I. the actual amount of water diverted and used from the Project expressed in thousands of gallons; or

II. Purchaser's minimum amount of water applicable during the Annual Payment

Period as determined in accordance with this Agreement, expressed in thousands

of gallons.

The difference, if any, between the Annual Payment paid by Purchaser during the Annual

Payment Period and the Adjusted Annual Payment, when determined, shall be applied as a credit

or debit to Purchaser's account with District and shall be credited or debited in one-twelfth (1/12th)

increments to Purchaser's next twelve (12) monthly payments, or as otherwise agreed upon

between District and Purchaser, provided that the total amount of the credit or debit shall be made

within the next twelve (12) months.

D. Dispute.

If Purchaser at any time disputes the amount to be paid by it to District, Purchaser 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 Purchaser should have

been less or more, District shall promptly revise and reallocate Purchaser's Annual Payment in a

manner that Purchaser or District will recover the amount due.

If a court, the Commission, or any federal or state regulatory authority finds that District's

rates or policies for delivering water to Purchaser under this Agreement are unreasonable or

otherwise unenforceable, District has the option to terminate this Agreement without liability to

Purchaser. By signing this Agreement, Purchaser stipulates and agrees that District and its other

customers will be prejudiced if Purchaser avoids the obligation to pay the rates for water specified

in this Agreement while accepting the benefits of obtaining water from District. Nothing in this

Agreement shall be construed as constituting an undertaking by District to furnish water to

Purchaser except pursuant to the terms of this Agreement. If Purchaser initiates or participates in

any proceeding regarding District's rates and policies under this Agreement and advocates a

position that is adverse to District and District prevails, Purchaser shall pay District for its

expenses, including attorneys' fees, in the proceeding within fifteen (15) days after District's

demand for payment. Purchaser stipulates and agrees that the rates and policies specified in this

Agreement at the Effective Date of this Agreement, are just, reasonable, and without

discrimination.

**SECTION 15. RATE.** 

Pursuant to the Amendatory Contract and the discussion below, Purchaser specifically

agrees to pay the rate per 1,000 gallons (U.S. Standard Liquid Measure) of water equal to District's

Standard Rate, which for any given year shall be the rate charged by District to the Initial

Contracting Parties for water sales in effect on the first (1st) day of such year pursuant to Section

4 of the Amendatory Contract.

Failure to pay any payment due District shall be sufficient grounds for District to exercise

any remedy available to District under this Agreement.

**SECTION 16. MEASUREMENT.** 

Purchaser shall provide, operate, maintain, and read meters which shall record water taken

by Purchaser from District at Purchaser's Diversion Point(s). Water shall be measured through

conventional types of approved meter(s). Purchaser shall provide for District's approval the plans

and specifications of the metering equipment and the method for determining the amount of water

diverted from the Project for Purchaser's use. Purchaser shall keep accurate records of all

measurements of water required under this Agreement, and the measuring device(s) and such

records shall be open for District inspection at all times. District shall have access to Purchaser's

metering equipment at all reasonable times. This access shall include authorization for District to

install, inspect, adjust, or test measuring and recording equipment. Upon written request of

District, Purchaser will give District copies of such records or permit District to have access to the

same in Purchaser's office during reasonable business hours. If requested in writing by District and

not more than once in each calendar month, on a date as near the end of such calendar month as

practical, Purchaser shall calibrate its raw water meter(s) in the presence of a District

representative, and District and Purchaser shall jointly observe any adjustments that shall be

necessary. If District shall in writing request Purchaser to calibrate its raw water meter(s),

Purchaser shall give District notice of the time when any such calibration is to be made and, if a

representative of District is not present at the time set, Purchaser may proceed with the calibration

and adjustment in the absence of any representative of District.

If, upon any test of the raw water meter(s), the percentage of inaccuracy of such metering

equipment is found to be in excess of two percent (2%), registration thereof shall be corrected for

a period extending back to the time when such inaccuracy began, if such time is ascertainable. If

such time is not ascertainable, then registration thereof shall be corrected for a period extending

back one-half (1/2) of the time elapsed since the last date of calibration, but in no event further

back than a period of six (6) months. If any meter(s) are out of service or out of repair so that the

amount of water delivered cannot be ascertained or computed from the reading thereof, the water

delivered through the period such meter(s) are out of service or out of repair shall be estimated and

agreed upon by District and Purchaser upon the basis of the best data available, and, upon written

request by District, Purchaser shall install new meter(s) or repair existing meter(s) within a

reasonable time not to exceed one hundred eighty (180) days. Upon Purchaser's refusal to install

new meter(s) or repair existing meter(s) or after one hundred eighty (180) days following District's

request to do so, District, at its option, may install new meters or repair existing meters at

Purchaser's cost. District shall recover its cost of labor and materials by billing Purchaser in twelve

(12) equal monthly installments on or before the tenth (10th) day of each month. If District and

Purchaser fail to agree on the amount of water delivered during such period, the amount of water

delivered may be estimated by:

(a) correcting the error if the percentage of the error is ascertainable by calibration tests or

mathematical calculation; or

(b) estimating the quantity of delivery by deliveries during the preceding periods under

similar conditions when the meter or meters were registering accurately.

All books and records pertaining to this Agreement shall be open and available for copying,

inspection, and audit by District.

SECTION 17. SOURCE AND ADEQUACY OF SUPPLY.

Water supplied by District to Purchaser under this Agreement shall be water stored by

District in the Project and from no other source, unless District, at its sole discretion, decides to

supply water from another source available to District. District will use its best efforts to remain

in a position to furnish raw water sufficient for the reasonable demands of Purchaser. District's

agreement to provide water to Purchaser shall not be deemed a guarantee on District's part that any

particular quantity of water will be available, and the quantity of water taken shall at all times be

subject to the right of District to reduce said quantity of water as District, in its sole judgment, may

deem necessary in order to meet District's commitments under the Amendatory Contract, comply

with any order of any court or administrative body having appropriate jurisdiction, reduce

flooding, or prevent injury.

District has adopted a Water Conservation and Drought Contingency and Emergency

Demand Management Plan. With respect to water provided to Purchaser under this agreement, if

Purchaser fails to implement District's and its own emergency demand management plans when

trigger conditions occur, District's General Manager is authorized to institute rationing pursuant to

the Amendatory Contract and any other applicable wholesale water contracts, including this

Agreement, as well as to enforce any contractual, statutory, or common law remedies available to

District necessary to protect the public welfare. District water made available to Purchaser when

Purchaser is not in compliance with District's Water Conservation and Drought Contingency and

Emergency Demand Management Plan will be reduced to the amount of water that District's

General Manager estimates would be necessary to satisfy Purchaser's demand if Purchaser was

operating in compliance with both District's and Purchaser's emergency demand management

plans.

District's rights to maintain and operate the reservoirs owned or used by District and its

water transportation facilities and at any and all times in the future to impound and release waters

thereby in any lawful manner and to any lawful extent District may see fit is recognized by

Purchaser, and, except as otherwise provided herein, there shall be no obligation hereunder upon

District to release or not to release any impounded waters at any time or to maintain any waters at

any specified level.

Purchaser acknowledges that the delivery of water to Purchaser through District's pipelines

is subject to and dependent on adequate pipeline operational capacity and efficiency. Therefore,

Purchaser agrees to maintain sufficient storage or an alternative supply of raw water to supply

Purchaser's demand for raw water without taking water under this Agreement for a period of sixty

(60) days.

### SECTION 18. ADDITIONAL SOURCE OF SUPPLY

If, at any time during the term of this Agreement, the District is or will become unable to supply all of the raw water requirements of Purchaser for any reason and Purchaser determines that it is necessary to procure or use raw water from sources other than the District, then Purchaser shall give written notice to District of its intention and desire to procure raw water from sources other than District. Within thirty (30) days of the receipt by District of such written notice, District shall advise Purchaser in writing whether it agrees that Purchaser should procure raw water from sources other than District. In the event that District agrees that it is necessary for Purchaser to procure raw water from other sources, Purchaser may proceed to procure such raw water from other sources at its sole cost, and without any liability for damages accruing in favor of or against District by reason thereof. If Purchaser procures water additional to that supplied by District under this Agreement, then Purchaser shall nevertheless continue to take from District and pay for all raw water thereafter available to Purchaser from the Project up to the full raw water requirements of Purchaser. If District disagrees with Purchaser's written notice concerning the adequacy of the supply of raw water to be furnished by District, then District, within said thirty (30) day period, shall so advise Purchaser and the Advisory Committee (a body created under the Amendatory Contract) and thereafter the Advisory Committee shall make its recommendations to the parties within sixty (60) days after receipt of such notice. Purchaser shall at all times have the right to secure water from any possible source in an emergency when District is unable to deliver water from the Project for reasons described in the force majeure clause of this Agreement.

### **SECTION 19. PLEDGE OF REVENUE**

Purchaser represents and covenants that all payments to be made by it under this Agreement shall constitute reasonable and necessary "operating expenses" of its system as defined in Tex. Gov't. Code Ann. §§ 1502.056-.058 (Vernon 2000), and that all such payments will be

made from the revenues of its water system. Purchaser represents and has determined that the

water supply to be obtained from the Project is absolutely necessary and essential to the present

and future operation of its water system and is the only available and adequate source of supply of

water. Accordingly, all payments required by this Agreement to be made by Purchaser shall

constitute reasonable and necessary operating expenses of Purchaser's system or systems as

described above, and the obligation to make such payments from revenues of such system or

systems shall have priority over any obligation to make any payments from such revenues, whether

of principal, interest, or both, with respect to all bonds heretofore or hereafter issued by Purchaser.

Purchaser agrees throughout the term of this Agreement to continuously operate and

maintain its water system and to fix and collect such rates and charges for water services to be

supplied by its water system as will produce revenues in an amount equal to at least (i) all of its

payments under this Agreement and (ii) all other amounts as required by the provisions of the

ordinances or resolutions authorizing its revenue bonds or other obligations now or hereafter

outstanding.

Unless otherwise specifically provided in writing by subsequent agreement between

District and Purchaser, District shall never have the right to demand payment by Purchaser of any

obligation assumed or imposed on it under this Agreement from funds raised or to be raised by

taxation, it being expressly understood by District and Purchaser that all payments due by

Purchaser are to be made from the revenues and income received by Purchaser from the ownership

and operation of its water system.

**SECTION 20. RAW WATER QUALITY.** 

The water which district offers to sell to Purchaser is non-potable, raw, and untreated.

Purchaser has satisfied itself that such water is suitable for its needs. District expressly disclaims

any warranty as to the quality of the raw water or suitability of the raw water for its intended

purpose. District expressly disclaims the warranties of merchantability and fitness. Purchaser

agrees that any variation in the quality or characteristics of the raw water offered for sale as

provided by this agreement shall not entitle purchaser to avoid or limit its obligation to make

payments provided for by this agreement. There are no warranties which extend beyond the

description contained in this agreement.

**SECTION 21. RETURN FLOWS.** 

Purchaser acknowledges that some of the water supplied to it by District may be returned

to watercourses in the Trinity River Basin as return flows, which for purposes of this Agreement,

are termed System Return Flows. District and Purchaser believe that the most economical means

for meeting some of the future demands of District's customers may involve the use of return flows

to extend or enhance the yield of the System. In this regard, District will, with Purchaser's

cooperation, study the potential benefits to the System that can be realized through the use of return

flows. In anticipation that District will determine that use of return flows is both feasible and

economical, Purchaser agrees that, other than for purposes of liability, District retains title to all

system water, and has the right, subsequent to Purchaser's use of System water, to make whatever

reuse of the water District deems necessary. Purchaser will receive no compensation, credit, or

offset for making System Return Flows available to District.

To the extent that Purchaser resells Project water to others, Purchaser shall include

language in any contract for resale of Project water assigning System Return Flows to the District

and requiring cooperation with the District in making System Return Flows available to District.

Similarly, to the extent that Purchaser does not treat its wastewater, Purchaser shall include

language in any wastewater treatment contract assigning System Return Flows to District and

requiring cooperation with District in making System Return Flows available to District. Neither

Purchaser nor its customers will be entitled to consideration or credit of any type, either in

exchange of water, money, or other consideration, for the System Return Flow assigned back to

the District.

Use of System Return Flows by Purchaser initiated prior to the effective date of this

Agreement are exempt from this section provided Purchaser provides the District with plans and

specifications of the existing reuse project and any other information reasonably requested by the

District within ninety days of the effective date of this Agreement. If Purchaser proposes to engage

in a new reuse project using System Return Flows, it shall provide the District with sufficient

information to allow the District to evaluate whether the proposed reuse project will significantly

increase the water rate for District customers or decrease the yield of the District Reuse Project.

Subsequent to evaluation by the District, the project will be approved by the District unless the

District determines that the project will increase the District's water rates or decrease the yield of

the District Reuse Project without a corresponding decrease in the demand for raw water from the

District.

**SECTION 22. TITLE.** 

Title for liability purposes to all water supplied hereunder to Purchaser shall be in District

up to the Point(s) of Delivery, at which point title for liability purposes shall pass to Purchaser.

While title for liability purposes remains in a party, to the greatest extent allowed by law, that party

hereby agrees to save and hold the other party harmless from all claims, demands, and causes of

action which may be asserted by anyone on account of the transportation and delivery of said

water.

# **SECTION 23. OTHER CHARGES.**

In the event that any sales or use taxes, or taxes, assessments, or charges of any similar nature, are imposed on diverting, storing, delivering, gathering, impounding, taking, selling, using, or consuming the water received by Purchaser from the Project, the amount of the tax, assessment, or charge shall be borne by Purchaser, in addition to all other charges, and whenever District shall be required to pay, collect, or remit any tax, assessment, or charge on water received by Purchaser, then Purchaser shall promptly pay or reimburse District for the tax, assessment, or charge in the manner directed by District.

# **SECTION 24. DEFAULT IN PAYMENTS.**

All amounts due and owing to District by Purchaser shall, if not paid when due, bear interest at the interest rate set out out in the STATE OF TEXAS PROMPT PAYMENT ACT, TEXAS GOVERNMENT CODE, CHAPTER 2251, or any successor statute, from the date when due until paid, provided that such rate shall never be usurious or exceed the maximum rate permitted by law. If any amount due and owing by Purchaser to District is placed with an attorney for collection, Purchaser shall pay to District, in addition to all other payments provided for by this Agreement, including interest, District's collection expenses, including court costs and attorneys' fees. District shall, to the extent permitted by law, suspend delivery of water from the Project to Purchaser if Purchaser remains delinquent in any payments due hereunder for a period of sixty (60) days and shall not resume delivery of water while Purchaser is so delinquent and may, at its option, terminate this Agreement without further liability to Purchaser. District shall pursue all legal remedies against Purchaser to enforce and protect the rights of District, District customers, and the holders of District's bonds. It is understood that the foregoing provisions are for the benefit of the holders of District's bonds.

### **SECTION 25. TERMINATION.**

If District decides to terminate this Agreement, as provided by this Agreement, District shall deliver written notice of the decision to Purchaser. Purchaser shall discontinue taking water from District or its facilities and physically seal Purchaser's diversion facilities within one hundred eighty (180) days after District delivers written notice to Purchaser.

# **SECTION 26. WAIVER AND AGREEMENT.**

Failure to enforce or the waiver of any provision of this Agreement or any breach or nonperformance by District or Purchaser shall not be deemed a waiver by Purchaser or District of the right in the future to demand strict compliance and performance of any provision of this Agreement. Regardless of any provision contained in this Agreement to the contrary, any right or remedy or any default under this Agreement, except the right of District to receive the Annual Payment which shall never be determined to be waived, shall be deemed to be conclusively waived unless asserted by a proper proceeding at law or in equity within two (2) years plus one (1) day after the occurrence of the default.

No officer or agent of District or Purchaser is authorized to waive or modify any provision of this Agreement. No modifications to or rescission of this Agreement may be made except by a written document signed by District's and Purchaser's authorized representatives.

### **SECTION 27. REMEDIES.**

It is not intended hereby to specify (and this Agreement shall not be considered as specifying) an exclusive remedy for any default, but all such other remedies (other than termination) existing at law or in equity may be availed of by any party hereto and shall be cumulative. Recognizing, however, that 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 specific performance, in addition to any other legal or equitable remedies (other than termination) which also may be available to District.

### **SECTION 28. INDEMNITY.**

BY SIGNING THIS AGREEMENT, PURCHASER AGREES, ON BEHALF OF ITSELF AND ITS SUCCESSORS AND ASSIGNS, THAT IT RELINQUISHES AND DISCHARGES AND WILL, TO THE FULLEST EXTENT PERMITTED BY LAW, DEFEND, PROTECT, INDEMNIFY, AND HOLD HARMLESS DISTRICT AND DISTRICT'S OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND CONSULTANTS FROM AND AGAINST ALL CLAIMS, LOSSES, EXPENSES, COSTS, DAMAGES, DEMANDS, JUDGMENTS, CAUSES OF ACTION, SUITS, AND LIABILITY IN TORT, CONTRACT OR ANY OTHER BASIS AND OF EVERY KIND AND CHARACTER WHATSOEVER (INCLUDING BUT NOT LIMITED TO ALL COSTS OF DEFENSE, SUCH AS FEES AND CHARGES OF ATTORNEYS, EXPERT WITNESSES, AND OTHER PROFESSIONALS INCURRED BY DISTRICT AND ALL COURT OR ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS) ARISING OUT OF OR INCIDENT TO, DIRECTLY OR INDIRECTLY, THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY SUCH CLAIM FOR BODILY INJURY, DEATH, PROPERTY DAMAGE, CONSEQUENTIAL DAMAGE, OR ECONOMIC LOSS AND ANY CLAIM THAT MAY ARISE IN CONNECTION WITH THE QUALITY, QUANTITY, USE, MISUSE, IMPOUNDMENT, DIVERSION, TRANSPORTATION, AND MEASUREMENT OF PROJECT WATER AND ANY CLAIM THAT MAY ARISE AS A RESULT OF INSTALLATION, INSPECTION, ADJUSTING, OR TESTING OF MEASURING AND RECORDING EQUIPMENT INVOLVING PURCHASER'S DIVERSION OF DISTRICT WATER, AS WELL AS ANY CLAIM THAT MAY ARISE FROM ANY CONDITION OF PURCHASER'S FACILITIES, SEPARATE OPERATIONS BEING CONDUCTED ON PURCHASER'S FACILITIES, OR THE IMPERFECTION OR DEFECTIVE CONDITION, WHETHER LATENT OR PATENT, OF ANY MATERIAL OR EQUIPMENT SOLD, SUPPLIED, OR FURNISHED BY DISTRICT. THIS INDEMNIFICATION AND RELEASE SHALL SURVIVE TERMINATION OR EXPIRATION OF THE AGREEMENT.

### **SECTION 29. FORCE MAJEURE.**

If, for any reason of force majeure, either District or Purchaser shall be rendered unable, wholly or in part, to carry out its obligation under this Agreement, other than the obligation of Purchaser to make the payments required under the terms of this Agreement, then if the party shall give notice of the reasons in writing to the other party within a reasonable time after the occurrence of the event or cause relied on, the obligation of the party giving the notice, so far as it is affected by the "force majeure," shall be suspended during the continuance of the inability then claimed, but for no longer period. The term "force majeure," as used in this Agreement, shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemy, orders or actions of any kind of government of the United States or of the State of Texas, or any civil or military authority, insurrections, riots, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, explosions, breakage or accident to dams, machinery, pipelines, canals, or other structures, partial or entire failure of water supply, including pollution (accidental or intentional), and any inability on the part of District to deliver water, or of Purchaser to receive water, on account of any other cause not reasonably within the control of the party claiming the inability.

# **SECTION 30. NON-ASSIGNABILITY.**

Purchaser understands and agrees that any assignment of rights or delegation of duties under this Agreement is void without the prior written consent of District. Such written consent shall not be unreasonably delayed, withheld, or denied.

### **SECTION 31. NO THIRD-PARTY BENEFICIARIES.**

This Agreement shall inure only to the benefit of the parties hereto and third persons not privy hereto shall not, in any form or manner, be considered a third-party beneficiary of this Agreement. Each party hereto shall be solely responsible for the fulfillment of its customer contracts or commitments, and District shall not be construed to be responsible for Purchaser's contracts or commitments by virtue of this Agreement or any provision contained herein.

### SECTION 32. RELATIONSHIP OF THE PARTIES.

This Agreement is by and between District and Purchaser and is not intended, and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association as between District and Purchaser nor between District and any officer, employee, contractor, or representative of Purchaser. No joint employment is intended or created by this Agreement for any purpose. Purchaser agrees to so inform its employees, agents, contractors, and subcontractors who are involved in the implementation of or construction under this Agreement.

# **SECTION 33. SOLE AGREEMENT.**

Except for the Amendatory Contract, this Agreement constitutes the sole and only agreement of Purchaser and District and supersedes any prior understanding or oral or written agreements between District and Purchaser respecting the subject matter of this Agreement, including any oral or written agreement with District that Purchaser obtained by assignment.

### **SECTION 34. SEVERABILITY.**

The provisions of this Agreement are severable, and if, for any reason, any one or more of the provisions contained in this Agreement shall be held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall remain in effect and be construed as if the invalid, illegal, or unenforceable provision had never been contained in the Agreement.

### **SECTION 35. NOTICES.**

All notices, payments, and communications (collectively "notices") required or allowed by this Agreement shall be in writing and be deemed to have been given and received (a) by hand-delivery or courier; or (b) on the third business day after depositing the notice in the United States mail, postage prepaid, registered or certified, with return receipt requested, and addressed to the party to be notified; or (c) when sent by email to RawWaterContracts@trwd.com and upon the receipt by the Purchaser of written confirmation by the District; provided, however, that an automated email confirmation of delivery or read receipt shall not constitute such confirmation. Each party will be entitled to assume, in the absence of any knowledge to the contrary, that any person signing any notice or other written communication issued in respect of this Agreement on behalf of a party is an Authorized Person of that party. Either party may change its physical or email address by giving written notice of the change to the other party at least fifteen (15) days before the change becomes effective.

### **SECTION 36. PLACE OF PERFORMANCE.**

All acts performable under the terms of this Agreement and all amounts due under this Agreement, including but not limited to payments due under this Agreement or damages for the breach of this Agreement, shall be paid and be due in Tarrant County, Texas, said Tarrant County, Texas, being the place of performance agreed to by the parties to this Agreement. In the event that any legal proceeding is brought to enforce this Agreement or any provision hereof, the same shall be brought in Tarrant County, Texas or the appropriate Federal District Court.

### **SECTION 37. APPROVAL OF CONTRACTS**

The Parties recognize that to attain certain goals of this Agreement several of its provisions must be included in contracts that Purchaser will execute with its wholesale customer(s) or incorporated into that contract by reference. Purchaser agrees that any contract between Purchaser

and any other party will incorporate this Agreement by reference; will include a provision allowing

for all or part of Purchaser's interest in such contract to be assigned to District; and will, in

conjunction with Purchaser's liability under this Agreement, constitute an unconditional obligation

to make the payments to District required under this Agreement. Purchaser hereby agrees that no

contract will be offered to a customer or potential customer of Purchaser until the contract has

been reviewed and approved by District. District agrees that approval will not be unreasonably

withheld for any reason other than non-compliance with the requirements of this Agreement

including this section or non-compliance with the requirements of the Amendatory Contract.

**SECTION 38. DUPLICATE ORIGINALS.** 

Purchaser and District, acting under the authority of their respective governing bodies, shall

authorize the execution of this Agreement in several counterparts, each of which shall be an

original.

**SECTION 39. NO WAIVER OF SOVEREIGN IMMUNITY** 

No statement or clause in this Agreement should be construed to limit or waive the

sovereign or governmental immunity of either party.

Each party represents and warrants that the person or persons executing this Agreement

has the legal authority to do so on behalf of their respective party, and that such binding authority

has been granted by proper order, resolution, ordinance, or other authorization of the entity. The

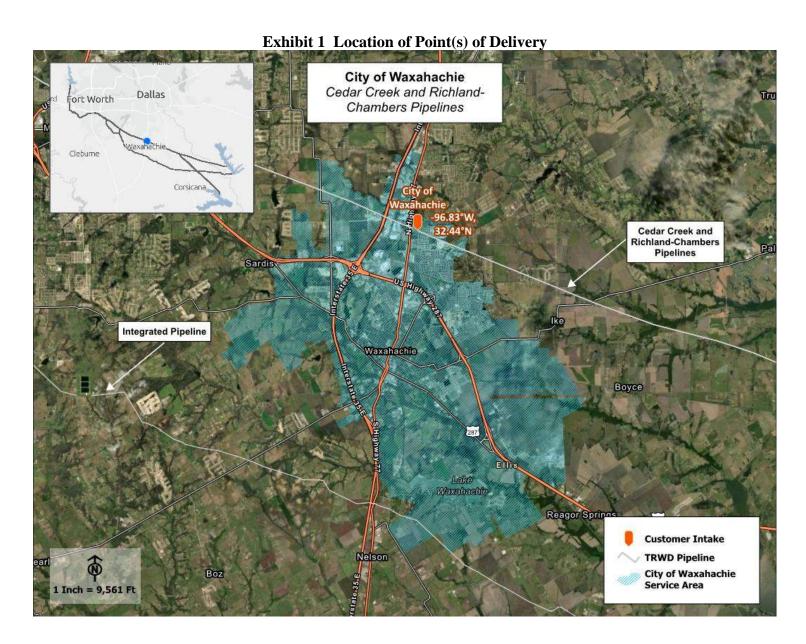
other party is fully entitled to rely on this warranty and representation in entering into this

Agreement.

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

# TARRANT REGIONAL WATER DISTRICT, A Water Control and Improvement District 800 East Northside Drive Fort Worth, TX 76102-1016 Attn.: General Manager

BY:
Dan Buhman
General Manager
DATE:
City of Waxahachie 408 S. Rogers Street Waxahachie, TX, 75168 Attn: City Manager
BY: Michael Scott City Manager
DATE:



# **Exhibit 2 TRA Consent and Acknowledgement**

# CONSENT AND ACKNOWLEDGMENT BY TRINITY RIVER AUTHORITY OF TEXAS

Trinity River Authority of Texas ("TRA") hereby consents and acknowledges that the City of Waxahachie ("Waxahachie") and Tarrant Regional Water District ("District") wish to enter into a direct contractual relationship ("2025 Direct Contract") that will release Waxahachie and their customer Nash-Forreston from the obligations of the 1991 & 1993 Agreements described in the 2025 Direct Contract. Such Consent and Acknowledgement becomes effective on the same date as the 2025 Direct Contract.

TRA consents and acknowledges that releasing Waxahachie and their customer Nash-Forreston from the 1991 & 1993 Agreements will extinguish any and all rights and claims TRA has to the water assigned to Waxahachie and Nash-Forreston under said Agreements, and that District shall be permitted to utilize the associated raw water for any purpose whatsoever including but not limited to municipal use, non-municipal use, industrial use, domestic use, or for any other type of use or resale to any third party.

TRA warrants and represents that (1) it is not aware of any default or breach by Waxahachie or Nash-Forreston relative to the 1991 & 1993 Agreements, (2) the 1991 & 1993 Agreements remain in full force and effect and (3) there are no sums due TRA from Waxahachie or Nash-Forreston in connection with the 1991 & 1993 Agreements.

TRA warrants and represents that the person executing this Consent and Acknowledgement has the legal authority to do so on behalf of TRA, and that such binding authority has been granted by proper order, resolution, ordinance, or other authorization of the entity. District is fully entitled to rely on this warranty and representation.

TRINITY RIVER AUTHORITY

5300 S. Collins St.

Arlington, Texas 76018 Attn: General Manager

D...

J. Kevin Ward

General Manager

Date:

# Tarrant Regional Water District Additional Party Contract (APC) - Industrial

FREESTONE POWER GENERATION, LLC RICHLAND CHAMBERS RESERVOIR

# **TABLE OF CONTENTS**

RECITALS	1
AGREEMENT	3
SECTION 1. Amendatory Contract	3
SECTION 2. Permits for Construction	3
SECTION 3. Term.	3
SECTION 4. Volume	4
SECTION 5. Point(s) of Delivery	5
SECTION 6. Facilities for Diverting Water.	5
SECTION 7. Purpose and Place of Use.	6
SECTION 8. Losses	7
SECTION 9. Texas Commission on Environmental Quality Rules	7
SECTION 10. Regulatory Requirements	8
SECTION 11. Water Conservation Plans.	8
SECTION 12. Water Quality.	9
SECTION 13. Payments by Purchaser.	10
A. Determination of Annual Payment.	10
B. Minimum Amount.	10
C. Determination of Adjusted Annual Payment.	11
D. Dispute.	12
SECTION 14. Rate.	13
SECTION 15. Measurement.	13
SECTION 16. Source and Adequacy of Supply	15
SECTION 17. Raw Water Quality	16
SECTION 18. Return Flows.	16
SECTION 19. Title.	17
SECTION 20. Other Charges.	18
SECTION 21. Default in Payments.	18
SECTION 22. Termination.	19
SECTION 23. Waiver and Agreement.	19
SECTION 24. Remedies.	19
SECTION 25. Indemnity.	20
SECTION 26. Force Majeure.	21
SECTION 27. Non-Assignability	22

SECTION 28. No Third-Party Beneficiaries	22
SECTION 29. Relationship of the Parties	22
SECTION 30. Sole Agreement	22
SECTION 31. Severability.	23
SECTION 32. Notices.	23
SECTION 33. Place of Performance.	24
SECTION 34. Duplicate Originals	24
Exhibit 1 Location of Point of Delivery & Service Area	26

THE STATE OF TEXAS \$ INDUSTRIAL \$ COUNTY OF TARRANT \$ ADDITIONAL PARTY CONTRACT

This Additional Party - Industrial Contract ("Agreement") is made and entered into by and between **TARRANT REGIONAL WATER DISTRICT**, a Water Control and Improvement District ("District"), a conservation and reclamation district and political subdivision of the State of Texas, and **FREESTONE POWER GENERATION**, **LLC** ("Purchaser").

# **RECITALS**

- 1. District owns or has the right to use and sell water from the System as defined in that certain contract between District and the City of Fort Worth, City of Arlington, City of Mansfield, and Trinity River Authority of Texas, dated September 1, 1982 ("Amendatory Contract"). For purposes of this Agreement, the "Project" is defined as Richland Chambers Reservoir and the sale of water to Purchaser, in addition to being subject to the Amendatory Contract, is also subject to the provisions of Certificate of Adjudication Number(s) 08-5035.
- 2. Purchaser wants to purchase, and District is willing to sell, raw water from the Project subject to the terms and conditions of this Agreement.
- 3. Purchaser will divert and use water from the Project, to supply water for an existing 1,100 megawatt (nominal) electric generation facility (the "Plant") and a new 435 megawatt (nominal) electric generation facility located at the Freestone Energy Center, located in Fairfield, Texas subject to all applicable rules and regulations of District and state and federal agencies.

Agreement for District to supply raw water ("2000 Agreement") to Freestone Power Generation, L.P via TRA which was Amended on November 16, 2001 ("2001 First

Amendment"). This new Agreement supercedes the 2000 Agreement and 2001

On December 5, 2000 District and Trinity River Authority (TRA) entered into an

Amendment and creates a direct contractual relationship between District and Purchaser.

5. On December 1, 2010, Purchaser assigned 25% (1,680 AFY) of its rights under the 2000

Agreement to Rayburn County Electric Cooperative ("Assignment"). That Assignment

remains in full force and effect and is not intended to be impacted by this Agreement. The

District does not object to a similar assignment of this Agreement in the future, provided it

is given notice of said Assignment and is given the opportunity to review and approve,

subject to the requirements of Section 27, herein.

**6.** District recognizes Purchaser, or an affiliate, is in the process of building the 435 megawatt

(nominal) Pin Oak Creek Energy Center ("Pin Oak Facility") on Purchaser's property and

Purchaser will provide water from this Agreement pursuant to a shared services agreement,

which will address such matters as the supply of services, commodities, and water to the

Pin Oak Facility and allocation of costs and payments, and District approves of such

provision and use of water by the Pin Oak Facility. Purchaser agrees that providing water

to other Purchaser-owned facilities requires District notification per the terms of this

Agreement.

4.

7. Purchaser recognizes that a sale, assignment, or change in ownership of all or part of any

facilities that utilize or receive water under this agreement requires notification to the

District.

# **AGREEMENT**

For and in consideration of the mutual promises, covenants, obligations, and benefits described in this Agreement, District and Purchaser agree as follows:

### **SECTION 1. AMENDATORY CONTRACT**

This Agreement is entered into pursuant to Section 3(B)(a) of the Amendatory Contract, and the rights and obligations of District and Purchaser under this Agreement shall be subject to, and be interpreted consistent with, the terms and conditions of the Amendatory Contract. The Amendatory Contract is incorporated into this Agreement by reference as if quoted verbatim in this section. The Initial Contracting Parties (as identified in the Amendatory Contract) shall, within the limits permitted by law, have absolute priority over Purchaser's right to purchase water from District in accordance with this Agreement.

### **SECTION 2. PERMITS FOR CONSTRUCTION**

Purchaser may have to obtain federal, state, and local permits or easements to construct and maintain, at Purchaser's expense, a raw water intake structure. It is Purchaser's responsibility to obtain and comply with any such permit or easement. Failure to obtain or comply with such permit or easement under this section may, at District's sole discretion, be grounds for terminating this Agreement without liability to Purchaser. Purchaser specifically recognizes that it will have to apply for and be granted a permit or easement to construct and maintain a raw water intake structure on land and water owned and controlled by District. When granted by District, this permit will be incorporated into this Agreement by reference as if quoted verbatim in this section.

# SECTION 3. TERM.

This Agreement shall be effective on the date it is signed by District's authorized representative ("Effective Date"), as shown on the signature page of this Agreement, and shall

continue in effect for a period of twenty (20) years from the effective date unless this Agreement

is terminated sooner because the Amendatory Contract is terminated, District and Purchaser both

agree to terminate this Agreement, or this Agreement is terminated pursuant to its terms. District

agrees that Purchaser can extend the contract for up to two (2) additional five (5)-year terms by

notifying District prior to two (2) years prior to the expiration of the preceding term. At the end

of the contract term and extension options, Purchaser has the option and responsibility to request

a renewal contract, in writing, 12 months prior to expiration of this Agreement. Such written

approval shall not be unreasonably delayed, withheld, or denied. Purchaser acknowledges that the

Project's primary purpose is to provide water for municipal water supply, that this Agreement is a

surplus water contract and subordinate to the rights of the Initial Contracting Parties as those terms

are defined in the Amendatory Contract, and that this Agreement shall be of no effect and that

Purchaser shall have no entitlement to water after the expiration or termination of this Agreement.

**SECTION 4. VOLUME.** 

Subject to the limitations and conditions described in this Agreement, the Amendatory

Contract, Certificate of Adjudication Number(s) 08-5035, District agrees to sell Purchaser up to

6,722 acre-feet per annum of raw water from the Project at the Point(s) of Delivery described in

this Agreement. The average volume to be furnished will be determined, in part, by past usage and

future quantities that District will review periodically. District may request updated usage

projections and Purchaser is required to provide the same within a timely manner. Purchaser may

not divert more than 6,722 acre-feet in an Annual Payment Period, as defined in Section 14,

without prior written approval of District.

### **SECTION 5. POINT(S) OF DELIVERY.**

Purchaser's raw water will be delivered from the Project at the Point of Delivery herein established. A vicinity map showing the Point of Delivery is attached as Exhibit 1 to this Agreement. Purchaser shall provide the location of the Point of Delivery in Digital Format, which for purposes of this Agreement means in GIS format (shapefile, geodatabase) or Google Earth format (KMZ, KML), projected to the following Tarrant Regional Water District data standards: Projection: Lambert Conformal Conic, Coordinate System: Texas State Plane, Zone 5351, Units: Feet, Datum: NAD83. The diversion shall be accomplished by facilities with a maximum combined diversion rate of 9,000 gallons per minute. Purchaser shall provide, at Purchaser's expense, the facilities required to divert and transport raw water to Purchaser's place of treatment and/or use. If Purchaser wishes to add or change the location of a Point of Delivery, Purchaser shall deliver to District the location of the proposed additional or relocated Point of Delivery in Digital Format and on a reproducible vicinity map with a graphic description of the location of the proposed additional or relocated Point of Delivery. Upon District's written approval of the additional or relocated Point of Delivery, this Agreement will be modified by attaching the map to this Agreement as an exhibit. Upon filing this Agreement, as modified, with the Texas Commission on Environmental Quality or its successor agency (Commission), the modification shall become effective upon regulatory approval of the location of the additional or relocated Point of Delivery.

### **SECTION 6. FACILITIES FOR DIVERTING WATER.**

The detailed plans and specifications for such facilities shall be submitted to District and approved by District in writing before such facilities are installed, and any changes thereafter made in the nature, type, or location of such facilities shall be made only after District's prior written approval. In addition, Purchaser shall provide plans and specifications to District in Digital Format.

All facilities and property of Purchaser used by Purchaser or relating to the use or diversion

of the water contemplated by this Agreement are subject to water damage by reason of their

location near a raw water transmission system owned or used by District. Purchaser acknowledges

the possibility of water damage and assumes the risk of such an occurrence. To the greatest extent

allowed by law, Purchaser will hold District harmless for any claims asserted by Purchaser or by

others growing out of the operation by Purchaser of the facilities used and employed by it in

connection with this Agreement.

Purchaser agrees that its use of the facilities to be constructed under this Agreement, if any,

and its operations under this Agreement shall not cause or in any way result in the pollution of

reservoirs and other water bodies within District Watersheds. District Watersheds are defined as

areas that drain, either directly or indirectly, into a reservoir owned, controlled, or used by District,

or watercourses that are used by District in providing water to its customers. Purchaser agrees to

correct any practice of Purchaser which District deems likely to result in such pollution within

thirty (30) days from the receipt by Purchaser of written notice from District to do so.

SECTION 7. PURPOSE AND PLACE OF USE.

Purchaser shall use raw water purchased from District under this Agreement for generating

electricity and ancillary domestic use only and within the area shown by the vicinity map attached

as Exhibit 1 to this Agreement. In addition, Purchaser shall notify District of changes to

Purchaser's water use areas by providing said changes in Digital Format. Upon receipt of said

changes, this Agreement will be modified with an Amendment to include a vicinity map with the

added territory.

Purchaser may not use water originating from District outside the boundary of the District

service area without prior written approval of District. Such written approval shall not be

Tarrant Regional Water District Additional Party - Industrial Contract unreasonably delayed, withheld, or denied. If Purchaser wishes to extend its territory outside the

boundary of the District's service area, Purchaser shall deliver to District a reproducible vicinity

map that shows the proposed added territory. Upon approval by the District, this Agreement will

be modified with an Amendment to include the approved vicinity map as Exhibit 1. Upon filing

this Agreement, as modified, with the Commission, and providing District the changed information

in Digital Format, Purchaser may use the water within the added territory.

Purchaser shall not sell or permit others to use the water purchased under this Agreement

without the prior written approval of District.

SECTION 8. LOSSES.

If Purchaser's diversion, now or in the future, requires a release of water from a District

reservoir or pipeline, District agrees to bear the cost of transportation and evapotranspiration losses

incident to the downstream sale of water from the reservoir or pipeline to Purchaser's point of

diversion of water.

SECTION 9. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

**RULES.** 

The effectiveness of this Agreement is dependent upon District and Purchaser complying

with the rules of the Commission, specifically including the rules codified as Texas Administrative

Code, Title 30, §§ 295.101 and 297.101-.108 as of the effective date of this Agreement. Purchaser

will file a signed copy of this Agreement with the Executive Director of the Commission as

required by the rules of the Commission. Purchaser may continue diverting raw water from the

Project unless Purchaser has received written notification from the Commission that a copy of this

Agreement has been received by the Commission but not accepted for filing. If this Agreement

was not accepted for filing by the Commission, Purchaser will notify District within ten (10)

business days. Purchaser shall submit written reports to the Commission as required by

Commission rules, with a copy to District, on forms provided by the Commission, indicating the

total amount of water taken under this Agreement each month. Purchaser also shall submit to

District written reports each month indicating the total amount of water diverted under this

Agreement each month.

SECTION 10. REGULATORY REQUIREMENTS.

This Agreement is subject to all applicable federal, state, and local laws and any applicable

ordinances, rules, orders, and regulations of any local, state, or federal governmental authority

having jurisdiction. However, nothing contained in this Agreement shall be construed as a waiver

of any right to question or contest any law, ordinance, order, rule, or regulation in any forum having

jurisdiction, and District and Purchaser each agree to make a good faith effort to support proposed

laws and regulations which would be consistent with the performance of this Agreement in

accordance with its terms.

SECTION 11. WATER CONSERVATION PLANS.

Purchaser shall cooperate with and assist District in its efforts 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. District's obligations

under this Agreement shall be subject to Purchaser preparing and implementing a water

conservation plan or water conservation measures, as well as implementing any water conservation

plans and drought contingency plans adopted by District and required or approved by the

Commission, the Texas Water Development Board, or any other federal, state, or local regulatory

authority with power to require or approve water conservation and drought contingency plans.

Prior to the execution of this agreement, Purchaser shall submit to the District its water

conservation plan or water conservation measures and update the water conservation plan every

five years in accordance with Commission guidelines or more often as requested in writing by the

District.

If District authorizes Purchaser to resell District water, Purchaser shall require through a

contract condition that any successive user of District water must implement water conservation

measures that comply with the State's, District's, and Purchaser's water conservation plans,

programs, and rules.

**SECTION 12. WATER QUALITY.** 

Purchaser shall cooperate with and assist District in its efforts to develop and implement

plans, programs, and rules to maintain and improve the quality of the water flowing into or

impounded within reservoirs owned or used by District; to maintain the existing uses of the water

impounded in reservoirs owned or used by District for public water supply, contact recreation, and

high quality aquatic habitat; and to decrease the effects of eutrophication and siltation upon the

storage capacity and uses of reservoirs owned or used by District. Such plans, programs, and rules

may include, but are not limited to, matters involving water conservation; water quality;

construction, operation, and regulation of wastewater collection, treatment, and disposal facilities;

siting and operation of solid waste transfer and disposal facilities; non-point source pollution

control; generation, storage, transportation, and disposal of hazardous substances; sedimentation

due to construction activities; improper farming practices; and highly erodible soil.

### **SECTION 13. PAYMENTS BY PURCHASER.**

As consideration for the water supply to be provided to Purchaser under this Agreement, Purchaser agrees that beginning with the Annual Payment Period commencing on October 1, 2024, Purchaser's Annual Payment shall be calculated as follows:

# A. Determination of Annual Payment.

The term "Annual Payment" means the amount of money to be paid to District by Purchaser during each Annual Payment Period as defined in the Amendatory Contract. An Annual Payment Period is from October 1 until September 30 of the following year. Purchaser shall make monthly payments based on actual raw water usage multiplied by the District's Standard Rate as defined in Section 14 herein, in effect on the first (1st) day of the applicable Annual Payment Period. Payment and a report of the amount of water used are due by the tenth (10th) day of the following month. For example, water usage for the month of January should be submitted no later than February  $10^{th}$ .

### B. Minimum Amount.

For the purpose of calculating the minimum amount of each Annual Requirement for which Purchaser is unconditionally liable, without offset or counterclaim, Purchaser, during each Annual Payment Period, shall be deemed to have taken and used the minimum annual average daily amount of Project water (regardless of whether or not such amount is or was actually taken or used) specified for Purchaser as follows:

During the period commencing on October 1, 2025 and during each Annual Payment Period thereafter, an amount for Purchaser, expressed in MGD, equal to the greater of:

a. 4.5 MGD or

b. the average annual MGD use actually taken from the Project by Purchaser

during the period of the immediately preceding five (5) consecutive Annual

Payment Periods. Until the water use for five (5) consecutive Annual Payment

Periods has been established, the average annual MGD use actually taken from

the Project will be the average of water use from the Project in the preceding

Annual Payment Periods.

C. Determination of Adjusted Annual Payment.

The term "Adjusted Annual Payment" means the Annual Payment, as adjusted during or

after each Annual Payment Period, as provided by this Agreement. At the close of each Annual

Payment Period, District shall determine, with the cooperation of Purchaser, the actual amount of

water diverted and used by Purchaser during the Annual Payment Period. District shall calculate

Purchaser's Adjusted Annual Payment by multiplying the sum of District's audited "Standard Rate"

applicable to the Annual Payment Period in accordance with this Agreement times the greater of

either:

i. The actual amount of water diverted and used from the Project expressed in

thousands of gallons; or

ii. Purchaser's minimum amount of water applicable during the Annual Payment

Period as determined in accordance with this Agreement, expressed in

thousands of gallons.

The difference, if any, between the Annual Payment paid by Purchaser during the Annual

Payment Period and the Adjusted Annual Payment, when determined, shall be applied as a credit

or debit to Purchaser's account with District and shall be credited or debited in one-twelfth (1/12th)

increments to Purchaser's next twelve (12) monthly payments, or as otherwise agreed upon

between District and Purchaser, provided that the total amount of the credit or debit shall be made

within the next twelve (12) months.

D. Dispute.

If Purchaser at any time disputes the amount to be paid by it to District, Purchaser 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 Purchaser should have

been less or more, District shall promptly revise and reallocate Purchaser's Annual Payment in a

manner that Purchaser or District will recover the amount due.

If a court, the Commission, or any federal or state regulatory authority finds that District's

rates or policies for delivering water to Purchaser under this Agreement are unreasonable or

otherwise unenforceable, District has the option to terminate this Agreement without liability to

Purchaser. By signing this Agreement, Purchaser stipulates and agrees that District and its other

customers will be prejudiced if Purchaser avoids the obligation to pay the rates for water specified

in this Agreement while accepting the benefits of obtaining water from District. Nothing in this

Agreement shall be construed as constituting an undertaking by District to furnish water to

Purchaser except pursuant to the terms of this Agreement. If Purchaser initiates or participates in

any proceeding regarding District's rates and policies under this Agreement and advocates a

position that is adverse to District and District prevails, Purchaser shall pay District for its

expenses, including attorneys' fees, in the proceeding within fifteen (15) days after District's

demand for payment. Purchaser stipulates and agrees that the rates and policies specified in this

Agreement at the Effective Date of this Agreement, are just, reasonable, and without

discrimination.

**SECTION 14. RATE.** 

Pursuant to the Amendatory Contract and the discussion below, Purchaser specifically

agrees to pay the rate per 1,000 gallons (U.S. Standard Liquid Measure) of water equal to District's

Standard Rate, which for any given year shall be the rate charged by District to the Initial

Contracting Parties for water sales in effect on the first (1st) day of such year pursuant to Section

4 of the Amendatory Contract.

Failure to pay any payment due District shall be sufficient grounds for District to exercise

any remedy available to District under this Agreement.

**SECTION 15. MEASUREMENT.** 

Purchaser shall provide, operate, maintain, and read meters which shall record water taken

by Purchaser from District at Purchaser's Diversion Point(s). Water shall be measured through

conventional types of approved meter(s). Purchaser shall keep accurate records of all

measurements of water required under this Agreement, and the measuring device(s) and such

records shall be open for District inspection at all times. District shall have access to Purchaser's

metering equipment at all reasonable times. This access shall include authorization for District to

install, inspect, adjust, or test measuring and recording equipment. Upon written request of

District, Purchaser will give District copies of such records or permit District to have access to the

same in Purchaser's office during reasonable business hours. If requested in writing by District and

not more than once in each calendar month, on a date as near the end of such calendar month as

practical, Purchaser shall calibrate its raw water meter(s) in the presence of a District

representative, and District and Purchaser shall jointly observe any adjustments that shall be

necessary. If District shall in writing request Purchaser to calibrate its raw water meter(s),

Purchaser shall give District notice of the time when any such calibration is to be made and, if a

representative of District is not present at the time set, Purchaser may proceed with the calibration

and adjustment in the absence of any representative of District.

If, upon any test of the raw water meter(s), the percentage of inaccuracy of such metering

equipment is found to be in excess of two percent (2%), registration thereof shall be corrected for

a period extending back to the time when such inaccuracy began, if such time is ascertainable. If

such time is not ascertainable, then registration thereof shall be corrected for a period extending

back one-half (1/2) of the time elapsed since the last date of calibration, but in no event further

back than a period of six (6) months. If any meter(s) are out of service or out of repair so that the

amount of water delivered cannot be ascertained or computed from the reading thereof, the water

delivered through the period such meter(s) are out of service or out of repair shall be estimated and

agreed upon by District and Purchaser upon the basis of the best data available, and, upon written

request by District, Purchaser shall install new meter(s) or repair existing meter(s) within a

reasonable time not to exceed one hundred eighty (180) days. Upon Purchaser's refusal to install

new meter(s) or repair existing meter(s) or after one hundred eighty (180) days following District's

request to do so, District, at its option, may install new meters or repair existing meters at

Purchaser's cost. District shall recover its cost of labor and materials by billing Purchaser in twelve

(12) equal monthly installments on or before the tenth (10th) day of each month. If District and

Purchaser fail to agree on the amount of water delivered during such period, the amount of water

delivered may be estimated by:

(a) correcting the error if the percentage of the error is ascertainable by calibration tests or

mathematical calculation; or

(b) estimating the quantity of delivery by deliveries during the preceding periods under

similar conditions when the meter or meters were registering accurately.

All books and records pertaining to this Agreement shall be open and available for copying,

inspection, and audit by District.

SECTION 16. SOURCE AND ADEQUACY OF SUPPLY.

Water supplied by District to Purchaser under this Agreement shall be water stored by

District in the Project and from no other source, unless District, at its sole discretion, decides to

supply water from another source available to District. District will use its best efforts to remain

in a position to furnish raw water sufficient for the reasonable demands of Purchaser. District's

agreement to provide water to Purchaser shall not be deemed a guarantee on District's part that any

particular quantity of water will be available, and the quantity of water taken shall at all times be

subject to the right of District to reduce said quantity of water as District, in its sole judgment, may

deem necessary in order to meet District's commitments under the Amendatory Contract, comply

with any order of any court or administrative body having appropriate jurisdiction, reduce

flooding, or prevent injury.

District has adopted a Water Conservation and Drought Contingency and Emergency

Demand Management Plan. With respect to water provided to Purchaser under this agreement, if

Purchaser fails to implement District's and its own emergency demand management plans when

trigger conditions occur, District's General Manager is authorized to institute rationing pursuant to

the Amendatory Contract and any other applicable wholesale water contracts, including this

Agreement, as well as to enforce any contractual, statutory, or common law remedies available to

District necessary to protect the public welfare. District water made available to Purchaser when

Purchaser is not in compliance with District's Water Conservation and Drought Contingency and

Emergency Demand Management Plan will be reduced to the amount of water that District's

General Manager estimates would be necessary to satisfy Purchaser's demand if Purchaser was

operating in compliance with both District's and Purchaser's emergency demand management

plans.

District's rights to maintain and operate the reservoirs owned or used by District and its

water transportation facilities and at any and all times in the future to impound and release waters

thereby in any lawful manner and to any lawful extent District may see fit is recognized by

Purchaser, and, except as otherwise provided herein, there shall be no obligation hereunder upon

District to release or not to release any impounded waters at any time or to maintain any waters at

any specified level.

**SECTION 17. RAW WATER QUALITY.** 

The water which district offers to sell to Purchaser is non-potable, raw, and untreated.

Purchaser has satisfied itself that such water is suitable for its needs. District expressly disclaims

any warranty as to the quality of the raw water or suitability of the raw water for its intended

purpose. District expressly disclaims the warranties of merchantability and fitness. Purchaser

agrees that any variation in the quality or characteristics of the raw water offered for sale as

provided by this agreement shall not entitle purchaser to avoid or limit its obligation to make

payments provided for by this agreement. There are no warranties which extend beyond the

description contained in this agreement.

**SECTION 18. RETURN FLOWS.** 

Purchaser acknowledges that some of the water supplied to it by District may be returned

to watercourses in the Trinity River Basin as return flows, which for purposes of this Agreement,

are termed System Return Flows. District and Purchaser believe that the most economical means

for meeting some of the future demands of District's customers may involve the use of return flows

to extend or enhance the yield of the System. In this regard, District will, with Purchaser's

cooperation, study the potential benefits to the System that can be realized through the use of return

flows. In anticipation that District will determine that use of return flows is both feasible and

economical, Purchaser agrees that other than for purposes of liability, District retains title to all

system water, and has the right, subsequent to Purchaser's use of System water, to make whatever

reuse of the water District deems necessary. Purchaser will receive no compensation, credit, or

offset for making System Return Flows available to District.

To the extent that Purchaser resells Project water to others, Purchaser shall include

language in any contract for resale of Project water assigning System Return Flows to the District

and requiring cooperation with the District in making System Return Flows available to District.

Similarly, to the extent that Purchaser does not treat its wastewater, Purchaser shall include

language in any wastewater treatment contract assigning System Return Flows to District and

requiring cooperation with District in making System Return Flows available to District. Neither

Purchaser nor its customers will be entitled to consideration or credit of any type, either in

exchange of water, money, or other consideration, for the System Return Flow assigned back to

the District.

**SECTION 19. TITLE.** 

Title for liability purposes to all water supplied hereunder to Purchaser shall be in District

up to the Point(s) of Delivery, at which point title for liability purposes shall pass to Purchaser.

While title for liability purposes remains in a party, to the greatest extent allowed by law, that party

hereby agrees to save and hold the other party harmless from all claims, demands, and causes of

action which may be asserted by anyone on account of the transportation and delivery of said

water.

**SECTION 20. OTHER CHARGES.** 

In the event that any sales or use taxes, or taxes, assessments, or charges of any similar

nature, are imposed on diverting, storing, delivering, gathering, impounding, taking, selling, using,

or consuming the water received by Purchaser from the Project, the amount of the tax, assessment,

or charge shall be borne by Purchaser, in addition to all other charges, and whenever District shall

be required to pay, collect, or remit any tax, assessment, or charge on water received by Purchaser,

then Purchaser shall promptly pay or reimburse District for the tax, assessment, or charge in the

manner directed by District.

**SECTION 21. DEFAULT IN PAYMENTS.** 

All amounts due and owing to District by Purchaser shall, if not paid when due, bear

interest at the interest rate set out in the STATE OF TEXAS PROMPT PAYMENT ACT, TEXAS

GOVERNMENT CODE, CHAPTER 2251, or any successor statute, from the date when due until paid,

provided that such rate shall never be usurious or exceed the maximum rate permitted by law. If

any amount due and owing by Purchaser to District is placed with an attorney for collection,

Purchaser shall pay to District, in addition to all other payments provided for by this Agreement,

including interest, District's collection expenses, including court costs and attorneys' fees. District

shall, to the extent permitted by law, suspend delivery of water from the Project to Purchaser if

Purchaser remains delinquent in any payments due hereunder for a period of sixty (60) days and

shall not resume delivery of water while Purchaser is so delinquent and may, at its option, terminate

this Agreement without further liability to Purchaser. District shall pursue all legal remedies

against Purchaser to enforce and protect the rights of District, District customers, and the holders

of District's bonds. It is understood that the foregoing provisions are for the benefit of the holders

of District's bonds.

**SECTION 22. TERMINATION.** 

If District decides to terminate this Agreement, as provided by this Agreement, District

shall deliver written notice of the decision to Purchaser. Purchaser shall discontinue taking water

from District or its facilities and physically seal Purchaser's diversion facilities within one hundred

eighty (180) days after District delivers written notice to Purchaser.

**SECTION 23. WAIVER AND AGREEMENT.** 

Failure to enforce or the waiver of any provision of this Agreement or any breach or

nonperformance by District or Purchaser shall not be deemed a waiver by Purchaser or District of

the right in the future to demand strict compliance and performance of any provision of this

Agreement. Regardless of any provision contained in this Agreement to the contrary, any right or

remedy or any default under this Agreement, except the right of District to receive the Annual

Payment which shall never be determined to be waived, shall be deemed to be conclusively waived

unless asserted by a proper proceeding at law or in equity within two (2) years plus one (1) day

after the occurrence of the default.

No officer or agent of District or Purchaser is authorized to waive or modify any provision

of this Agreement. No modifications to or rescission of this Agreement may be made except by a

written document signed by District's and Purchaser's authorized representatives.

SECTION 24. REMEDIES.

It is not intended hereby to specify (and this Agreement shall not be considered as

specifying) an exclusive remedy for any default, but all such other remedies (other than

termination) existing at law or in equity may be availed of by any party hereto and shall be

Tarrant Regional Water District Additional Party - Industrial Contract cumulative. Recognizing, however, 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 specific performance, in addition to any other legal or equitable remedies (other than termination) which also may be available to District.

#### **SECTION 25. INDEMNITY.**

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

INSPECTION, ADJUSTING, OR TESTING OF MEASURING AND RECORDING EQUIPMENT INVOLVING PURCHASER'S DIVERSION OF DISTRICT WATER, AS WELL AS ANY CLAIM THAT MAY ARISE FROM ANY CONDITION OF PURCHASER'S FACILITIES, SEPARATE OPERATIONS BEING CONDUCTED ON PURCHASER'S FACILITIES, OR THE IMPERFECTION OR DEFECTIVE CONDITION, WHETHER LATENT OR PATENT, OF ANY MATERIAL OR EQUIPMENT SOLD, SUPPLIED, OR FURNISHED BY DISTRICT. THIS INDEMNIFICATION AND RELEASE SHALL SURVIVE TERMINATION OR EXPIRATION OF THE AGREEMENT.

#### **SECTION 26. FORCE MAJEURE.**

If, for any reason of force majeure, either District or Purchaser shall be rendered unable, wholly or in part, to carry out its obligation under this Agreement, other than the obligation of Purchaser to make the payments required under the terms of this Agreement, then if the party shall give notice of the reasons in writing to the other party within a reasonable time after the occurrence of the event or cause relied on, the obligation of the party giving the notice, so far as it is affected by the "force majeure," shall be suspended during the continuance of the inability then claimed, but for no longer period. The term "force majeure," as used in this Agreement, shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemy, orders or actions of any kind of government of the United States or of the State of Texas, or any civil or military authority, insurrections, riots, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, explosions, breakage or accident to dams, machinery, pipelines, canals, or other structures, partial or entire failure of water supply, including pollution (accidental or intentional), and any inability on the part

of District to deliver water, or of Purchaser to receive water, on account of any other cause not

reasonably within the control of the party claiming the inability.

SECTION 27. NON-ASSIGNABILITY.

Purchaser understands and agrees that any assignment of rights or delegation of duties

under this Agreement is void without the prior written consent of District. Such written consent

shall not be unreasonably delayed, withheld, or denied.

SECTION 28. NO THIRD-PARTY BENEFICIARIES.

This Agreement shall inure only to the benefit of the parties hereto and third persons not

privy hereto shall not, in any form or manner, be considered a third-party beneficiary of this

Agreement. Each party hereto shall be solely responsible for the fulfillment of its customer

contracts or commitments, and District shall not be construed to be responsible for Purchaser's

contracts or commitments by virtue of this Agreement or any provision contained herein.

**SECTION 29. RELATIONSHIP OF THE PARTIES.** 

This Agreement is by and between District and Purchaser and is not intended, and shall not

be construed to create, the relationship of agent, servant, employee, partnership, joint venture, or

association as between District and Purchaser nor between District and any officer, employee,

contractor, or representative of Purchaser. No joint employment is intended or created by this

Agreement for any purpose. Purchaser agrees to so inform its employees, agents, contractors, and

subcontractors who are involved in the implementation of or construction under this Agreement.

**SECTION 30. SOLE AGREEMENT.** 

Except for the Amendatory Contract, this Agreement constitutes the sole and only

agreement of Purchaser and District and supersedes any prior understanding or oral or written

agreements between District and Purchaser respecting the subject matter of this Agreement,

including any oral or written agreement with District that Purchaser obtained by assignment.

**SECTION 31. SEVERABILITY.** 

The provisions of this Agreement are severable, and if, for any reason, any one or more of

the provisions contained in this Agreement shall be held to be invalid, illegal, or unenforceable in

any respect, the invalidity, illegality, or unenforceability shall not affect any other provision of this

Agreement, and this Agreement shall remain in effect and be construed as if the invalid, illegal, or

unenforceable provision had never been contained in the Agreement.

**SECTION 32. NOTICES.** 

All notices, payments, and communications (collectively "notices") required or allowed by

this Agreement shall be in writing and be deemed to have been given and received (a) by hand-

delivery or courier; or (b) on the third business day after depositing the notice in the United States

mail, postage prepaid, registered or certified, with return receipt requested, and addressed to the

party to be notified; or (c) when sent by email to RawWaterContracts@trwd.com and upon the

receipt by the Purchaser of written confirmation by the District; provided, however, that an

automated email confirmation of delivery or read receipt shall not constitute such confirmation.

Each party will be entitled to assume, in the absence of any knowledge to the contrary, that any

person signing any notice or other written communication issued in respect of this Agreement on

behalf of a party is an Authorized Person of that party. Either party may change its physical or

email address by giving written notice of the change to the other party at least fifteen (15) days

before the change becomes effective.

#### **SECTION 33. PLACE OF PERFORMANCE.**

All acts performable under the terms of this Agreement and all amounts due under this Agreement, including but not limited to payments due under this Agreement or damages for the breach of this Agreement, shall be paid and be due in Tarrant County, Texas, said Tarrant County, Texas, being the place of performance agreed to by the parties to this Agreement. In the event that any legal proceeding is brought to enforce this Agreement or any provision hereof, the same shall be brought in Tarrant County, Texas or the appropriate Federal District Court.

#### **SECTION 34. DUPLICATE ORIGINALS.**

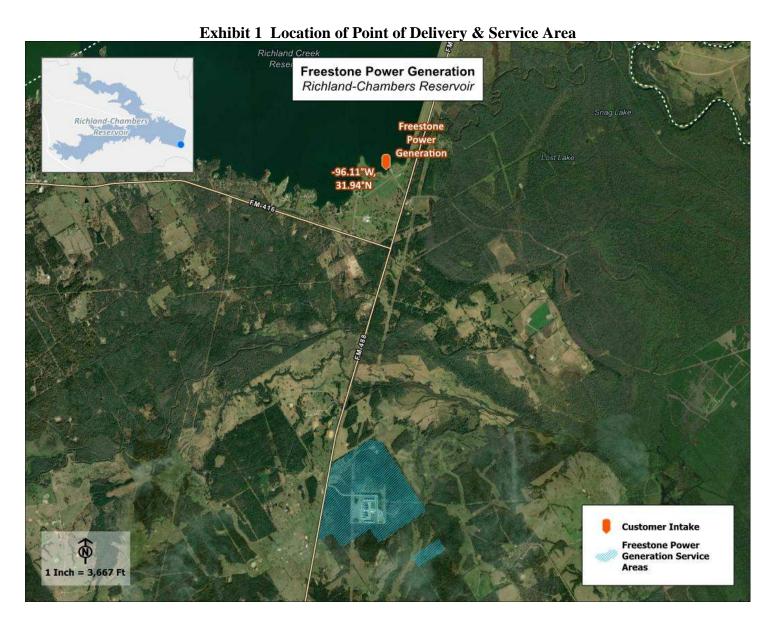
Purchaser and District, acting under the authority of their respective governing bodies, shall authorize the execution of this Agreement in several counterparts, each of which shall be an original.

Each party represents and warrants that the person or persons executing this Agreement has the legal authority to do so on behalf of their respective party, and that such binding authority has been granted by proper order, resolution, ordinance, or other authorization of the entity. The other party is fully entitled to rely on this warranty and representation in entering into this Agreement.

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

DATE:

TARRANT REGIONAL WATER DISTRICT,



#### ASSIGNMENT AND ASSUMPTION OF RAW WATER

This Assignment and Assumption of Raw Water ("Assignment") is by and between the City of Palmer, Texas ("Palmer"), a Texas General Law Type A Municipality, and Rockett Special Utility District ("Rockett"), a political subdivision of the State of Texas operating pursuant to Chapters 49 and 65 of the Texas Water Code.

#### WITNESSETH:

WHEREAS, Palmer is a party to the 1991 & 1993 Ellis County Regional Water Supply Project Contracts and the corresponding 2015 & 2017 First and Second Amendments (collectively known as "Ellis County Contracts") by and between Trinity River Authority of Texas ("TRA"), an agency and political subdivision of the State of Texas, and Tarrant Regional Water District, a Water Control and Improvement District ("District"), a conservation and reclamation district and political subdivision of the State of Texas; and

WHEREAS, under the terms of the Ellis County Contracts, Palmer contracted for 0.271 million gallons of raw water per day, on an annual average, by TRWD to be treated and delivered by TRA; and

WHEREAS, TRA and District have mutually agreed to terminate the Ellis County Contracts by November 30, 2025; and

WHEREAS, Palmer is in need of treatment and delivery services to make use of the raw water which it is entitled to purchase under the Ellis County Contracts; and

WHEREAS, concurrently with this Assignment, Palmer is entering into a Treated Wholesale Water Supply Contract with Rockett ("Wholesale Contract") whereby Rockett will deliver treated water to Palmer; and

WHEREAS, in order for Palmer to obtain such treatment and delivery services from Rockett, it is necessary for Palmer to provide its contractual right to purchase such raw water by assigning Palmer's purchase rights under the Ellis County Contracts to Rockett; and

WHEREAS Palmer therefore desires to assign its right to purchase 0.271 MGD of raw water under the Ellis County Contracts to Rockett;

NOW, THEREFORE, Palmer and Rockett, in consideration of the mutual promises herein expressed, do covenant and agree to and with each other as follows:

- 1. By this instrument Palmer assigns to Rockett Palmer's right to purchase 0.271 MGD of raw water under the Ellis County Contracts.
- 2. The raw water to be drawn by Rockett from District pursuant to this Assignment shall be governed by and in compliance with the 2015 APC Municipal Raw Water Contract between Rockett and District.

- 3. Palmer will cease to be a party to the Ellis County Contracts as of the effective date of this Assignment.
- 4. This Assignment and its terms and conditions are binding on Palmer and Rockett, and their respective successors and assigns.

Each party represents and warrants that the person or persons executing this Assignment has the legal authority to do so on behalf of their respective party, and that such binding authority has been granted by proper order, resolution, ordinance, or other authorization of the entity. The other party is fully entitled to rely on this warranty and representation in entering into this Assignment.

Formatting note 05/30/2025: The City of Palmer signature is on the next page

#### ASSIGNOR:

CITY OF PALMER, TEXAS 650 S. Dallas Street Palmer, TX 75152 Attn: Mayor

By: \_\_\_\_\_ Kenneth Bateman Mayor

Date:

#### ASSIGNEE:

ROCKETT SPECIAL UTILITY DISTRICT 126 Alton Adams Dr Waxahachie, TX 75165 Attn: Board President

By: Don Werner
Board President

Date: 2-18-2025

	650 S. Dallas Street
	Palmer, TX 75152
	Attn: Mayor
	By: Saura Milles  Kenneth Bateman Laura Milles  Mayor
	Date: 5/21/2025
	ASSIGNEE:
	ROCKETT SPECIAL UTILITY DISTRICT
	126 Alton Adams Dr
	Waxahachie, TX 75165
	Attn: Board President
Formatting note 05/30/2025: The Rockett SUD signature	
is on the previous page	Ву:
	Don Werner
	Board President
	Date:

ASSIGNOR:

CITY OF PALMER, TEXAS

# CONSENT AND ACKNOWLEDGMENT OF ASSIGNMENT AND ASSUMPTION BY TRINITY RIVER AUTHORITY OF TEXAS

Trinity River Authority of Texas ("TRA") hereby acknowledges this Assignment by and between the City of Palmer, Texas ("Palmer"), and Rockett Special Utility District ("Rockett"), of the rights of Palmer to 0.271 million gallons of raw water per day in the Ellis County Contracts described above in this Assignment, and further acknowledges the assumption by Rockett of the obligations of Palmer as described in this Assignment.

TRA warrants and represents that (1) it is not aware of any default or breach by Palmer relative to the Ellis County Contracts, (2) the Ellis County Contracts remain in full force and effect and (3) there are no sums due TRA from Palmer in connection with the Ellis County Contracts. TRA further consents and acknowledges that Rockett shall be permitted to utilize the raw water received pursuant to the 2015 APC Municipal Raw Water Contract between Rockett and District.

TRINITY RIVER AUTHORITY

5300 S. Collins St. Arlington, Texas 76018

Attn: General Manager

J. Kevin Ward General Manager

Date: 2/3/2025

# CONSENT AND ACKNOWLEDGMENT OF ASSIGNMENT AND ASSUMPTION BY TARRANT REGIONAL WATER DISTRICT

Tarrant Regional Water District ("District") hereby acknowledges this Assignment by and between the City of Palmer, Texas ("Palmer"), and Rockett Special Utility District ("Rockett"), of the rights of Palmer to 0.271 million gallons of raw water per day in the Ellis County Contracts described above in this Assignment and further acknowledges the assumption by Rockett of the obligations of Palmer as described in this Assignment.

District warrants and represents that (1) it is not aware of any default or breach by Palmer relative to the Ellis County Contracts, (2) the Ellis County Contracts remain in full force and effect and (3) there are no sums due District from Palmer in connection with the Ellis County Contracts. District further consents and acknowledges that Rockett shall be permitted to utilize the raw water received pursuant to the 2015 APC Municipal Raw Water Contract between Rockett and District.

TARRANT REGIONAL WATER DISTRICT 800 E. Northside Dr. Fort Worth, TX 76102 Attn: General Manager

By:	
	Dan Buhman
	General Manager
Date:	

# **Tarrant Regional Water District**

#### Amendment to

## **Additional Party Raw Water Supply Contract**

### **APC MUNICIPAL**

**Rockett Special Utility District Third Amendment** 

**Cedar Creek and Richland Chambers Pipelines** 

#### TABLE OF CONTENTS

RECITALS	3
AGREEMENT	4
SECTION 4. Volume	4
C. Minimum Amount	5
Exhibit 1 Location of Point of Delivery & Service Area	. 7

THE STATE OF TEXAS \$ ADDITIONAL PARTY \$ APC MUNICIPAL COUNTY OF TARRANT \$ RAW WATER SUPPLY CONTRACT AMENDMENT

# THIRD AMENDMENT TO THE 2015 ROCKETT SPECIAL UTILITY DISTRICT ADDITIONAL PARTY CONTRACT

Between **TARRANT REGIONAL WATER DISTRICT**, a Water Control and Improvement District ("District"), a conservation and reclamation district and political subdivision of the State of Texas and **ROCKETT SPECIAL UTILITY DISTRICT** ("Purchaser"), a political subdivision of the State of Texas operating pursuant to Chapters 49 and 65 of the Texas Water Code.

#### RECITALS

- Purchaser and District entered into an Additional Party Raw Water Supply Contract ("2015 Contract") that was executed on November 30, 2015.
- 2. On November 9, 2022, the District and Purchaser executed the First Amendment to the 2015 Rockett Special Utility District Additional Party Contract ("2022 First Amendment"), wherein the annual volume of water supply available to Purchaser from the District under the 2015 Rockett Special Utility District Additional Party Contract was increased to 11.85 MGD.
- 3. On May 23, 2024, the District and Purchaser executed the Second Amendment ("2024 Second Amendment") to the 2015 Contract, wherein the annual volume of water supply available to Purchaser from the District under the 2015 Rockett Special Utility District Additional Party Contract was increased to 12.025 MGD.

Tarrant Regional Water District

Additional Party Raw Water Supply Contract – Third Amendment
Rockett Special Utility District

4. On May 21, 2025, the City of Palmer and Purchaser executed an Assignment and

Assumption of Raw Water ("Assignment-Palmer") for 0.271 MGD, which Assignment

was acknowledged by District.

5. By this Third Amendment ("2025 Third Amendment") to the 2015 Contract, the annual

volume of water supply available to Purchaser from the District under the 2015 Contract

is increased to 12.296 MGD.

6. Because this is a transfer of an existing agreement to purchase water and not an agreement

for new supply, and because the buy-in premium attributable to this volume has been paid

and received, there will not be an additional buy-in premium charged to Purchaser unless

and until there is a future increase to the contracted volume.

**AGREEMENT** 

For and in consideration of the mutual promises, covenants, obligations, and benefits described in

the 2015 Contract, and the 2022 First and 2024 Second Amendments to same, District and

Purchaser agree to amend the 2015 Contract as follows:

1. Amend Section 4 of the 2015 Contract regarding Volume, as amended by the 2022 First

and 2024 Second Amendments, to read as follows:

**SECTION 4. VOLUME** 

Subject to the limitations and conditions described in this Agreement, the Amendatory

Contract, and Certificate(s) of Adjudication Nos. 08-4976 and 08-5035, District agrees to sell

Purchaser raw water from the Project at the Point(s) of Delivery described in this Agreement. The

average volume to be furnished will be determined, in part, by past usage and future quantities that

District will review periodically. District may request updated usage projections and Purchaser is

Tarrant Regional Water District
Additional Party Raw Water Supply Contract – Third Amendment
Rockett Special Utility District

required to provide the same within a timely manner. Purchaser may not divert more than 13,772.92 acre-feet (12.296 MGD) in an Annual Payment Period as defined in Section 13, without

prior written approval of District.

2. Amend Section 13C of the 2015 Contract regarding Minimum Amount, as amended by

the 2022 First Amendment, to read as follows:

C. Minimum Amount

For the purpose of calculating the minimum amount of each Annual Requirement for which

Purchaser is unconditionally liable, without offset or counterclaim related to this Agreement,

Purchaser during each Annual Payment Period shall be deemed to have taken and used the

minimum annual average daily amount of Project water (regardless of whether or not such amount

is or was actually taken or used) specified for Purchaser as follows:

Beginning on Effective Date of the Agreement, and during each Annual Payment

Period thereafter, an amount for Purchaser, expressed in MGD, equal to the greater of:

a. 3.69 MGD (4,133.22 AFY), or

b. the average annual MGD use actually taken from the Project by Purchaser

during the period of the immediately preceding five (5) consecutive Annual

Payment Periods.

IN WITNESS WHEREOF, the undersigned District and Purchaser execute this 2025 Third Amendment to the 2015 Rockett Special Utility District Additional Party Contract. Each party represents and warrants that the person or persons executing this Agreement has the legal authority to do so on behalf of their respective party, and that such binding authority has been granted by proper order, resolution, ordinance, or other authorization of the entity. The other party

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

#### TARRANT REGIONAL WATER DISTRICT,

is fully entitled to rely on this warranty and representation in entering into this Agreement.

A Water Control and Improvement District 800 E Northside Drive Fort Worth, TX 76102 Attn: General Manager

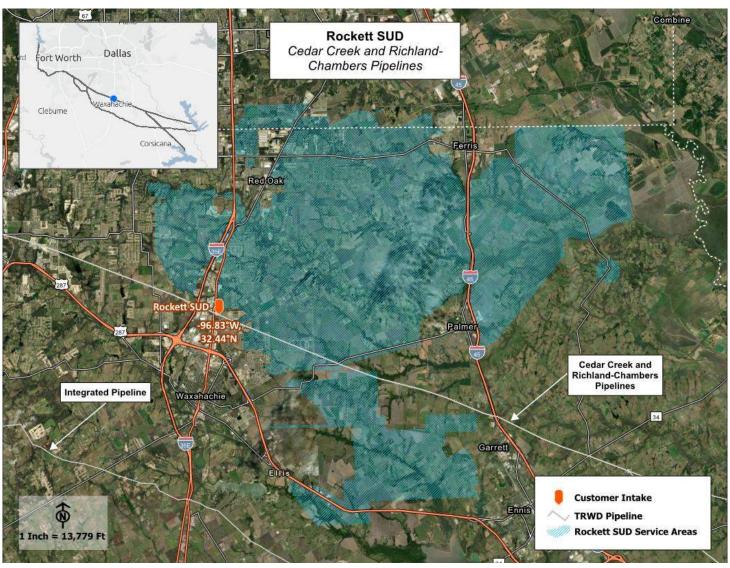
BY:_	Dan Buhman	
	General Manager	
DATE	E:	

#### ROCKETT SPECIAL UTILITY DISTRICT

126 Alton Adams Dr Waxahachie, TX 75165 Attn: Board President

BY:		
	Don Werner	
	<b>Board President</b>	
DATI	E:	

**Exhibit 1 Location of Point of Delivery & Service Area** 



Tarrant Regional Water District
Additional Party Raw Water Supply Contract – Third Amendment
Rockett Special Utility District

# Tarrant Regional Water District Second Amendment to Additional Party Raw Water Supply Contract

Municipal

**East Cedar Creek Fresh Water Supply District** 

**Cedar Creek Reservoir** 

#### TABLE OF CONTENTS

RECITALS	. 3
AGREEMENT	. 4
SECTION 4. Volume	. 4
SECTION 7. Purpose and Place of Use	. 4
Exhibit 1 Location of Point(s) of Delivery and Service Area	7

THE STATE OF TEXAS \$ ADDITIONAL PARTY \$ MUNICIPAL COUNTY OF TARRANT \$ RAW WATER SUPPLY CONTRACT AMENDMENT

SECOND AMENDMENT TO THE 1995 APC-Municipal Raw Water Supply Contract

Between **TARRANT REGIONAL WATER DISTRICT** ("District") and East Cedar Creek Fresh Water Supply District ("Purchaser").

#### **RECITALS**

- Purchaser and District entered into an Additional Party Raw Water Supply Contract ("1995 Contract") that was executed on October 16, 1995.
- 2. Subsequent to the execution of the 1995 Contract, Purchaser requested to extend the term of the 1995 Contract. On March 15, 2006, the District and Purchaser executed the First Amendment to the 1995 Contract ("2006 First Amendment"), increasing the term from 20 years to 55 years thereby establishing a new contract expiration date of October 16, 2050.
- 3. Subsequent to the execution of the 2006 First Amendment, District management determined that specific payment terms and water use conditions that were included in Purchaser's Agreements with the City of Trinidad ("2010 Trinidad Contract" & "2016 Trinidad First Amendment") were not incorporated into the 1995 Contract between District and Purchaser by Amendment.

#### **AGREEMENT**

For and in consideration of the mutual promises, covenants, obligations, and benefits described in this the 1995 Contract, and the 2006 First Amendment to same, District and Purchaser agree to amend the 1995 Contract as follows:

1. Amend Section 4 of the 1995 Contract regarding Volume to read as follows:

#### **SECTION 4. VOLUME**

Subject to the limitations and conditions described in this Agreement, the Amendatory Contract, and Certificate(s) of Adjudication No. 08-4976, District agrees to sell Purchaser raw water from the Project at the Point(s) of Delivery described in this Agreement. The average volume to be furnished will be determined, in part, by past usage and future quantities that District will review periodically. District may request updated usage projections and Purchaser is required to provide the same within a timely manner. Purchaser may not divert more than 1,155 acre-feet in an Annual Payment Period as defined in Section 14, without prior written approval of District.

Additionally, in each Annual Payment Period Purchaser is permitted to divert 750 acre-feet of the City of Trinidad's water right in Cedar Creek, a tributary of the Trinity River that feeds Cedar Creek Reservoir, as provided for in the 2010 Trinidad Contract & 2016 Trinidad First Amendment, without payment to District. Said volume does not count toward Purchaser's Maximum Volume of 1,155 AFY or Minimum Amount and Adjusted Annual Payment as outlined in Sections 14B and 14C of this Agreement.

2. Amend Section 7 of the 1995 Contract regarding Purpose and Place of Use as follows:

#### SECTION 7. PURPOSE AND PLACE OF USE.

Purchaser shall use raw water purchased from District under this Agreement for municipal purposes only and within the area served by Purchaser's municipal water system, which area is

shown by the vicinity map attached as Exhibit 1 to this Agreement. In addition, Purchaser shall

notify District of changes to Purchaser's service area by providing said changes in Digital Format.

Upon receipt of said changes, this Agreement will be modified with an Amendment to include a

vicinity map with the added territory.

Purchaser may not provide retail or wholesale water service outside the boundary of the

District service area using water originating from District without prior written approval of

District. Such written approval shall not be unreasonably delayed, withheld, or denied. If Purchaser

wishes to extend its municipal water system service area outside the boundary of the District's

service area, Purchaser shall deliver to District a reproducible vicinity map that shows the proposed

added territory. Upon approval by the District, this Agreement will be modified with an

Amendment to include the approved vicinity map as Exhibit 1. Upon filing this Agreement, as

modified, with the Commission, and providing District the changed information in Digital Format,

Purchaser may use the water within the added territory.

Each party represents and warrants that the person or persons executing this Second

Amendment has the legal authority to do so on behalf of their respective party, and that such

binding authority has been granted by proper order, resolution, ordinance, or other authorization

of the entity. The other party is fully entitled to rely on this warranty and representation in entering

into this Second Amendment.

Tarrant Regional Water District

Additional Party Raw Water Supply Contract – Second Amendment

East Cedar Creek Fresh Water Supply District

# IN WITNESS WHEREOF, the undersigned District and Purchaser execute this Second Amendment to the 1995 Contract.

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

TARRANT REGIONAL WATER DISTRICT,

A Water Control and Improvement District
800 East Northside Drive
Fort Worth, TX 76102-1016
Attn.: General Manager

BY:\_\_\_\_\_\_
Dan Buhman
General Manager

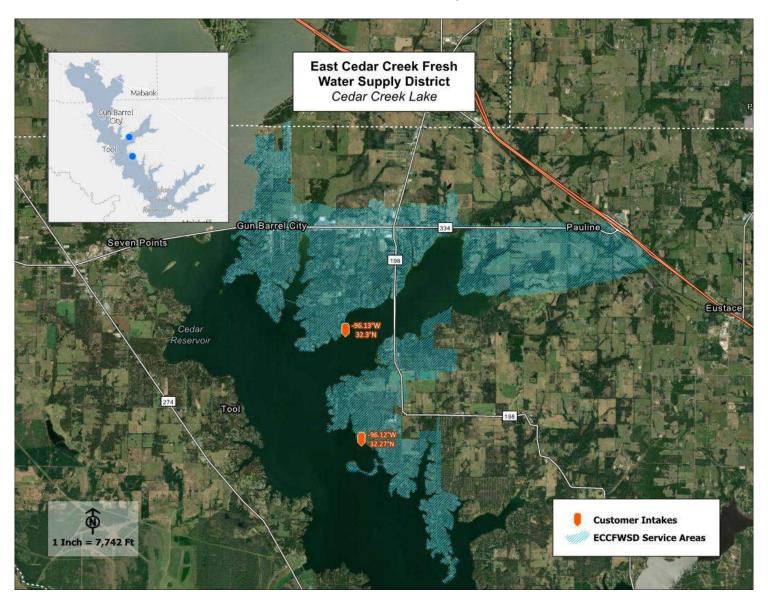
DATE:\_\_\_\_\_

EAST CEDAR CREEK FRESH WATER SUPPLY DISTRICT
PO Box 309
Mabank, TX 75147
Attn: General Manager

BY:\_\_\_\_\_\_
James Blodgett
General Manager

DATE: \_\_\_\_\_

Exhibit 1 Location of Point(s) of Delivery and Service Area



Tarrant Regional Water District
Additional Party Raw Water Supply Contract – Second Amendment
East Cedar Creek Fresh Water Supply District

# **Tarrant Regional Water District**

#### **Amendment to**

## **Additional Party Raw Water Supply Contract**

## Municipal

**City of Mabank First Amendment** 

**Cedar Creek Reservoir** 

#### TABLE OF CONTENTS

RECITALS	1
AGREEMENT	1
	• -
SECTION 5. Point(s) of Delivery.	2
Exhibit 1 Location of Point(s) of Delivery	4

THE STATE OF TEXAS

\$ ADDITIONAL PARTY

\$ MUNICIPAL

COUNTY OF TARRANT

\$ RAW WATER SUPPLY

CONTRACT AMENDMENT

# FIRST AMENDMENT TO THE 2015 ADDITIONAL PARTY RAW WATER SUPPLY CONTRACT

Between TARRANT REGIONAL WATER DISTRICT ("District") and the CITY OF MABANK

Texas ("Purchaser"), a municipality and political subdivision of the State of Texas.

#### RECITALS

- Purchaser and District entered into an Additional Party Raw Water Supply Contract ("2015 Municipal Contract") that was executed on October 1, 2015.
- 2. Subsequent to the execution of the 2015 Municipal Contract, Purchaser submitted plans and specifications for improvements to the raw water pump station and water treatment plant operated by Purchaser, which the District approved.
- 3. By this First Amendment to the 2015 Municipal Contract ("First Amendment"), the maximum diversion rate for Purchaser is increased to 7, 200 gallons per minute (GPM).

#### **AGREEMENT**

For and in consideration of the mutual promises, covenants, obligations, and benefits described in the 2015 Municipal Contract, and the First Amendment to same, District and Purchaser agree to amend the 2015 Municipal Contract as follows:

4. Amend Section 5 of the 2015 Municipal Contract regarding Point(s) of Delivery to read as

follows:

**SECTION 5. POINT(S) OF DELIVERY.** 

Purchaser's raw water will be delivered from the Project at the Point of Delivery herein

established. A vicinity map showing the Point of Delivery is attached as Exhibit 1 to this

Agreement. Purchaser shall provide the location of the Point of Delivery in Digital Format, which

for purposes of this Agreement means in GIS format (shapefile, geodatabase) or Google Earth

format (KMZ, KML), projected to the following Tarrant Regional Water District data standards:

Projection: Lambert Conformal Conic, Coordinate System: Texas State Plane, Zone 5351, Units:

Feet, Datum: NAD83. The diversion shall be accomplished by facilities with a maximum

combined diversion rate of 7,200 gallons per minute. Purchaser shall provide, at Purchaser's

expense, the facilities required to divert and transport raw water to Purchaser's place of treatment

and/or use. If Purchaser wishes to add or change the location of a Point of Delivery, Purchaser

shall deliver to District the location of the proposed additional or relocated Point of Delivery in

Digital Format and on a reproducible vicinity map with a graphic description of the location of the

proposed additional or relocated Point of Delivery. Upon District's written approval of the

additional or relocated Point of Delivery, this Agreement will be modified by attaching the map to

this Agreement as an exhibit. Upon filing this Agreement, as modified, with the Texas Commission

on Environmental Quality or its successor agency (Commission), the modification shall become

effective upon regulatory approval of the location of the additional or relocated Point of Delivery.

IN WITNESS WHEREOF, the undersigned District and Purchaser execute this First Amendment to the 2015 Municipal Contract.

Each party represents and warrants that the person or persons executing this Agreement has the legal authority to do so on behalf of their respective party, and that such binding authority has been granted by proper order, resolution, ordinance, or other authorization of the entity. The other party is fully entitled to rely on this warranty and representation in entering into this Agreement.

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

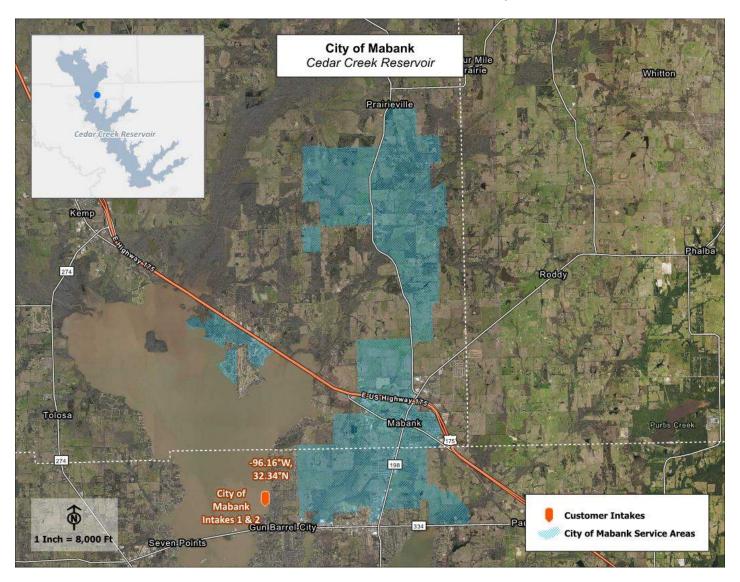
TARRANT REGIONAL WATER DISTRICT, A Water Control and Improvement District 800 East Northside Drive Fort Worth, TX 76102-1016 Attn.: General Manager

3Y:_	D D 1	
	Dan Buhman	
	General Manager	
) A T	F.	

CITY OF MABANK 129 Market Mabank, TX 75147 Attn: Assistant City Administrator

BY:_	
	Michael Main
	Assistant City Administrator
DAT	E:

**Exhibit 1 Location of Point(s) of Delivery** 



Tarrant Regional Water District Additional Party Raw Water Supply Contract – First Amendment City of Mabank

# Tarrant Regional Water District Additional Party Raw Water Supply Contract Municipal

City of Weatherford Benbrook Reservoir

# TABLE OF CONTENTS

RECITALS
AGREEMENT2
SECTION 1. Amendatory Contract
SECTION 2. Permits for Construction2
SECTION 3. Term. 3
SECTION 4. Volume
SECTION 5. Point(s) of Delivery
SECTION 6. Facilities for Diverting Water
SECTION 7. Purpose and Place of Use. 5
SECTION 8. Losses
SECTION 9. Texas Commission on Environmental Quality Rules
SECTION 10. Regulatory Requirements
SECTION 11. Water Conservation Plans. 7
SECTION 12. Water Quality
SECTION 13. Wastewater Treatment
SECTION 14. Payments by Purchaser
A. Determination of Annual Payment
B. Minimum Amount
C. Determination of Adjusted Annual Payment. 12
D. Dispute
SECTION 15. Rate
SECTION 16. Measurement. 14
SECTION 17. Source and Adequacy of Supply
SECTION 18. Pledge of Revenue
SECTION 20. Raw Water Quality
SECTION 21. Return Flows. 19
SECTION 22. Title
SECTION 23. Other Charges
SECTION 24. Default in Payments. 21
SECTION 25. Termination. 22
SECTION 26. Waiver and Agreement 22.

SECTION 27. Remedies.	22
SECTION 28. Indemnity.	23
SECTION 29. Force Majeure.	24
SECTION 30. Non-Assignability.	25
SECTION 31. No Third-Party Beneficiaries.	25
SECTION 32. Relationship of the Parties.	25
SECTION 33. Sole Agreement.	25
SECTION 34. Severability.	26
SECTION 35. Notices.	26
SECTION 36. Place of Performance.	26
SECTION 37. Approval of Contracts	27
SECTION 38. Operations Agreement	27
SECTION 39. Duplicate Originals.	28
Exhibit 1 Location of Point of Delivery and Retail Service Area	29

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

This Additional Party Raw Water Supply Contract ("Agreement") is made and entered into by and between **TARRANT REGIONAL WATER DISTRICT**, a Water Control and Improvement District ("District"), a conservation and reclamation district and political subdivision of the State of Texas, and **CITY OF WEATHERFORD** ("Purchaser"), a municipality and political subdivision of the State of Texas formed pursuant to the laws of the State of Texas.

# **RECITALS**

- District owns or has the right to use and sell water from the System as defined in that certain contract between District and the City of Fort Worth, City of Arlington, City of Mansfield, and Trinity River Authority of Texas, dated September 1, 1982 ("Amendatory Contract"). For purposes of this Agreement, the "Project" is defined as the water sourced to Purchaser from Benbrook Reservoir, Cedar Creek Reservoir, Richland-Chambers Reservoir, and associated pipelines. The sale of water to Purchaser, in addition to being subject to the Amendatory Contract, is also subject to the provisions of Certificate of Adjudication Number(s) 08-5157, 08-4976, and 08-5035.
- 2. Purchaser wants to purchase, and District is willing to sell, raw water from the Project subject to the terms and conditions of this Agreement.
- 3. Purchaser has an existing 2001 Additional Party Municipal Raw Water Contract and 2006
  First Amendment with the District that are superseded by this Agreement.

4. This Agreement is separate from and excludes any water provided to Purchaser by District

under the Benbrook Settlement Contract, Sunshine Lake Agreement, or from any source

owned by Purchaser. For purposes of this Agreement, the term "Purchaser's Water

System", "municipal water system" and/or "water system", shall mean Weatherford's

wholesale service area.

5. Because this is a renewal of a previous contract and the buy-in premium attributable to this

contract has been paid and received, there will not be an additional buy-in premium charged

to Weatherford unless and until there is a future increase to the contracted volume.

**AGREEMENT** 

For and in consideration of the mutual promises, covenants, obligations, and benefits

described in this Agreement, District and Purchaser agree as follows:

**SECTION 1. AMENDATORY CONTRACT** 

This Agreement is entered into pursuant to Section 3(B) (a) of the Amendatory Contract,

and the rights and obligations of District and Purchaser under this Agreement shall be subject to,

and be interpreted consistent with, the terms and conditions of the Amendatory Contract. The

Amendatory Contract is incorporated into this Agreement by reference as if quoted verbatim in

this section. The Initial Contracting Parties (as identified in the Amendatory Contract) shall, within

the limits permitted by law, have absolute priority over Purchaser's right to purchase water from

District in accordance with this Agreement.

**SECTION 2. PERMITS FOR CONSTRUCTION** 

Purchaser may have to obtain federal, state, and local permits or easements to construct

and maintain, at Purchaser's expense, a raw water intake structure. It is Purchaser's responsibility

to obtain and comply with any such permit or easement. Failure to obtain or comply with such

permit or easement under this section may, at District's sole discretion, be grounds for terminating this Agreement without liability to Purchaser. Purchaser specifically recognizes that it will have to apply for and be granted a permit or easement to construct and maintain a raw water intake structure on land and water owned and controlled by District. When granted by District, this permit

will be incorporated into this Agreement by reference as if quoted verbatim in this section.

**SECTION 3. TERM.** 

This Agreement shall be effective on the date it is signed by District's authorized representative ("Effective Date"), as shown on the signature page of this Agreement, and shall continue in effect for a period of 30 years from the effective date unless this Agreement is terminated earlier because the Amendatory Contract is terminated, District and Purchaser both agree to terminate this Agreement, or this Agreement is terminated pursuant to its terms. Purchaser has the option and responsibility to request a renewal contract, in writing, 12 months prior to expiration of this Agreement. Such written approval shall not be unreasonably delayed, withheld, or denied. Purchaser acknowledges that the Project's primary purpose is to provide water for municipal water supply and is subordinate to the rights of the Initial Contracting Parties as those terms are defined in the Amendatory Contract, and that Purchaser's entitlement to water under this Agreement ends upon termination of this Agreement and failure to execute a renewal contract.

**SECTION 4. VOLUME.** 

Subject to the limitations and conditions described in this Agreement, the Amendatory Contract, and Certificate(s) of Adjudication No. 08-5157, District agrees to sell Purchaser up to 1783.22 acre-feet per annum of raw water from the Project at the Point(s) of Delivery described in this Agreement. The average volume to be furnished will be determined, in part, by past usage and future quantities that District will review periodically. District may request updated usage projections and Purchaser is required to provide the same within a timely manner. Purchaser may

not divert more than 1783.22 acre-feet (1.592 MGD) in an Annual Payment Period as defined in Section 14, without prior written approval of District.

# **SECTION 5. POINT(S) OF DELIVERY.**

Purchaser's raw water will be delivered from the Project at the Point of Delivery herein established. A vicinity map showing the Point of Delivery is attached as Exhibit 1 to this Agreement. Purchaser shall provide the location of the Point of Delivery in Digital Format, which for purposes of this Agreement means in GIS format (shapefile, geodatabase) or Google Earth format (KMZ, KML), projected to the following Tarrant Regional Water District data standards: Projection: Lambert Conformal Conic, Coordinate System: Texas State Plane, Zone 5351, Units: Feet, Datum: NAD83. The diversion shall be accomplished by facilities with a maximum combined diversion rate of 14,000 gallons per minute. Purchaser shall provide, at Purchaser's expense, the facilities required to divert and transport raw water to Purchaser's place of treatment and/or use. If Purchaser wishes to add or change the location of a Point of Delivery, Purchaser shall deliver to District the location of the proposed additional or relocated Point of Delivery in Digital Format and on a reproducible vicinity map with a graphic description of the location of the additional or relocated Point of Delivery which shall be attached to this Agreement, and, subject to District's written approval, this Agreement will be modified by attaching the map to this Agreement as an exhibit. Upon filing this Agreement, as modified, with the Texas Commission on Environmental Quality or its successor agency (Commission), the modification shall become effective upon regulatory approval of the location of the additional or relocated Point of Delivery.

# SECTION 6. FACILITIES FOR DIVERTING WATER.

All facilities required for the taking of water under this Agreement from a watercourse or District reservoir shall be appropriately marked and lighted in the interest of the safety of persons using the watercourse or reservoir surface or shore. The detailed plans and specifications for such

facilities shall be submitted to District and approved by District in writing before such facilities

are installed, and any changes thereafter made in the nature, type, or location of such facilities shall

be made only after District's prior written approval. In addition, Purchaser shall provide plans and

specifications to District in Digital Format.

All facilities and property of Purchaser used by Purchaser or relating to the use or diversion

of the water contemplated by this Agreement are subject to water damage by reason of their

location near a raw water transmission system owned or used by District. Purchaser acknowledges

the possibility of water damage and assumes the risk of such an occurrence. To the greatest extent

allowed by law, Purchaser will hold District harmless for any claims asserted by Purchaser or by

others growing out of the operation by Purchaser of the facilities used and employed by it in

connection with this Agreement.

Purchaser agrees that its use of the facilities to be constructed under this Agreement, if any,

and its operations under this Agreement shall not cause or in any way result in the pollution of

reservoirs and other water bodies within District Watersheds. District Watersheds are defined as

areas that drain, either directly or indirectly, into a reservoir owned, controlled, or used by District,

or watercourses that are used by District in providing water to its customers. Purchaser agrees to

correct any practice of Purchaser which District deems likely to result in such pollution within

thirty (30) days from the receipt by Purchaser of written notice from District to do so.

SECTION 7. PURPOSE AND PLACE OF USE.

Purchaser shall use raw water purchased from District under this Agreement for municipal

purposes only and within the area served by Purchaser's municipal water system, which area is

shown by the vicinity map attached as Exhibit 1 to this Agreement. In addition, Purchaser shall

notify District of changes to Purchaser's service area by providing said changes in Digital Format.

Upon receipt of said changes, this Agreement will be modified with an Amendment to include a

vicinity map with the added territory.

Purchaser may not provide retail or wholesale water service outside the boundary of the

District service area using water purchased from District under this Additional Party Contract

without prior written approval of District. Such written approval shall not be unreasonably delayed,

withheld, or denied. If Purchaser wishes to extend its municipal water system service area outside

the boundary of the District's service area, Purchaser shall deliver to District a reproducible

vicinity map that shows the proposed added territory. Upon approval by the District, this

Agreement will be modified with an Amendment to include the approved vicinity map as Exhibit

1. Upon filing this Agreement, as modified, with the Commission, and providing District the

changed information in Digital Format, Purchaser may use the water within the added territory.

**SECTION 8. LOSSES.** 

If Purchaser's diversion, now or in the future, requires a release of water from a District

reservoir or pipeline, District agrees to bear the cost of transportation and evapotranspiration losses

incident to the downstream sale of water from the reservoir or pipeline to Purchaser's point of

diversion of water.

SECTION 9. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

RULES.

The effectiveness of this Agreement is dependent upon District and Purchaser complying

with the rules of the Commission, specifically including the rules codified as Texas Administrative

Code, Title 30, §§ 295.101 and 297.101-.108 as of the effective date of this Agreement. Purchaser

will file a signed copy of this Agreement with the Executive Director of the Commission as

required by the rules of the Commission. Purchaser may continue diverting raw water from the

Project unless Purchaser has received written notification from the Commission that a copy of this

Agreement has been received by the Commission but not accepted for filing. If this Agreement

was not accepted for filing by the Commission, Purchaser will notify District within ten (10)

business days. Purchaser shall submit written reports to the Commission as required by

Commission rules, with a copy to District, on forms provided by the Commission, indicating the

total amount of water taken under this Agreement each month. Purchaser also shall submit to

District written reports each month indicating the total amount of water diverted under this

Agreement each month.

**SECTION 10. REGULATORY REQUIREMENTS.** 

This Agreement is subject to all applicable federal, state, and local laws and any applicable

ordinances, rules, orders, and regulations of any local, state, or federal governmental authority

having jurisdiction. However, nothing contained in this Agreement shall be construed as a waiver

of any right to question or contest any law, ordinance, order, rule, or regulation in any forum having

jurisdiction, and District and Purchaser each agree to make a good faith effort to support proposed

laws and regulations which would be consistent with the performance of this Agreement in

accordance with its terms.

**SECTION 11. WATER CONSERVATION PLANS.** 

Purchaser shall cooperate with and assist District in its efforts 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. District's obligations

under this Agreement shall be subject to Purchaser preparing and implementing a water

conservation plan or water conservation measures, as well as implementing any water conservation

plans and drought contingency plans adopted by District and required or approved by the

Commission, the Texas Water Development Board, or any other federal, state, or local regulatory

authority with power to require or approve water conservation and drought contingency plans.

Prior to the execution of this agreement, Purchaser shall submit to the District its water

conservation plan or water conservation measures and update the water conservation plan every

five years in accordance with Commission guidelines or more often as requested in writing by the

District.

If District authorizes Purchaser to resell District water, Purchaser shall require through a

contract condition that any successive user of District water must implement water conservation

measures that comply with the State's, District's, and Purchaser's water conservation plans,

programs, and rules.

**SECTION 12. WATER QUALITY.** 

Purchaser shall cooperate with and assist District in its efforts to develop and implement

plans, programs, and rules to maintain and improve the quality of the water flowing into or

impounded within reservoirs owned or used by District; to maintain the existing uses of the water

impounded in reservoirs owned or used by District for public water supply, contact recreation, and

high quality aquatic habitat; and to decrease the effects of eutrophication and siltation upon the

storage capacity and uses of reservoirs owned or used by District. Such plans, programs, and rules

may include, but are not limited to, matters involving water conservation; water quality;

construction, operation, and regulation of wastewater collection, treatment, and disposal facilities;

siting and operation of solid waste transfer and disposal facilities; non-point source pollution

control; generation, storage, transportation, and disposal of hazardous substances; sedimentation

due to construction activities; improper farming practices; and highly erodible soil.

Purchaser agrees that, in areas within its jurisdiction, it will require and enforce compliance

with Commission rules relating to Construction Standards for On-Site Sewage Facilities found in

30 TEX. ADMIN. CODE Chapter 285. Purchaser further agrees to ensure that construction activities

within its jurisdiction comply with the Commission's Storm Water Pollution Protection Plans

(SWPPP) found in Texas Water Code Chapter 26. Purchaser also further agrees to require and

enforce compliance with any stricter standards that may be imposed by any other applicable state

or federal laws or regulations. Purchaser shall notify District if they impose stricter standards than

the current Commission (or any successor agency) standards.

**SECTION 13. WASTEWATER TREATMENT** 

By signing this Agreement, Purchaser stipulates and agrees that District is potentially

aggrieved or affected by any actions taken by Purchaser relating to the collection, treatment, and

disposal of wastewater. If Purchaser proposes to modify or amend its permit(s), if any, or obtain

additional or new permit(s) which authorize the construction of wastewater treatment facilities or

the disposal of treated effluent, Purchaser shall inform District of Purchaser's plans and provide

District with a comprehensive assessment of the individual and cumulative effect of Purchaser's

proposed activities on surface water and groundwater quality and such additional information as

District may reasonably require. Purchaser shall provide notice of its proposed plans of renewal,

modification, or amendment to District at least sixty (60) days before Purchaser submits an

application to the Commission or other regulatory authority.

If Purchaser seeks to modify or amend a permit from the Commission or other regulatory

authority to discharge effluent which, in the District's reasonable opinion, degrades the water

quality of District's surface water or ground water, District will notify Purchaser, and the parties

will make reasonable efforts to address or resolve the matter. If the parties are unable to resolve

the issue, District reserves the right to seek remedy up to and including termination of this

Agreement. District may terminate this Agreement, without liability to Purchaser, if a court, or

federal or state regulatory authority with jurisdiction to regulate Purchaser's collection, treatment,

and disposal of wastewater within a District watershed enters an order of any type which includes

an express or implied finding that Purchaser violated applicable statutes, rules, orders, or permits

for a period of four (4) months or for a shorter period if the noncompliance causes an actual or

potential hazard to public health and safety or severe adverse impact on or to the uses of a receiving

stream or of groundwater.

By signing this Agreement, Purchaser consents and authorizes District's employees or

agents exhibiting proper credentials to enter upon Purchaser's premises or other premises under

the control of Purchaser where an effluent source is located or in which any records are required

to be kept under the terms and conditions of Purchaser's permit or the Commission's (or any

successor agency) rules, at any reasonable times, to copy any records required to be kept under the

terms and conditions of Purchaser's permit or the Commission's (or any successor agency) rules,

to inspect any monitoring equipment or monitoring method required in Purchaser's permit or the

Commission's (or any successor agency) rules, to sample any discharge, and to perform an

enforcement and/or operation and maintenance inspection of Purchaser's facility or facilities.

Contemporaneously with the filing by Purchaser of any notifications, self-reporting data,

sludge disposal records, or other records and reports required by the rules, orders, or permits of

the Commission, Purchaser shall deliver a copy of the signed document to District.

Purchaser shall install and maintain adequate safeguards to prevent the discharge of

untreated or inadequately treated wastewater from its collection, treatment, and disposal facilities

during electrical power failures and equipment failures or repairs by means of alternate power

sources, standby generators, adequate spare parts, or retention facilities.

#### SECTION 14. PAYMENTS BY PURCHASER.

As consideration for the water supply to be provided to Purchaser under this Agreement, Purchaser agrees to pay District, at the time and in the manner provided by this Agreement, Purchaser's proportionate share of District's Annual Requirement as determined under the Amendatory Contract. Purchaser's proportionate share shall equal Purchaser's Annual Payment after adjustment, as described below. Purchaser's Annual Payment shall be calculated as follows:

#### A. Determination of Annual Payment.

The term "Annual Payment" means the amount of money to be paid to District by Purchaser during each Annual Payment Period as defined in the Amendatory Contract. An Annual Payment Period is from October 1 until September 30 of the following year. Purchaser shall make monthly payments based on actual raw water usage multiplied by the District's Standard Rate as defined in Section 15 herein, in effect on the first (1st) day of the applicable Annual Payment Period. Payment and a report of the amount of water used are due by the tenth (10th) day of the following month. For example, water usage for the month of January should be submitted no later than February  $10^{th}$ .

#### B. Minimum Amount

For the purpose of calculating the minimum amount of each Annual Requirement for which Purchaser is unconditionally liable, without offset or counterclaim related to this agreement, Purchaser during each Annual Payment Period shall be deemed to have taken and used the minimum annual average daily amount of Project water (regardless of whether or not such amount is or was actually taken or used) specified for Purchaser as follows:

I. Beginning with the period commencing on the Effective Date of this Agreement, the initial minimum amount will be 0 MGD, until the Purchaser's first diversion of water from the Project under this agreement.

- II. During the Annual Payment Period commencing on the Purchaser's first diversion of water from the Project under this agreement, and during each Annual Payment Period thereafter, an amount for Purchaser, expressed in MGD, equal to the greater of:
  - a. 0.478 MGD (534.966 acre-feet), or
  - b. the average annual MGD use actually taken from the Project by Purchaser during the period of the immediately preceding five (5) consecutive Annual Payment Periods. Until the water use for five (5) consecutive Annual Payment Periods has been established, the average annual MGD use actually taken from the Project will be the average of water use from the Project in the preceding Periods.

# C. Determination of Adjusted Annual Payment.

The term "Adjusted Annual Payment" means the Annual Payment, as adjusted during or after each Annual Payment Period, as provided by this Agreement. At the close of each Annual Payment Period, District shall determine, with the cooperation of Purchaser, the actual amount of water diverted and used by Purchaser during the Annual Payment Period. District shall calculate Purchaser's Adjusted Annual Payment by multiplying District's audited Standard Rate applicable to the Annual Payment Period in accordance with this Agreement times the greater of either:

- I. the actual amount of water diverted and used from the Project expressed in thousands of gallons; or
- II. Purchaser's minimum amount of water applicable during the Annual Payment Period as determined in accordance with this Agreement, expressed in thousands of gallons.

The difference, if any, between the Annual Payment paid by Purchaser during the Annual

Payment Period and the Adjusted Annual Payment, when determined, shall be applied as a credit

or debit to Purchaser's account with District and shall be credited or debited in one-twelfth (1/12th)

increments to Purchaser's next twelve (12) monthly payments, or as otherwise agreed upon

between District and Purchaser, provided that the total amount of the credit or debit shall be made

within the next twelve (12) months.

D. Dispute.

If Purchaser at any time disputes the amount to be paid by it to District, Purchaser 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 Purchaser should have

been less or more, District shall promptly revise and reallocate Purchaser's Annual Payment in a

manner that Purchaser or District will recover the amount due.

If a court, the Commission, or any federal or state regulatory authority finds that District's

rates or policies for delivering water to Purchaser under this Agreement are unreasonable or

otherwise unenforceable, District will cooperate with Purchaser and use all reasonable and

available means to continue providing water under this Agreement. However, if a viable solution

cannot be reached, District has the option to terminate this Agreement without liability to

Purchaser. By signing this Agreement, Purchaser stipulates and agrees that District and its other

customers will be prejudiced if Purchaser avoids the obligation to pay the rates for water specified

in this Agreement while accepting the benefits of obtaining water from District. Nothing in this

Agreement shall be construed as constituting an undertaking by District to furnish water to

Purchaser except pursuant to the terms of this Agreement. If Purchaser initiates or participates in

any proceeding regarding District's rates and policies under this Agreement and advocates a

position that is adverse to District and District prevails, Purchaser shall pay District for its

expenses, including attorneys' fees, in the proceeding within fifteen (15) days after District's

demand for payment. Purchaser stipulates and agrees that the rates and policies specified in this

Agreement at the Effective Date of this Agreement, are just, reasonable, and without

discrimination.

SECTION 15. RATE.

Pursuant to the Amendatory Contract and the discussion below, Purchaser specifically

agrees to pay the rate per 1,000 gallons (U.S. Standard Liquid Measure) of water equal to District's

Standard Rate, which for any given year shall be the rate charged by District to the Initial

Contracting Parties for water sales in effect on the first (1st) day of such year pursuant to Section

4 of the Amendatory Contract.

Failure to pay any payment due District shall be sufficient grounds for District to exercise

any remedy available to District under this Agreement.

**SECTION 16. MEASUREMENT.** 

Purchaser shall provide, operate, maintain, and read meters which shall record water taken

by Purchaser from District at Purchaser's Diversion Point(s). Water shall be measured through

conventional types of approved meter(s). Purchaser shall provide for District's Approval the plans

and specifications of the metering equipment and the method for determining the amount of water

diverted from the Project for Purchaser's use. Purchaser shall keep accurate records of all

measurements of water required under this Agreement, and the measuring device(s) and such

records shall be open for District inspection at all times. Purchaser shall maintain records sufficient

to track and differentiate between water taken from Benbrook Reservoir under this Agreement, the

Benbrook Settlement Contract, and the Sunshine Lake Agreement. District shall have access to

Purchaser's metering equipment at all reasonable times. This access shall include authorization for

District to install, inspect, adjust, or test measuring and recording equipment. Upon written request

of District, Purchaser will give District copies of such records or permit District to have access to

the same in Purchaser's office during reasonable business hours. If requested in writing by District

and not more than once in each calendar month, on a date as near the end of such calendar month

as practical, Purchaser shall calibrate its raw water meter(s) in the presence of a District

representative, and District and Purchaser shall jointly observe any adjustments that shall be

necessary. If District shall in writing request Purchaser to calibrate its raw water meter(s),

Purchaser shall give District notice of the time when any such calibration is to be made and, if a

representative of District is not present at the time set, Purchaser may proceed with the calibration

and adjustment in the absence of any representative of District.

If, upon any test of the raw water meter(s), the percentage of inaccuracy of such metering

equipment is found to be in excess of two percent (2%), registration thereof shall be corrected for

a period extending back to the time when such inaccuracy began, if such time is ascertainable. If

such time is not ascertainable, then registration thereof shall be corrected for a period extending

back one-half (1/2) of the time elapsed since the last date of calibration, but in no event further

back than a period of six (6) months. If any meter(s) are out of service or out of repair so that the

amount of water delivered cannot be ascertained or computed from the reading thereof, the water

delivered through the period such meter(s) are out of service or out of repair shall be estimated and

agreed upon by District and Purchaser upon the basis of the best data available, and, upon written

request by District, Purchaser shall install new meter(s) or repair existing meter(s) within a

reasonable time not to exceed one hundred eighty (180) days. Upon Purchaser's refusal to install

new meter(s) or repair existing meter(s) or after one hundred eighty (180) days following District's

request to do so, District, at its option, may install new meters or repair existing meters at

Purchaser's cost. District shall recover its cost of labor and materials by billing Purchaser in twelve

(12) equal monthly installments on or before the tenth (10th) day of each month. If District and

Purchaser fail to agree on the amount of water delivered during such period, the amount of water

delivered may be estimated by:

(a) correcting the error if the percentage of the error is ascertainable by calibration tests or

mathematical calculation; or

(b) estimating the quantity of delivery by deliveries during the preceding periods under

similar conditions when the meter or meters were registering accurately.

All books and records pertaining to this Agreement shall be open and available for copying,

inspection, and audit by District.

SECTION 17. SOURCE AND ADEQUACY OF SUPPLY.

Water supplied by District to Purchaser under this Agreement shall be water stored by

District in the Project and from no other source, unless District, at its sole discretion, decides to

supply water from another source available to District. District will use its best efforts to remain

in a position to furnish raw water sufficient for the reasonable demands of Purchaser. District's

agreement to provide water to Purchaser shall not be deemed a guarantee on District's part that any

particular quantity of water will be available, and the quantity of water taken shall at all times be

subject to the right of District to reduce said quantity of water as District, in its sole judgment, may

deem necessary in order to meet District's commitments under the Amendatory Contract, comply

with any order of any court or administrative body having appropriate jurisdiction, reduce

flooding, or prevent injury.

District has adopted a Water Conservation and Drought Contingency and Emergency

Demand Management Plan. With respect to water provided to Purchaser under this agreement, if

Purchaser fails to implement District's and its own emergency demand management plans when

trigger conditions occur, District's General Manager is authorized to institute rationing pursuant to

the Amendatory Contract and any other applicable wholesale water contracts, including this

Agreement, as well as to enforce any contractual, statutory, or common law remedies available to

District necessary to protect the public welfare. District water made available to Purchaser when

Purchaser is not in compliance with District's Water Conservation and Drought Contingency and

Emergency Demand Management Plan will be reduced to the amount of water that District's

General Manager estimates would be necessary to satisfy Purchaser's demand if Purchaser was

operating in compliance with both District's and Purchaser's emergency demand management

plans.

District's rights to maintain and operate the reservoirs owned or used by District and its

water transportation facilities and at any and all times in the future to impound and release waters

thereby in any lawful manner and to any lawful extent District may see fit is recognized by

Purchaser, and, except as otherwise provided herein, there shall be no obligation hereunder upon

District to release or not to release any impounded waters at any time or to maintain any waters at

any specified level.

Purchaser acknowledges that the delivery of water to Purchaser through District's pipelines

is subject to and dependent on adequate pipeline operational capacity and efficiency. Therefore,

Purchaser agrees to maintain sufficient storage or an alternative supply of raw water to supply

Purchaser's demand for raw water without taking water under this Agreement for a period of sixty

(60) days.

**SECTION 18. PLEDGE OF REVENUE** 

Purchaser represents and covenants that all payments to be made by it under this

Agreement shall constitute reasonable and necessary "operating expenses" of its system as defined

in Tex. Gov't. Code Ann. §§ 1502.056-.058 (Vernon 2000), and that all such payments will be

made from the revenues of its water system. Purchaser represents and has determined that the

water supply to be obtained from the Project is absolutely necessary and essential to the present

and future operation of its water system and is the only available and adequate source of supply of

water. Accordingly, all payments required by this Agreement to be made by Purchaser shall

constitute reasonable and necessary operating expenses of Purchaser's system or systems as

described above, and the obligation to make such payments from revenues of such system or

systems shall have priority over any obligation to make any payments from such revenues, whether

of principal, interest, or both, with respect to all bonds heretofore or hereafter issued by Purchaser.

Purchaser agrees throughout the term of this Agreement to continuously operate and

maintain its water system and to fix and collect such rates and charges for water services to be

supplied by its water system as will produce revenues in an amount equal to at least (i) all of its

payments under this Agreement and (ii) all other amounts as required by the provisions of the

ordinances or resolutions authorizing its revenue bonds or other obligations now or hereafter

outstanding.

Unless otherwise specifically provided in writing by subsequent agreement between

District and Purchaser, District shall never have the right to demand payment by Purchaser of any

obligation assumed or imposed on it under this Agreement from funds raised or to be raised by

taxation, it being expressly understood by District and Purchaser that all payments due by

Purchaser are to be made from the revenues and income received by Purchaser from the ownership

and operation of its water system.

**SECTION 20. RAW WATER QUALITY.** 

The water which district offers to sell to Purchaser is non-potable, raw, and untreated.

Purchaser has satisfied itself that such water is suitable for its needs. District expressly disclaims

any warranty as to the quality of the raw water or suitability of the raw water for its intended

purpose. District expressly disclaims the warranties of merchantability and fitness. Purchaser

agrees that any variation in the quality or characteristics of the raw water offered for sale as

provided by this agreement shall not entitle Purchaser to avoid or limit its obligation to make

payments provided for by this agreement. There are no warranties which extend beyond the

description contained in this agreement.

**SECTION 21. RETURN FLOWS.** 

Purchaser acknowledges that some of the water supplied to it by District may be returned

to watercourses in the Trinity River Basin as return flows, which for purposes of this Agreement,

are termed System Return Flows. District and Purchaser believe that the most economical means

for meeting some of the future demands of District's customers may involve the use of return flows

to extend or enhance the yield of the System. In this regard, District will, with Purchaser's

cooperation, study the potential benefits to the System that can be realized through the use of return

flows. In anticipation that District will determine that use of return flows is both feasible and

economical, Purchaser agrees that, other than for purposes of liability, District retains title to all

system water, and has the right, subsequent to Purchaser's use of System water, to make whatever

reuse of the water District deems necessary. Purchaser will receive no compensation, credit, or

offset for making System Return Flows available to District.

To the extent that Purchaser resells Project water to others, Purchaser shall include

language in any contract for resale of Project water assigning System Return Flows to the District

and requiring cooperation with the District in making System Return Flows available to District.

Similarly, to the extent that Purchaser does not treat its wastewater, Purchaser shall include

language in any wastewater treatment contract assigning System Return Flows to District and

requiring cooperation with District in making System Return Flows available to District. Neither

Purchaser nor its customers will be entitled to consideration or credit of any type, either in

exchange of water, money, or other consideration, for the System Return Flow assigned back to

the District.

Use of System Return Flows by Purchaser initiated prior to the effective date of this

Agreement are exempt from this section provided Purchaser provides the District with plans and

specifications of the existing reuse project and any other information reasonably requested by the

District within ninety days of the effective date of this Agreement. If Purchaser proposes to engage

in a new reuse project using System Return Flows, it shall provide the District with sufficient

information to allow the District to evaluate whether the proposed reuse project will significantly

increase the water rate for District customers or decrease the yield of the District Reuse Project.

Subsequent to evaluation by the District, the project will be approved by the District unless the

District determines that the project will increase the District's water rates or decrease the yield of

the District Reuse Project without a corresponding decrease in the demand for raw water from the

District.

**SECTION 22. TITLE.** 

Title for liability purposes to all water supplied hereunder to Purchaser shall be in District

up to the Point(s) of Delivery, at which point title for liability purposes shall pass to Purchaser.

While title for liability purposes remains in a party, to the greatest extent allowed by law, that party hereby agrees to save and hold the other party harmless from all claims, demands, and causes of action which may be asserted by anyone on account of the transportation and delivery of said

### **SECTION 23. OTHER CHARGES.**

water.

In the event that any sales or use taxes, or taxes, assessments, or charges of any similar nature, are imposed on diverting, storing, delivering, gathering, impounding, taking, selling, using, or consuming the water received by Purchaser from the Project, the amount of the tax, assessment, or charge shall be borne by Purchaser, in addition to all other charges, and whenever District shall be required to pay, collect, or remit any tax, assessment, or charge on water received by Purchaser, then Purchaser shall promptly pay or reimburse District for the tax, assessment, or charge in the manner directed by District.

#### **SECTION 24. DEFAULT IN PAYMENTS.**

All amounts due and owing to District by Purchaser shall, if not paid when due, bear interest at the interest rate set out in the STATE OF TEXAS PROMPT PAYMENT ACT, TEXAS GOVERNMENT CODE, CHAPTER 2251, or any successor statute, from the date when due until paid, provided that such rate shall never be usurious or exceed the maximum rate permitted by law. If any amount due and owing by Purchaser to District is placed with an attorney for collection, Purchaser shall pay to District, in addition to all other payments provided for by this Agreement, including interest, District's collection expenses, including court costs and attorneys' fees. District shall, to the extent permitted by law, suspend delivery of water from the Project to Purchaser if Purchaser remains delinquent in any payments due hereunder for a period of sixty (60) days and shall not resume delivery of water while Purchaser is so delinquent and may, at its option, terminate this Agreement without further liability to Purchaser. District shall pursue all legal remedies

against Purchaser to enforce and protect the rights of District, District customers, and the holders

of District's bonds. It is understood that the foregoing provisions are for the benefit of the holders

of District's bonds.

**SECTION 25. TERMINATION.** 

If District decides to terminate this Agreement, as provided by this Agreement, District

shall deliver written notice of the decision to Purchaser. Purchaser shall discontinue taking water

from District or its facilities and physically seal Purchaser's diversion facilities within one hundred

eighty (180) days after District delivers written notice to Purchaser.

**SECTION 26. WAIVER AND AGREEMENT.** 

Failure to enforce or the waiver of any provision of this Agreement or any breach or

nonperformance by District or Purchaser shall not be deemed a waiver by Purchaser or District of

the right in the future to demand strict compliance and performance of any provision of this

Agreement. Regardless of any provision contained in this Agreement to the contrary, any right or

remedy or any default under this Agreement, except the right of District to receive the Annual

Payment which shall never be determined to be waived, shall be deemed to be conclusively waived

unless asserted by a proper proceeding at law or in equity within two (2) years plus one (1) day

after the occurrence of the default.

No officer or agent of District or Purchaser is authorized to waive or modify any provision

of this Agreement. No modifications to or rescission of this Agreement may be made except by a

written document signed by District's and Purchaser's authorized representatives.

**SECTION 27. REMEDIES.** 

It is not intended hereby to specify (and this Agreement shall not be considered as

specifying) an exclusive remedy for any default, but all such other remedies (other than

termination) existing at law or in equity may be availed of by any party hereto and shall be cumulative. Recognizing, however, that 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 specific performance, in addition to any other legal or equitable remedies (other than termination) which also may be available to District.

#### **SECTION 28. INDEMNITY.**

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

INSPECTION, ADJUSTING, OR TESTING OF MEASURING AND RECORDING EQUIPMENT INVOLVING PURCHASER'S DIVERSION OF DISTRICT WATER, AS WELL AS ANY CLAIM THAT MAY ARISE FROM ANY CONDITION OF PURCHASER'S FACILITIES, SEPARATE OPERATIONS BEING CONDUCTED ON PURCHASER'S FACILITIES, OR THE IMPERFECTION OR DEFECTIVE CONDITION, WHETHER LATENT OR PATENT, OF ANY MATERIAL OR EQUIPMENT SOLD, SUPPLIED, OR FURNISHED BY DISTRICT. THIS INDEMNIFICATION AND RELEASE SHALL SURVIVE TERMINATION OR EXPIRATION OF THE AGREEMENT.

#### **SECTION 29. FORCE MAJEURE.**

If, for any reason of force majeure, either District or Purchaser shall be rendered unable, wholly or in part, to carry out its obligation under this Agreement, other than the obligation of Purchaser to make the payments required under the terms of this Agreement, then if the party shall give notice of the reasons in writing to the other party within a reasonable time after the occurrence of the event or cause relied on, the obligation of the party giving the notice, so far as it is affected by the "force majeure," shall be suspended during the continuance of the inability then claimed, but for no longer period. The term "force majeure," as used in this Agreement, shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemy, orders or actions of any kind of government of the United States or of the State of Texas, or any civil or military authority, insurrections, riots, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, explosions, breakage or accident to dams, machinery, pipelines, canals, or other structures, partial or entire failure of water supply, including pollution (accidental or intentional), and any inability on the part of District to deliver water, or of Purchaser to receive water, on account of any other cause not reasonably within the control of the party claiming the inability.

#### **SECTION 30. NON-ASSIGNABILITY.**

Purchaser understands and agrees that any assignment of rights or delegation of duties under this Agreement is void without the prior written consent of District. Such written consent shall not be unreasonably delayed, withheld, or denied.

#### SECTION 31. NO THIRD-PARTY BENEFICIARIES.

This Agreement shall inure only to the benefit of the parties hereto and third persons not privy hereto shall not, in any form or manner, be considered a third-party beneficiary of this Agreement. Each party hereto shall be solely responsible for the fulfillment of its customer contracts or commitments, and District shall not be construed to be responsible for Purchaser's contracts or commitments by virtue of this Agreement or any provision contained herein.

# **SECTION 32. RELATIONSHIP OF THE PARTIES.**

This Agreement is by and between District and Purchaser and is not intended, and shall not be construed to create, the relationship of agent, servant, employee, partnership, joint venture, or association as between District and Purchaser nor between District and any officer, employee, contractor, or representative of Purchaser. No joint employment is intended or created by this Agreement for any purpose. Purchaser agrees to so inform its employees, agents, contractors, and subcontractors who are involved in the implementation of or construction under this Agreement.

#### **SECTION 33. SOLE AGREEMENT.**

Except for the Amendatory Contract, this Agreement constitutes the sole and only agreement of Purchaser and District and supersedes any prior understanding or oral or written agreements between District and Purchaser respecting the subject matter of this Agreement, more specifically as this Agreement relates only to Weatherford's wholesale customer service area, including any oral or written agreement with District that Purchaser obtained by assignment.

# **SECTION 34. SEVERABILITY.**

The provisions of this Agreement are severable, and if, for any reason, any one or more of the provisions contained in this Agreement shall be held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall remain in effect and be construed as if the invalid, illegal, or unenforceable provision had never been contained in the Agreement.

#### **SECTION 35. NOTICES.**

All notices, payments, and communications (collectively "notices") required or allowed by this Agreement shall be in writing and be deemed to have been given and received (a) by hand-delivery or courier; or (b) on the third business day after depositing the notice in the United States mail, postage prepaid, registered or certified, with return receipt requested, and addressed to the party to be notified; or (c) when sent by email to RawWaterContracts@trwd.com and upon the receipt by the Purchaser of written confirmation by the District; provided, however, that an automated email confirmation of delivery or read receipt shall not constitute such confirmation.

Any notice required or allowed to be given under this Agreement shall be sent to the

City of Weatherford, Director of Water Utilities or their designee

Tarrant Regional Water District, Water Supply Manager or their designee

Either party may change its physical or email address by giving written notice of the change to the other party at least fifteen (15) days before the change becomes effective.

#### **SECTION 36. PLACE OF PERFORMANCE.**

All acts performable under the terms of this Agreement and all amounts due under this Agreement, including but not limited to payments due under this Agreement or damages for the breach of this Agreement, shall be paid and be due in Tarrant County, Texas, said Tarrant County,

Texas, being the place of performance agreed to by the parties to this Agreement. In the event that

any legal proceeding is brought to enforce this Agreement or any provision hereof, the same shall

be brought in Tarrant County, Texas or the appropriate Federal District Court.

**SECTION 37. APPROVAL OF CONTRACTS** 

The Parties recognize that to attain certain goals of this Agreement several of its provisions

must be included in contracts that Purchaser will execute with its wholesale customer(s) or

incorporated into that contract by reference. Purchaser agrees that any contract between Purchaser

and any other party will incorporate this Agreement by reference; will include a provision allowing

for all or part of Purchaser's interest in such contract to be assigned to District; and will, in

conjunction with Purchaser's liability under this Agreement, constitute an unconditional obligation

to make the payments to District required under this Agreement. Purchaser hereby agrees that no

contract will be offered to a customer or potential customer of Purchaser until the contract has

been reviewed and approved by District. District agrees that approval will not be unreasonably

withheld for any reason other than non-compliance with the requirements of this Agreement

including this section or non-compliance with the requirements of the Amendatory Contract.

**SECTION 38. OPERATIONS AGREEMENT** 

Purchaser specifically agrees not to divert water from Benbrook Reservoir for terminal

storage in Lake Weatherford unless the elevation of Lake Weatherford is less than 892 feet mean

sea level. For purposes of this Agreement, terminal storage is defined as Purchaser's discharge of

water into Lake Weatherford at a rate exceeding the rate of diversions from Lake Weatherford to

Purchaser's existing or future water treatment plant(s). Purchaser specifically acknowledges and

agrees that this section applies to all water obtained by Purchaser from Benbrook Reservoir,

including water supplied under this Agreement and the Benbrook Settlement Contract.

#### **SECTION 39. DUPLICATE ORIGINALS.**

Purchaser and District, acting under the authority of their respective governing bodies, shall authorize the execution of this Agreement in several counterparts, each of which shall be an original.

Each party represents and warrants that the person or persons executing this Agreement has the legal authority to do so on behalf of their respective party, and that such binding authority has been granted by proper order, resolution, ordinance, or other authorization of the entity. The other party is fully entitled to rely on this warranty and representation in entering into this Agreement.

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

TARRANT REGIONAL WATER DISTRICT, A Water Control and Improvement District 800 East Northside Drive Fort Worth, TX 76102-1016 Attn.: General Manager

Dan Buhman
General Manager

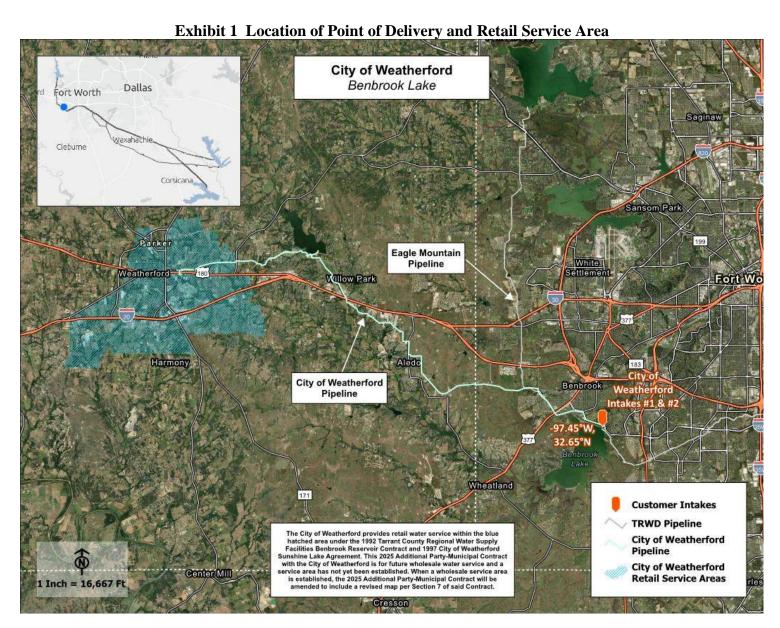
DATE:

CITY OF WEATHERFORD
PO BOX 255
Weatherford, TX 76086
Attn: City Manager

BY:

James Hotopp
City Manager

DATE:



#### TARRANT REGIONAL WATER DISTRICT

#### **AGENDA ITEM 6**

**DATE:** June 17, 2025

SUBJECT: Consider Approval of Contact Amendment with CDM Smith, Inc. for

Design of Joint Booster Pump Station Number 2 and Application

**Engineering Services of the Integrated Pipeline Project** 

**FUNDING:** Joint Bond Fund

#### **RECOMMENDATION:**

Management recommends approval of a contract amendment **in an amount not-to-exceed \$3,669,842** with CDM Smith, Inc. to perform design services for Joint Booster Pump Station Number 2 (JB2) and application engineering services for the Lake Palestine Pump Station (LP1 AES). The current contract amount is \$21,587,672.86 and the revised not to exceed contract amount, including this proposed amendment will be \$25,257,514.86. Phase 5 of the IPL (JB2) is jointly funded by TRWD and Dallas.

#### DISCUSSION:

CDM Smith, Inc. (CDM) was evaluated, selected, and contracted in 2011 to provide design and construction services for the three Integrated Pipeline Program booster pump stations. The contract has been amended seven times for engineering services regarding design, bid phase and construction phase services for Booster Pump Stations (JB3, JB4 and S1x10) and for application engineering services (AES) related to all IPL facilities.

Initial plans called for the IPL to be fully functional in 2018. Revised supply, demand, debt, and rate projections yielded an IPL system phased approach in meeting incremental demands. As a result, Joint Booster Pump Station Number 2 (JB2) design and construction was put on hold in 2013.

Recently updated TRWD demand projections indicate the need for IPL Phases 4 and 5 to be complete, online, and operational in 2032. The IPL Phase 4 and 5 expansion includes the Richland-Chambers Lake Pump Station (JRC1), Section 16 pipeline, Joint Booster Pump Station Number 2 (JB2), Joint Booster Pump Station 3 (JB3) and the associated Owner Furnished Equipment and high voltage power sub-stations.

Current plans for IPL Phase 3 (Dallas) include the Lake Palestine Pump Station (LP1) and Section 19 pipeline completion, large diameter isolation valves procurement and communications network. Th requested AES system development along with factory and site testing, start-up, commissioning, and witness testing are required for Phase 3 system completion and operations.

This request also includes scope and fee for analysis and design updates needed due to potential environmental changes, rules and operational needs for the JB2 Pump Station site layout (Phase 5 - Joint). It is anticipated that a future amendment will be submitted to finalize pump station site configuration and design.

The IPL Program strives to achieve 25% DBE/HUB participation when and where possible. CDM Smith Inc. intends to subcontract 18.7% of the project work to qualified DBE/HUB firms under the Fair Opportunities in Purchasing and Contracting Program.

Management additionally requests the Board of Directors grant authority to the General Manager or his designee to execute all documents associated with the contract described herein.

The Recommendation by Staff, Fee Summary, and Fair Opportunity in Purchasing and Contracting Summary are attached.

This item was reviewed by the Construction and Operations Committee on June 12, 2025.

# Submitted By:

Ed Weaver IPL Program Manager



# Memo

TO: Ed Weaver

FROM: Shelly Hattan

**COPY:** Coy Veach

**DATE:** May 30, 2025

**SUBJECT:** Recommendation for Approval of a Contact Amendment with CDM

Smith, Inc. for Design of Joint Booster Pump Station Number 2 (JB2) and Application Engineering Services of the Integrated Pipeline Project

CDM Smith Inc. (CDM) provides Booster Pump Station Engineering Services and Application Engineering Services for the IPL Program. This request is for an amendment to the contract for Booster Pump Sation Engineering Services.

This request includes scope and fee for analysis and design updates needed due to potential environmental changes and operational needs for the JB2 Pump Station. It is anticipated that a future Amendment will be recommended for Board action later this year to finalize design of the pump station. In addition, this request also includes scope and fee for application engineering services for programming and integration work for the Phase 3 projects.

This request includes scope and fee for the following tasks:

- 1. Booster Pump Station Design
  - a. JB2 Project Management and Support
  - b. JB2 Pump Station Design Updates
- 2. Application Engineering Services
  - a. AES Project Management
  - b. AES LP1 Control Narrative Compilation
  - c. AES LP1 OFE Pre-purchase Equipment
  - d. AES LP1 Programming and Integration

CDM does not qualify as a DBE/HUB firm under the Fair Opportunities in Purchasing and Contracting Program. CDM's team includes three sub-consultant firms that are MWBE/HUB certified consultants. These firms will provide services amounting to 18.7% of the total contract amendment.

Staff recommend the award of this contract amendment for Professional Services to CDM Smith, Inc. for IPL Booster Pump Station Engineering Services and Application Engineering Services in the not to exceed amount of \$3,669,842.00. The Fee Summary and Fair Opportunity in Purchasing Summary are attached.

Fee Summary CDM Smith, Inc. IPL Design of Joint Booster Pump Station Number 2 (JB2) and Application Engineering Services of the Integrated Pipeline Project

Task No.	Description	Estimated Fee
Booster	Pump Station Engineering Services	
1	JB2 - Project Management and Support	\$241,704.00
2	JB2 – Pump Station Design Updates	\$2,113,016.00
	Total Budget for Booster Pump Station Engineering	\$2,354,720.00
Applicat	tion Engineering Services	
1	AES - Project Management and Support	\$106,484.36
2	AES – LP1 Control Narrative Compilation	\$111,828.64
3	AES – LP1 OFE Pre-Purchased Equipment	\$141,267.13
4	AES – LP1 Programming and Integration	\$621,919.87
	Total Budget for Application Engineering Services	\$981,500.00
Special	Services	
999	Special Services	\$333,622.00
	Total Budget for Amendment	\$3,669,842.00

#### **Fair Opportunity Purchasing**

Project: Consider approval of a Contract Amendment with CDM Smith, Inc. for Design of Joint Booster Pump Station Number 2 (JB2) and Application Engineering Services of the Integrated Pipeline Project

Not to Exceed \$3,669,842.00

CDM Smith, Inc., an Engineering and Consulting company with local offices in Dallas, Texas and Fort Worth, Texas, has signed the IPL Project Fair Opportunity Purchasing documentation, and proposes to use the following subconsultants:

Project Category: Engineering, Bid and Construction Services

### LOCAL/NON-LOCAL CONTRACT SUMMARY

		<u>Amount</u>	<u>Percent</u>
Local Contracts		\$3,336,220	90.9%
Non-Local Contracts			0.0%
Special Services (Contingency)		\$ 333,662	9.1%
	Total This Agenda	\$3,669,842	

#### LOCAL/NON-LOCAL MWBE/HUB PARTICIPATION THIS ACTION

<u>Local</u>	Certification	<u>Percentage</u>
Nathan D Maier, Inc.	MWBE/HUB	14.0%
JQ Infrastructure	MWBE/HUB	4.3%
Team Consultants	MWBE	0.4%

#### **AGENDA ITEM 7**

**DATE:** June 17, 2025

SUBJECT: Consider Approval of Contract Amendment with Freese and Nichols,

Inc. for Design of Joint Booster Pump Station Number 2 Reservoir Project and Program Management Services for Integrated Pipeline

**Project Phase 4 and 5** 

**FUNDING:** Joint Bond Fund

#### **RECOMMENDATION:**

Management recommends approval of a contract amendment **in an amount not-to-exceed \$4,820,940** with Freese and Nichols, Inc. for design of the Joint Booster Pump Station Number 2 Reservoir Project (\$2,827,948.00) and Program Management Services for Integrated Pipeline Project Phase 4 and 5 (\$1,992,992.00). The current contract amount is \$37,422,115.95 and the revised not to exceed contract amount, including this proposed amendment will be \$42,243,055.95. Phase 5 of the IPL (JB2) is jointly funded by TRWD and Dallas.

#### **DISCUSSION:**

#### **Joint Booster Pump Station Number 2**

Freese and Nichols (FNI) was evaluated, selected, and contracted in 2011 to provide design and construction services for the Integrated Pipeline Program booster pump stations and system balancing reservoirs -- Joint Booster Pump Station 2, Joint Booster Pump Station 3 and Midlothian Balancing Reservoir JB2, JB3 and MBR respectively. Initial plans called for the IPL to be fully functional in 2018. Revised supply, demand, debt and rate projections yielded an IPL phased approach to meeting incremental demands. As a result, Joint Booster Pump Station Number 2 and associated reservoir design and construction were put on hold.

Current TRWD demand projections now indicate a need for IPL Phase 4 to be complete, online, and operational starting in 2032. The IPL Phase 4 expansion includes the Richland Chambers Lake Pump Station (JRC1), Section 16 pipeline, Joint Booster Pump Station 2 (JB2), Joint Booster Pump 3 (JB3) high-capacity pump additions and assorted Owner Furnished Equipment and sub-station contracts.

This request includes scope and fee for analysis of a reservoir capacity, layout and final design as follows:

- 1. Project Management and Support
- 2. Previous Design Criteria Confirmation
- 3. JB2R Increased Reservoir Capacity Analysis

- 4. Preliminary Engineering Services and Documents
- 5. Final Design Services and Documents

#### **Phase 4 and 5 Program Management Services**

Over the next two years, the Integrated Pipeline Program will be continuing design of Phase 4 of the Integrated Pipeline System. There will be seven engineering teams designing Joint Richland Chambers Pump Station (JRC1), Joint Booster Pump Station Number 1 (JB2), and Pipeline Section 16 (PL16).

Design Contracts	<b>Board Action</b>	Contract Amount
AECOM – Program Wide Services	May 2025	\$4,787,638
Jacobs – JRC1 Pump Station – Final Design	June 2025	\$9,960,870
CDM Smith – JB2 Pump Station – Preliminary Design	June 2025	\$2,354,720
FNI – JB2 Reservoirs	June 2025	\$2,827,948
FNI – Section 16 Pipeline & Environmental Permitting	April 2025	\$9,043,451
HDR – Cathodic Protection Design	July 2025	TBD
Burns and McDonnell – High Voltage Substations	Dec 2025	TBD

The purpose of this Contract Amendment is to provide ongoing IPL program management services. FNI. provides Program Construction Management Services for the IPL Program. This request includes scope and fee to perform program construction management, FOPC administration and public relations editor services for Integrated IPL Phase 4 and 5.

The current FNI contract expires on April 30, 2025. This proposed amendment is for the term beginning May 1, 2025, and ending April 30, 2027. An amendment is anticipated to continue services after this two-year period has expired. FNI will provide related Integrated Pipeline Program professional services in the following three program tasks:

- 1. Program management and construction management
- 2. FOPC Administration
- 3. Public Relations Editor

The IPL Program strives to achieve 25% DBE/HUB participation when and where possible. FNI intends to subcontract 24.5% of the project work to six qualified DBE/HUB firms under the Fair Opportunities in Purchasing and Contracting Program.

Management additionally requests the Board of Directors grant authority to the General Manager or his designee to execute all documents associated with the contract described herein.

The Recommendation by Staff, Fee Summary, and Fair Opportunity in Purchasing and Contracting Summary are attached.

This item was reviewed by the Construction and Operations Committee on June 12, 2025. **Submitted By:** 

Ed Weaver IPL Program Manager



# Memo

TO: Ed Weaver

FROM: Shelly Hattan

**COPY:** Coy Veach

**DATE:** June 4, 2025

**SUBJECT:** Recommendation for Amendment to Contract with Freese and Nichols

Inc. for Design of Joint Booster Pump Station Number 2 Reservoir Project and Integrated Pipeline Project Phase 4 and 5 Program

Management Services

Freese and Nichols, Inc. (FNI) provides Reservoir Engineering Design Services, for the IPL Program. This scope, fee and services will be an amendment to the current contract, terms and conditions for IPL Reservoir Design Services. This request includes scope and fee to perform analysis and engineering design for the JBR2 Reservoir. This request includes scope and fee for the following five tasks:

- 1. Project Management and Support
- 2. Previous Design Criteria Confirmation (Pre-Design)
- 3. JB2R Reservoir Re-analysis
- 4. Preliminary Engineering Services and Documents
- 5. Final Design Services and Documents

Also, over the next two years, the Integrated Pipeline Program will be continuing design of Phase 4 and 5 of the Integrated Pipeline System. There will be seven design teams who will be designing Joint Richland Chambers Pump Station (JRC1), Joint Booster Pump Station Number 1 (JB2), and Pipeline Section 16 (PL16).

Freese and Nichols, Inc. provides Program Construction Management Services for the IPL Program. This request includes scope and fee to perform program construction management, FOPC administration and public relations editor services for Integrated Pipeline (IPL) Phase 4 and 5. Negotiations produced an agreement on recommended scope, fees and contract terms and conditions.

The IPL Program strives to achieve 25 percent DBE/HUB participation when and where possible. FNI does not qualify as a DBE/HUB firm under the Fair Opportunities in Purchasing and Contracting Program. The FNI team does however include six subconsultant firms that are MWBE/HUB certified consultants. These firms will provide services amounting to 24.5% of the total contract amendment.

Staff recommend the award of this contract amendment for Professional Services to Freese and Nichols, Inc. for IPL Design Services in the not to exceed amount of \$4,820,940.00. The Fee Summary is attached.

# Fee Summary Freese and Nichols, Inc. IPL Design of Joint Booster Pump Station Number 2 Reservoir Project and IPL Phase 4 and 5 Program Management Services

Task No.	Description	Estimated Fee
JB2 Res	servoir Design – Basic Services	
1	Project Management and Support	\$462,529.00
2	Previous Design Criteria Confirmation (Pre-Design)	\$191,672.00
3	JB2R Reservoir Re-analysis	\$354,611.00
4	Preliminary Engineering Services and Documents	\$582,721.00
5	Final Engineering Services and Documents	\$979,329.00
	Basic Services - JB2 Reservoir Design	\$2,570,862.00
IPL Phas	se 4 and 5 Program Management Services - Basic Services	
100	Program Construction Management	\$1,475,856.62
1000	FOPC Administration	\$326,413.15
1200	Public Relations Editor Services	\$9,540.99
Ва	sic Services - IPL Phase 4 and 5 Program Management	\$1,811,810.76
Total B	udget - Basic Services	\$4,382,672.76
Special	Services	
999	Special Services	\$438,267.24
	Total Budget for Amendment	\$4,820,940.00

#### **Fair Opportunity Purchasing**

Project:

Consider approval of a Contract Amendment with Freese and Nichols, Inc. for Design of Joint Booster Pump Station Number 2 Reservoir Project and Integrated Pipeline Project Phase 4 and 5 Program Management Services

Not to Exceed \$4,820,940.00

Freese and Nichols, Inc., an Engineering and Consulting company with local offices in Dallas, Texas and Fort Worth, Texas, has signed the IPL Project Fair Opportunity Purchasing documentation, and proposes to use the following subconsultants:

**Project Category:** Engineering, Bid and Construction Services

LOCAL/NON-LOCAL CONTRACT SUMMARY

		<u>Amount</u>	<u>Percent</u>
Local Contracts		\$4,382,672.76	90.9%
Non-Local Contracts			0.0%
Special Services (Contingency)		\$438,267.24	9.1%
	Total This Agenda	\$4,820,940.00	

#### LOCAL/NON-LOCAL MWBE/HUB PARTICIPATION THIS ACTION

Local	Certification	<u>Percentage</u>
Nathan D Maier, Inc.	MWBE/HUB	12.6%
Mbroh Engineering	MWBE/HUB	3.1%
WEST Drilling	SBE/HUB	1.4%
Beyond Testing	MWBE/HUB	0.4%
Williams and Hope	MWBE/HUB	6.8%
Shaffer Creative	MWBE/HUB	0.2%

#### **AGENDA ITEM 8**

**DATE:** June 17, 2025

SUBJECT: Consider Approval of Contract Amendment with CH2M Hill Engineers

Inc. for Pump Station Design for Richland-Chambers Lake Pump

**Station of the Integrated Pipeline Project** 

**FUNDING**: TRWD Bond Fund

#### **RECOMMENDATION:**

Management recommends approval of a contract amendment in an amount not-to-exceed \$10,746,500 with CH2M Hill Engineers Inc. (now a part of Jacobs Engineering Group Inc.) to perform design services for the Joint Richland-Chambers Lake Pump Station. The current contract amount is \$36,079,363.37 and the revised not to exceed contract amount, including this amendment will be \$46,825,863.37.

#### **DISCUSSION:**

CH2M Hill was evaluated, selected, and contracted in 2011 to provide Integrated Pipeline (IPL) pump station design and subsequent construction services for three lake pump stations — Cedar Creek (TRWD), Richland-Chambers (TRWD), and Lake Palestine (Dallas). Cedar Creek (JCC1) is complete and operational, and Lake Palestine (LP1) is currently under construction with an operational date of December 2028. The IPL Richland-Chambers pipeline (Section 16) and lake pump station (JRC1) were put on hold in 2011 based on then current and projected demands. Recently updated TRWD demand projections now indicate a need for the JRC1 lake pump station and Section 16 Pipeline to be completed, on-line and operational in 2032.

The initial IPL plan was to expand the existing RC Lake Pump Station utilizing the existing intake structure. The concern with expanding the current RC lake pump station is access to more of the reservoir's storage capacity (deeper water and volume). TRWD and Jacobs recently performed site evaluations of eight (8) potential pump station locations and has recommended a site currently owned by TRWD. The relocation to deeper water now provides greater access to more of the reservoir's volume.

An updated preliminary design and construction schedule developed based on pump station timing, site and route selection options, design durations, environmental clearances and permitting, property acquisition, and construction indicate that the project needs to start this year to be operational in 2032. The current plan to meet this 2032 completion goal is through three (3) contract amendment authorizations for Jacobs to proceed with JRC1 design.

Jacobs plans to proceed with preliminary design up to 100% final designs (authorization number 1) and a second amendment for construction services (authorization 2) subject to Management and Board of Directors approvals. This request includes scope and fee for the following tasks:

- 1. Package 1 Intake and Wetwell Final Design
- 2. Package 2 Pump Station Final Design
- 3. Owner Furnished Equipment Final Design

The IPL Program strives to achieve 25% DBE/HUB participation when and where possible. CH2MHill intends to subcontract 28.1% of the project work to three qualified DBE/HUB firms under the Fair Opportunities in Purchasing and Contracting Program.

Management additionally requests the Board of Directors grant authority to the General Manager or his designee to execute all documents associated with the contract described herein.

This scope of work includes a Special Services Contingency for release only at the Program Manager's approval.

Staff Recommendation and the Fee Summary are attached.

This item was reviewed by the Construction and Operations Committee on June 12, 2025.

#### **Submitted By:**

Ed Weaver IPL Program Manager



TO: Ed Weaver

FROM: Shelly Hattan

**COPY:** Coy Veach

**DATE:** June 4, 2025

**SUBJECT:** Consider Approval of Amendment to Contract with CH2M Hill

Engineers Inc. for Preliminary and Final Pump Station Design for the Joint Richland Chambers Lake Pump Station of the Integrated Pipeline

Project

In January of 2011, the District entered into a contract with CH2M Hill Engineers, Inc. (CH2M) to provide Engineering Services for the design of the IPL Lake Pump Stations including Joint Richland Chambers Pump Station (JRC1). Subsequent amendments to contract resulted in a price not to exceed \$36.079,363.37.

The proposed amendment amount of \$10,746,500.00 is for the Preliminary and Final design of the Joint Richland Chambers Lake Pump Station (JRC1). The total not to exceed contract value, including this proposed amendment will be \$46,825,863.37.

The proposed contract amendment includes three tasks and a special services contingency. The tasks include Package 1 – Intake and Wetwell Final Design, Package 2 – Pump Station Final Design, and Owner Furnished Equipment Final Design

There are requirements for CH2M to meet DBE/HUB participation goals under the Fair Opportunities in Purchasing and Contracting Program for IPL Contracts. CH2M does not qualify as a DBE/HUB firm under the Fair Opportunities in Purchasing and Contracting Program. CH2M's team includes three sub-consultant firms that are MWBE/HUB certified consultants. These firms will provide services amounting to 28.1% of the total contract amendment.

Included for reference are the Fee Summary and Fair Opportunity in Purchasing and Contracting summaries.

# Fee Summary CH2M Hill Engineers, Inc. Preliminary and Final Pump Station Design for the Joint Richland Chambers Lake Pump Station of the Integrated Pipeline Project

Task No.	Description	Estimated Fee
Basic Se	rvices	
1.00	JRC1 Package 1 – Intake and Wetwell Final Design	\$ 4,127,640.00
2.00	JRC1 Package 2 – Pump Station Final Design	\$ 5,209,978.00
3.00	JRC1 Owner Furnished Equipment - Final Design	\$ 431,948.00
	Total Budget for Basic Services	\$9,769,566.00
Special S	Services	
	Special Services Contingency	\$976,934.00
	Total Budget for Special Services	\$976,934.00
	Total Budget for All Services	\$10,746,500.00

Note -- This scope of work includes a Special Services Contingency to be released at the Program Director's discretion.

#### **Fair Opportunity Purchasing**

Project: Consider approval of a Contract Amendment with CH2M Hill Engineers Inc. for Preliminary and Final Pump Station Design for the Joint Richland Chambers Lake Pump Station of the Integrated Pipeline Project

Not to Exceed \$10,746,500.00

CH2M Hill Engineers, Inc. an Engineering and Consulting company with local offices in Dallas, Texas and Fort Worth, Texas, has signed the IPL Project Fair Opportunity Purchasing documentation, and proposes to use the following subconsultants:

Project Category: Engineering, Bid and Construction Services

### LOCAL/NON-LOCAL CONTRACT SUMMARY

		<u>Amount</u>	<u>Percent</u>
Local Contracts		\$9,769,566.00	90.9%
Non-Local Contracts			0.0%
Optional Supplemental Services		\$976,934.00	9.1%
	Total This Agenda	\$10,746,500.00	

#### LOCAL/NON-LOCAL MWBE/HUB PARTICIPATION THIS ACTION

<u>Local</u>	<u>Certification</u>	<u>Percentage</u>
Gupta & Associates, Inc	MBE/HUB	8.5%
JQ Infrastructure, LLC	MBE/HUB	10.3%
HVJ	MBE/HUB	9.3%

#### **AGENDA ITEM 9**

**DATE:** June 17, 2025

SUBJECT: Consider Approval of Contract Amendment with Plus Six Engineering,

LLC. for Program Wide Management Support Services for Phases 4

and 5 of the Integrated Pipeline Project

**FUNDING:** TRWD Bond Fund

#### **RECOMMENDATION:**

Management recommends approval of a contract amendment **in an amount not-to-exceed \$2,968,000** with Plus Six Engineering, LLC. to perform Program Management Support Services for Phases 4 and 5 of the Integrated Pipeline (IPL) Project. The current contract amount is \$25,997,314.50 and the revised not-to-exceed contract amount, including this amendment will be \$28,965,314.50.

#### DISCUSSION:

Over the next two years, the Integrated Pipeline Program will be continuing design of Phase 4 of the Integrated Pipeline System. There will be seven engineering teams designing and supporting the Joint Richland Chambers Pump Station (JRC1), Joint Booster Pump Station Number 1 (JB2), and Pipeline Section 16 (PL16).

Design Contracts	<b>Board Action</b>	Contract Amount
AECOM – Program Wide Services	May 2025	\$4,787,638
Jacobs – JRC1 Pump Station – Final Design	June 2025	\$10,746,566
CDM Smith – JB2 Pump Station – Preliminary Design	June 2025	TBD
FNI – JB2 Reservoirs	June 2025	\$2,827,948
FNI – Section 16 Pipeline & Environmental Permitting	April 2025	\$9,043,451
Burns and McDonnell – High Voltage Substations	July 2025	TBD
HDR – Cathodic Protection Design	July 2025	TBD

The purpose of this Contract Amendment is to provide ongoing program management services for the Integrated Pipeline Project. The current Plus Six task order expires on June 30, 2025. This amended contract is for the term beginning July 1, 2025, and ending June 30, 2027. An amendment is anticipated to continue services after this two-year period expires.

Plus Six will provide related Integrated Pipeline Program professional services in the following six program tasks –

- 1. Program Management and Engineering support
- 2. Document Controls
- 3. Land and Environmental Departments support
- 4. Cost Controls
- 5. Project Construction Management
- 6. Tunnel Advisor

The IPL Program strives to achieve 25% DBE/HUB participation when and where possible. Plus Six intends to subcontract 19% of the project work to qualified DBE/HUB firms under the Fair Opportunities in Purchasing and Contracting Program. Plus Six is a qualified DBE/HUB firm.

Management additionally requests the Board of Directors grant authority to the General Manager or his designee to execute all documents associated with the contract described herein.

This scope of work includes a Special Services Contingency for release only at the Program Manager's approval.

Staff Recommendation, Fee Summary and Fair Opportunity in Purchasing and Contracting are attached.

This item was reviewed by the Construction and Operations Committee on June 12, 2025.

#### **Submitted By:**

Ed Weaver IPL Program Manager



## Memo

TO: Ed Weaver

FROM: Shelly Hattan

**COPY:** Coy Veach

**DATE:** May 27, 2025

**SUBJECT:** Recommendation for Approval of a Contract Amendment with Plus Six

Engineering, LLC. for Program Management Support Services for

Phase 4 and 5 of the Integrated Pipeline Project.

Over the next two years, the Integrated Pipeline Program will be continuing design of Phase 4 of the Integrated Pipeline System. There will be seven design teams who will be designing Joint Richland Chambers Pump Station (JRC1), Joint Booster Pump Station Number 1 (JB2), and Pipeline Section 16 (PL16).

Plus Six Engineering, LLC provides Program Management Services for the IPL Program. This contract is an amendment to the contract for IPL Program Management services. This request includes scope and fee to perform program management, document controls support, land department support, cost control support, construction management and tunnel advisor services for Integrated Pipeline (IPL) Phase 4 and 5. Negotiations produced an agreement on recommended scope, fees and contract terms and conditions.

The IPL Program strives to achieve 25% DBE/HUB participation when and where possible. Plus Six intends to subcontract 19% of the project work to qualified DBE/HUB firms under the Fair Opportunities in Purchasing and Contracting Program.

Staff recommends award of this contract amendment for Professional Services to Plus Six Engineering, LLC for IPL Program Management Services in the not to exceed amount of \$2,968,000.00. The Fee Summary is attached.

# Fee Summary Plus Six Engineering, LLC IPL Phase 4 and 5 – Program Management Support Services

Task No.	Description	Estimated Fee
Basic Se	ervices	
100	Program Management and Engineering Support	\$935,704.00
200	Document Controls Support	\$386,581.00
300	Land Department Support	\$675,126.00
400	Program Cost Control Support	\$310,532.00
500	Project Construction Management Support	\$362,877.00
600	Tunnel Advisor	\$76,753.00
	Total Budget for Basic Services	\$2,747,572.00
Additiona	al Services	
100	Program Management and Engineering Support	\$83,232.00
Special S	ervices	
	Total Budget for Special Services	\$137,196.00
	Total Budget for Amendment	\$2,968,000.00

#### **Fair Opportunity Purchasing**

Project: Consider approval of a Contract Amendment with Plus Six Engineering, LLC for Program Management Support Services related to Phase 4 and 5 of the Integrated Pipeline Project

Not to Exceed \$2,968,000.00

Plus Six Engineering, LLC an Engineering and Consulting company with offices in Grapevine, Texas, has signed the IPL Project Fair Opportunity Purchasing documentation, and proposes to use the following sub-consultants:

**Project Category:** Engineering, Bid and Construction Services

### LOCAL/NON-LOCAL CONTRACT SUMMARY

	<u>Amount</u>	<u>Percent</u>
Local Contracts	\$2,894,199.00	97.4%
Non-Local Contracts	\$73,801.00	2.6%

**Total This Agenda** \$2,968,000.00

#### LOCAL/NON-LOCAL MWBE/HUB PARTICIPATION THIS ACTION

<u>Local</u>	Certification	Percentage
TEC Consulting	MBE/HUB	8.4%
Lekha Tax LLC	MBE/HUB	10.6%

#### **AGENDA ITEM 10**

**DATE:** June 17, 2025

SUBJECT: Consider Award of Contract to Termomeccanica Pompe (Trillium Flow

Technologies) for Purchase of Procurement Package 13 - Pumps, Motors, and Drives for Lake Palestine Pump Station of the Integrated

**Pipeline Project** 

FUNDING: Dallas Bond Fund

#### **RECOMMENDATION:**

Management recommends approval of a contract in an amount not-to-exceed \$16,758,790.86 with Termomeccanica Pompe (Trillium Flow Technologies) to purchase five pumping units (pumps, motors, and variable frequency drives) to be installed at the Lake Palestine Pump Station (LP1) of the Integrated Pipeline Project.

#### **DISCUSSION:**

In October 2019, Dallas requested that the District proceed with design and construction of Phase 3 of the Integrated Pipeline Project with an operational date by the end of 2027. Phase 3 spans roughly 47miles from Lake Palestine to a connection point near Cedar Creek Reservoir. To date there have been six Phase 3 construction contracts executed that are in various stages of completion including tunneling, opencut pipeline, pump station intake and wet well and pump station high voltage electric sub-station. Additional Phase 3 projects on the near horizon include one more open cut pipeline project, a pipeline micro-tunnel project, an Owner Furnished Valve project and the Lake Palestine Lake Pump Station Package 2. This proposed Trillium Flow Technologies contract is for supply of the required pumps, motors, and variable frequency drives for LP1.

Proposals were received from two offerors on May 8, 2025 for the Lake Palestine Pump Station Pumps Motors and Drives. The IPL Project Selection Team, consisting of three District members and two Dallas member, evaluated and scored the proposals. Following preliminary ranking, negotiations were conducted with the highest rank offeror Trillium Flow Technologies located in La Spezia, Italy. The selection team concluded that the proposal submitted by Trillium offers the best value in terms of cost and schedule to both the City of Dallas and the District.

Management additionally requests the Board of Directors grant authority to the General Manager or his designee to execute all documents associated with the contract described herein.

The Recommendation by Staff, Offeror Selection Worksheet, and Fair Opportunity in Purchasing and Contracting Summary are attached.

The Construction and Operations Committee reviewed this item on June 12, 2025.

#### Submitted By:

Ed Weaver IPL Program Manager



## Memo

TO: Ed Weaver

FROM: Shelly Hattan

**COPY:** Coy Veach

**DATE:** May 23, 2025

SUBJECT: Recommendation for Award of Contract to Termomeccanica Pompe

(Trillium Flow Technologies) for Purchase of Procurement Package 13 – Pumps, Motors and Drives for Lake Palestine Pump Station (LP1) of

the Integrated Pipeline Project

On May 8, 2025, two proposals were received for the referenced Owner Furnished Equipment. The IPL Project Selection Team evaluated and scored the proposals.

After preliminary ranking of the proposals, negotiations were conducted on May 22, 2025 with Trillium Flow Technologies, the highest-ranking Offeror. The key points of these negotiations are general clarifications on the proposal and alternate proposals for terms and conditions changes.

The selection team determined that Trillium Flow Technologies submitted the Proposal that provides the best value to the City of Dallas and the District.

The Tabulation of Offers Received and Offeror Evaluation Worksheet are attached.

It is recommended that a Contract be awarded to Trillium Flow Technologies in the amount of \$16,758,790.86 for the purchase of five pumping units according to Procurement Package 13 – Pumps, Motors, and Drives for LP1 Pump Station of the Integrated Pipeline Project.

IPL Project
Project Name - OFE13 Pumps Motors and VFD for LP1 PS
Offeror Selection Worksheet
Tabulation of Scoring

Owner's Construction Budget	\$20,000,000.00
Contract Guaranteed Delivery Date	6/30/2027
Lowest Adjusted Contract Price	\$16,758,790.86

Lowes	t Adjusted Contract Price	\$16,758,790.86				
Item	Criteria		Points	Flowserve Corporation	Termomeccanica Pompe (Trillium Flow Technologies)	
	Proposed Contract Price and Contra	ct Time				
Α	Adjusted Contract Price		50	\$24,599,768.00	\$16,758,790.86	
	Adjusted Point Value		30	34.1	50.0	
В	Experience in Offeror in providing si	milar Goods	20	20.0	18.3	
С	Experience in Offeror in providing similar Special Services		20	20.0	20.0	
D	FOPC Participation			1.0	-	
Total	Total Points 75.1 8				88.3	
Notes						
1	1 Both offerors commit to delivery on SC date - so no added value to evaluation of either for early completion					
2	Cost of ownership based on efficiency - Flowserve 79.9%, Trillium 81.5% - Difference @ \$41,000 per 0.10% - 1.6% -					
	> \$656,000 adjustment to Flowserve					
3	Flowserve provides 2.5% FOPC participation and GFE - 1 points; Trillium provides 0% participation with intent to					
3	provide participation to be determined at time of delivery - 0 points.					

#### **Fair Opportunity Purchasing**

**Project:** Procurement Package 13 – Pumps, Motors, and Drives for Lake Palestine Pump Station (LP1) of the Integrated Pipeline Project

Consider approval of a Contract with Termomeccanica Pompe (Trillium Flow Technologies) for the purchase of five pumping units to be installed at LP1 Pump Station.

Project Category: Owner Furnished Equipment

LOCAL / NON-LOCAL CONTRACT SUMMARY

 Amount
 Percent

 Local Contracts
 \$0
 0%

 Non-Local Contracts
 \$16,758,790.86
 100%

**Total This Agenda** \$16,758,790.86

#### LOCAL/NON-LOCAL MWBE/HUB PARTICIPATION THIS ACTION

0% - \$0

<u>Local</u> <u>Certification</u> <u>Percentage</u>

None - Note

Note – Transportation for this Owner Furnished Equipment has not been contracted at this time. Trillium Flow Technologies agrees to abide by the IPL Project Fair Opportunity Purchasing/Contracting Policy and will endeavor to utilize MWBE/HUM where possible. However, pump, motor and drive suppliers have limited ability to include MWBE/HUB firms, except during transportation to the construction site, as recognized in the IPL Project Fair Opportunity Purchasing/Contracting Policy

#### **AGENDA ITEM 11**

**DATE:** June 17, 2025

SUBJECT: Consider Approval of Contract with C1S Group, Inc. for Dechlorination

Improvements at Arlington and Benbrook Outlets

FUNDING: Bond Fund

#### RECOMMENDATION:

Management recommends approval of a contract in an amount not-to-exceed **\$6,680,900** with C1S Group, Inc for the Dechlorination Improvements at Arlington and Benbrook Outlets project.

#### **DISCUSSION:**

The two District dechlorination facilities located at Arlington Outlet and Benbrook Outlet were established with the 1997 Benbrook Connection Pipeline Project. The two facilities serve an important purpose to protect the aquatic health of receiving bodies of water when the District is dosing chloramines for zebra mussel and biofilm control purposes at its lake pump stations. While it is infrequent that chloramine residuals reach these outlet facilities, District dechlorination capabilities must be operational when such conditions do exist. The two facilities are in need of upgrades to address the aging infrastructure, improve safety and optimize operations.

Improvements at Arlington Outlet facility include separation of sampling equipment from the electrical room to a new building for staff safety, replacement of the chemical feed process piping and associated equipment, sodium bisulfite chemical storage tanks replacement, electrical instrumentation and controls, sampling and injection yard piping, and the addition of a translucent removal roof system to facilitate protection from the elements. Improvements at Benbrook include replacement of the chemical feed system with an in-line Vita-D-Chlor specialized dechlorination feed system.

Competitive Sealed Proposals were solicited per Texas Government Code Chapter 2269. Six vendors were solicited, and two proposals were received. The evaluation team determined that the proposal submitted by C1S Group provided the lowest cost and best value alternative for the District.

C1S Group is a prime, certified diverse business and has subcontracted portions of this contract to certified diverse business(es), resulting in a diverse business participation commitment of 27%.

This item was reviewed by the Construction and Operations Committee on June 12, 2025.

#### **Submitted By:**

Jason Gehrig, P.E. Infrastructure Engineering Director

## Tarrant Regional Water District - Dechlor Improvements: Arlington and Benbrook - TRWD-CSP-25-001 Offeror Selection Worksheet

#### **Tabulation of Scoring**

Owner's Construction Budget	\$ 4,730,000.00
Contract Substantial Completion Date	July 31, 2026
Contract Final Competion Date	September 29, 2026
Lowest Proposed Contract Price	\$6,680,900.00
Highest Proposed Contract Price	\$ 8,697,840.00
Lowest Adjusted Contract Price	\$ 6,680,900.00

Criteria	Criteria	Points	C1S	Walsh
	Proposed Contract Price and Contract Time		\$ 6,680,900.00	\$ 8,697,840.00
	Difference between amount offered and low offer		\$ -	\$ 2,016,940.00
	Unadjusted Point Value		40.0	30.7
	Proposed Substantial Completion Contract Days		218	220
Α	Changes in Days for Acceptable Alternate Proposals		0	0
A	Adjusted Contract Days	40	218	220
	Cost related to Adjusted Substantial Completion	40	\$ -	\$ -
	Recommended Adjustments in Contract Price		\$0.00	\$0.00
	Adjusted Contract Price		\$ 6,680,900.00	\$ 8,697,840.00
	Point Value		40.0	30.7
В	Contractor's Approach to the Project	20	18.0	19.0
С	Experience/past performance of Offeror	20	16.0	20.0
D	Experience and qualifications of proposed key personnel 20		19.0	20.0
<b>Total Poir</b>	nts		93.0	89.7

#### **AGENDA ITEM 12**

**DATE:** June 17, 2025

SUBJECT: Consider Approval of Contract Amendment with Quiddity

Engineering, LLC for Engineering Services Related to the Construction Phase of Improvements to District Outlet Dechlorination

Facilities at Lakes Arlington and Benbrook

**FUNDING:** Bond Fund

#### **RECOMMENDATION:**

Management recommends approval of a contract amendment in an amount not-to-exceed \$456,113 with Quiddity Engineering, LLC for engineering services related to the construction phase services for improvements to District Outlet Dechlorination Facilities at Lakes Arlington and Benbrook.

#### **DISCUSSION:**

In May 2023, the District awarded an engineering design services contract for improvements to District Outlet Dechlorination Facilities at Lakes Arlington and Benbrook where upgrades are needed to address aging infrastructure, improve safety and optimize operations.

The two District dechlorination facilities located at Arlington outlet and Benbrook outlet were established with the 1997 Benbrook Connection Pipeline Project. The two facilities serve an important purpose to protect the aquatic health of receiving bodies of water when the District is dosing chloramines for zebra mussel and biofilm control purposes at its lake pump stations. While it is infrequent that chloramine residuals reach these outlet facilities, District dechlorination capabilities must be operational when such conditions do exist.

This contract amendment with Quiddity Engineering, LLC will include construction contract administration services including review of contractor equipment submittals, change management services, as well as preparation of final record drawings and updated facility Operations and Maintenance manuals. These engineering services will take place over the next year with construction planned to begin in late summer 2025. Attached is the scope of services to be provided by Quiddity Engineering LLC for this amendment.

The overall diverse business participation commitment for the Quiddity contract is 22.5%.

This item was reviewed by the Construction and Operations Committee on June 12, 2025.

#### Submitted By:

Jason Gehrig, P.E. Infrastructure Engineering Director



## CHANGE AUTHORIZATION FOR THE AGREEMENT BETWEEN CLIENT AND ENGINEER FOR PROFESSIONAL SERVICES (the "Agreement") dated May 16, 2023

PROJECT NAME: DECHLORINATION IMPROVEMENTS: ARLINGTON AND BENBROOK (the "Project")

CHANGE MANAGEMENT NO.: CCM002

TASK REQUEST: Scope Amendment No. 2

DATE ISSUED: June 3, 2025

CLIENT: Tarrant Regional Water District ("TRWD")

ENGINEER: Quiddity Engineering, LLC ("Quiddity")

Quiddity Job No.: 05785-0005-01

This Change Authorization, or Change Management No. 2 (CCM002), amend the Agreement dated May 16, 2023, between Tarrant Regional Water District (TRWD) and Quiddity Engineering, LLC (Quiddity) for the purpose of adding additional engineering support services during the construction phase. Except as stated herein, all other terms and conditions of the Agreement remain in full force and effect. The revised scope and additional services listed in this Change Authorization are in relation to the basic services as detailed in Exhibit A-1 of the Agreement, dated May 3, 2023, consisting of 23 pages.

#### **SCOPE DESCRIPTION:**

Quiddity understands that TRWD has completed the design for the Arlington and Benbrook Dechlor Outlet Facilities (Project), for which Quiddity provided engineering design phase services. TRWD plans to advertise the bid documents, evaluate proposals, and award a construction contract in order to proceed with construction of the Project. To support this effort, TRWD wishes to engage Quiddity to lead an engineering team and provide construction phase engineering services for the Project.

Based on our understanding of the Project and the review and approval process, we have prepared the following scope of services and fee proposal for your consideration as an additional Engineering Services Request.

#### **NEW ADDED TASKS:**

#### **TASK 9 – Construction Phase Project Management**

- Monitor and report on project scope, schedule, cost, quality, staff resources, sub-consultants, communications, and invoicing.
  - Quiddity will report to TRWD for all project related items confirming sub-consultants' activities are compatible, integrated, and meet project requirements.
  - Quiddity will maintain project schedule and milestone and coordinate all deliverables between engineering team and sub-consultants
  - Provide a one-page electronic monthly bulleted status report along with monthly invoice submitted via SharePoint.



#### TASK 10 – Construction Contract Administration (CCA)

#### Construction Administration Services

- Collect all addenda and incorporate such information into the drawings and technical specifications to create conformed documents for construction phase.
- Attend a meeting with TRWD prior to the pre-construction conference to prepare for the pre-construction meeting with the Contractor. Up to 3 members of the design team will attend the meeting.
- Provide interpretation of drawings and specification in accordance with the Contract Documents.
- When requested by TRWD, review the provided information of ongoing construction and provide a recommendation to correct non-conforming work or accept the work. Provide a brief memorandum to document observation and recommendations of any work considered non-conforming.
- Assist in the response to a design related issue related to a claim from the Contractor that either contests
  an initial decision by Quiddity concerning the requirements of the Contract Documents, the acceptability
  of Work under the Contract Documents or contests the Quiddity's decision regarding a Change Proposal.
  Scope is limited to a maximum of five (5) such responses and is not intended to include re-evaluation or
  negotiation of the issue.
- Use the forms and PMIS workflows provided by TRWD for contract administration and reviews of payment applications, submittals, request for information (RFIs), documentation of test results, equipment installation and documentation, and project closeout.
- Assist TRWD with PROJECT completion activities. Determine if the completed construction conforms with
  the design. Prepare a list of deficiencies to be corrected by the Contractor (punch list) to be issued after
  the project is considered substantially complete and before final payment is released.
- If the construction period extends beyond the date of final completion provided for in the Contract
  Documents, then additional work required of the ENGINEER shall be considered as a Supplemental
  Services and required additional compensation.

#### Deliverables:

Electronic copy (.pdf) of Conformed Construction Drawings and Specifications

#### **Meetings and Site Visits**

- Attend the pre-construction meeting with the Contractor. Up to three (3) members of the design team will attend the meeting either in person and/or virtually.
- Attend up to eleven (11) construction progress meetings with TRWD and/or the Contractor. Only one (1) member of the design team will attend the meeting either in person and/or virtually.
  - Two (2) pre-submittal meetings for cast-in-place concrete and door hardware will be conducted in conjunction with scheduled progress meetings to minimize additional travel and meeting time.
     Up to two (2) members of the design team will attend these discussions.
  - Three (3) pre-installation meetings—for structural steel, standing seam metal roofing, and the door hardware/keying conference—will also be conducted in conjunction with progress meetings when possible. Up to two (2) members of the design team will attend these discussions.
- Attend up to eleven (11) site visits in conjunction with the construction progress meetings noted above
  to observe the progress of work. The observations will be the same visit as the progress meeting. Up to
  three (3) members of the design team will attend the site visit. Prepare a site visit report summarizing
  observations and observed non-conforming work.



- Attend a site visit to review the project to determine if the project is substantially complete. Up to five (5)
  members of the design team will attend this site visit.
- Attend a site visit to review the project to determine if the project is finally complete and all punch list items were addressed. Up to three (3) members of the design team will attend this site visit.
- Other Site visits not described above may be considered as a Supplemental Services.

#### **Deliverables:**

- > Electronic copy (.pdf) of pre-construction meeting agenda and minutes.
- > Electronic copies (.pdf) of construction progress meeting agendas and minutes.
- Electronic copies (.pdf) of memedoms on non-conforming work.
- Electronic copies (.pdf) of site visit reports.
- Electronic copies (.pdf) of Defective Work notices.
- > Electronic copy (.pdf) of substantial completion corticate and punch list.

#### Review of Contractor's Submittals

- Provide up to one hundred and fifty (150) reviews of contractor shop drawing submittals for compliance
  with the Engineer's design to complete the submittal review process. Any item submitted by the
  contractor will only yield two reviews.
  - Engineer's review and approval of a submittal is only for the limited purpose of checking for conformance with the performance criteria given and the design concepts expressed in the Contract Documents.
- Review quality related documents provided by the Contractor such as test reports, equipment start-up
  reports or other documentation required by the Contract Documents and file a Defective Work Notice for
  work that is not in conformance with requirements of the Contract Documents.
- Additional reviews of submittals in excess of the specified number may be considered as a Supplemental Services.

#### **Deliverables:**

Electronic copies (.pdf) of submittal review recommendation letters.

#### Review of Contractor's Request for Information

- Review up to sixty (60) Requests for Information (RFIs) from the contractor and provide written responses.
  - Maintain a document control system using TRWD's PMIS workflow.
  - Investigations, analyses, and studies requested by the Contractor and approved by TRWD for substitutions of equipment and/or materials or deviations from the plans and specifications may be considered as a Supplemental Services.

#### Deliverables:

Electronic copies (.pdf) of RFI responses.



#### Preparation of Request for Change Proposals (RCPs) and Change Orders (COs)

- Review up to five (5) Contractor's Change Proposals (CCP) and provide a recommendation on the technical
  merits of the Change Proposal. Provide an Engineer's opinion on cost and time impacts of changes in the
  recordation letter as well as the changes required to the plans and specifications.
- Prepare up to five (5) Change Orders for execution by TRWD when the change is a result of design nonperformance or omission
- Prepare up to two (2) Owner initiated Change Orders for execution by TRWD.
- Additional authorized COs preparation or reviews in excess of the specified number may be considered as a Supplemental Services.

#### Deliverables:

➤ Electronic copies (.pdf) of CCP recommendation letters.

#### **Preparation of Record Drawings**

- Prepare record drawings at the conclusion of the construction phase that incorporates information furnished by Contractor to TRWD showing changes in the Project made during construction.
  - Provide TRWD with one draft electronic copy (pdf) of Record Drawings for review and commenting.
  - o Provide TRWD with final electronic copy (.pdf and .dwg) of Record Drawings

#### Deliverables:

Record Drawings in .dwg format and .pdf format.

#### TASK 11 - Operation and Maintenance Manual Updates

#### <u>Arlington Operation & Maintenance Manual Updates</u>

• For the Arlington Dechlorination facility, update the existing operating and maintenance (O&M) manual to include new manufacturers and vendors supplied O&M's and new figures from engineering design that are related to the new or replaced facilities.

#### Benbrook Operation & Maintenance Manual

For the Benbrook Dechlorination facility, review submitted manufacturer and vendor supplied O&M's.

#### **COMPENSATION:**

Compensation for services described above will be HOURLY NOT TO EXCEED (HNTE) as described in the Agreement. Quiddity is requesting an additional \$456,113.00 for this amendment request. The total contract value of \$877,921.00 will be modified to the new total of \$1,334,034.00 as a result of this Change Authorization.



Task	Engineering Fee 5/16/23	Approved Compensation 5/16/23 & Under Change Authorization 9/20/24	Engineering Fee for Additional Services Under this Amendment	Revision to Total Engineering Fee Under this Change Authorization
SS	\$877,921.00	\$853,056	\$456,113.00	\$1,334,034.00

#### **Project Schedule:**

Quiddity will complete the scope of services defined herein in 455 Calendar days. This time frame will ensure supporting TRWD during the 365 Calendar days of construction time and additional 90 days for updating Record Drawings and O&M Manuals.

TRWD – HENDERSON BUILDING 808 East Northside Drive Fort Worth, Texas 76102	QUIDDITY ENGINEERING, LLC 6330 W. Loop South, Suite 150 Bellaire, Texas 77401
BY:	BY: Suwlaw
Rachel A. Ickert	C. Drew Crow, P.E.
TITLE: Chief Water Resources Officer	TITLE: Senior Vice President
DATE:	DATE:06/03/25
	ATTEST:

AMENDMENT - Engineering Services During Construction		Fee
TASK IX - Construction Phase Project Management	\$	78,953.00
TASK X - Construction Contract Administration	\$	345,470.00
Construction Administration Services	\$	61,132.00
Meetings and Site Visits	\$	66,086.00
Review of Contractor's Submittals	\$	101,616.00
Review of Contractor's Request for Information	\$	48,885.00
Review and Preparation of Change Orders	\$	40,341.00
Preparation of Record Drawings	\$	27,410.00
TASK XI - Operation and Maintenance Manual Updates	\$	31,690.00
TOTA	\L \$	456,113.00

#### **AGENDA ITEM 13**

**DATE:** June 17, 2025

SUBJECT: Consider Approval of Contract with DMI Corp. for Joint Booster Pump

**Station 3 Cooling Tower Improvements Construction** 

FUNDING: Fiscal Year 2025 Budget Amount - \$150,000

Proposed Fiscal Year 2026 Budget Amount - \$200,000

#### **RECOMMENDATION:**

Management recommends approval of a contract **in an amount not-to-exceed \$351,171** with DMI Corp. for the Joint Booster Pump Station #3 Cooling Tower Improvements Construction.

#### DISCUSSION:

Reliable cooling is essential for continuous operation of the District's water supply pump stations. The Joint Booster Pump Station 3 cooling towers provide the required cooling for pump motors and bearings. The current cooling tower basins use chemicals to prevent biological growth. The District has other locations with cooling towers that use a system called Pulse-Pure which eliminates the need for chemicals, providing a safer and more reliable system for equipment and personnel. This project was designed by AACE Engineers to convert the existing chemical system to the Pulse-Pure system.

Competitive Sealed Proposals were solicited per Texas Government Code 2269.. Six vendors were solicited, and one proposal was received. The proposal amount submitted by DMI Corp. was lower than AACE engineer's estimate for the project. The selection team evaluated the proposal, and based on DMI Corp's proposal, references, and past successful work with the District and others, staff recommends contracting with DMI Corp.

DMI Corp. is not a certified business. DMI Corp. has subcontracted portions of this contract to certified diverse business(es), resulting in a diverse business participation commitment of 34%.

This item was reviewed by the Construction and Operations Committee on June 12, 2025.

#### Submitted By:

Jason Gehrig, P.E. Infrastructure Engineering Director

#### 00 43 00 PROPOSAL - EXHIBIT A

JB3 Cooling Tower Improvements Tarrant Regional Water District CSP-25-073

#### **BASE BID AND ALTERNATES**

Item No.	Item Description	Unit	Unit Quantity	Unit Price	Extended Amount
BC-01	Procure and install Pulse Pure Equipment and Panels	LS	1		186,782.00
BC-02	Modify existing Piping, Supports, and Controls	LS	1		75,731.00
BC-03	Remove existing Chemical Piping and Instrumentation	LS	1		2,077.00
BC-04	Repair floor coating where supports are removed	LS	1		2,872.00
BC-05	Demolish the exiting Chemical Treatment Systems	LS	1		1,994.00
BC-06	Install, pipe, and wire the Conductivity and Blowdown packages.	LS	1		12,022.00
BC-07	Recoat DI Fittings	LS	1		11,486.00
BC-08	Fabricate and install OSHA approved handrails around the unprotected floor opening, as indicated, where the stainless steel chemical piping is removed.	LS	1		2,871.00
BC-09	Replace Spray Water Box Gasket Material	LS	1		45,142.00.00
BC-10	Remove and properly dispose of the chemicals, tanks, dosing equipment, and all associated wiring and tubing.	LS	1		10,194.00
BC-11	Any Additional Work required to meet the requirements of the Contract Documents	LS	1		None at time of bid
					\$ 351,171.00 -

Offeror agrees to reach Substantial Completion in	180	days from the Date of the Notice to Proceed
Offeror agrees to reach Final Completion in	240	days from the Date of the Notice to Proceed

#### TARRANT REGIONAL WATER DISTRICT

#### **AGENDA ITEM 14**

**DATE:** June 17, 2025

SUBJECT: Consider Approval of Contract with Shermco, Inc. for Electric Motor

**Rehabilitation Services** 

**FUNDING:** Proposed Fiscal Year 2026 Revenue Fund Budget - \$650,000

#### **RECOMMENDATION:**

Management recommends approval of a contract in an amount not-to-exceed \$800,000 with Shermco, Inc. for electric motor rehabilitation services.

#### **DISCUSSION:**

In June 2024, the District awarded CDM Smith a professional services contract to design new electrical rooms for the Cedar Creek Reservoir and Richland-Chambers Reservoir pump stations. The primary purpose of the project is to improve the safety and reliability of the Richland-Chambers and Cedar Creek Lake Pump Station electrical systems and to install variable frequency drives so the amount of water pumped can be varied to meet the water needed to meet customer demands.

The rehabilitation of the pump motors at the Richland-Chambers Lake Pump Station is required to prepare the motors for the new variable frequency drives. To ensure that the Richland-Chambers Lake Pump Station is able to meet water demands, only one pump will be removed from service at a time.

The proposed Contract with Shermco, Inc. for electric motor repairs is through a Cooperative Purchasing Program with the City of Fort Worth. Texas Government Code Chapter 791 enables the District to participate in this program. Since this contract is under a cooperative agreement, the total contract amount is capped at the amount shown in the original contract with the City of Fort Worth. The City of Fort Worth renews this contract annually, which then resets the cap; therefore, this contract will be used to repair two of the six motors at an estimated cost of \$325,000 per motor, and a new contract will be brought to the board once the contract renews next year.

This item was reviewed by the Construction and Operations Committee on June 12, 2025.

#### **Submitted By:**

Darrell Beason Chief Operations Officer



#### VENDOR SERVICES AGREEMENT

This **VENDOR SERVICES AGREEMENT** ("Agreement") is made and entered into by and between the **CITY OF FORT WORTH** ("City"), a Texas home rule municipal corporation, acting by and through its duly authorized Assistant City Manager, and **SHERMCO INDUSTRIES, INC.** ("Vendor"), a state registered company and acting by and through its duly authorized representative, each individually referred to as a "**party**" and collectively referred to as the "**parties**."

- 1. <u>Scope of Services</u>. Provide electric motor repair and replacement services as needed ("Services"), which are set forth in more detail in Exhibit "A," attached hereto and incorporated herein for all purposes.
- 2. <u>Term.</u> The initial term of this Agreement is for 1 year(s), beginning on the date that this Agreement is executed by the City's Assistant City Manager ("Effective Date"), unless terminated earlier in accordance with this Agreement ("Initial Term"). City will have the option, in its sole discretion, to renew this Agreement under the same terms and conditions, for up to 4 automatic one-year renewal option(s) (each a "Renewal Term").

#### 3. Compensation.

- 3.1 Total compensation under this Agreement will not exceed **Eight Hundred Thousand Dollars and Zero Cents** (\$800,000.00).
- 3.2 City will pay Vendor in accordance with the Prompt Payment Act (Chapter 2251 of the Texas Government Code) and provisions of this Agreement, including Exhibit "B," which is attached hereto and incorporated herein for all purposes.
- 3.3 Vendor will not perform any additional services or bill for expenses incurred for City not specified by this Agreement unless City requests and approves in writing the additional costs for such services. City will not be liable for any additional expenses of Vendor not specified by this Agreement unless City first approves such expenses in writing.

#### 4. <u>Termination.</u>

- 4.1. <u>Written Notice.</u> City or Vendor may terminate this Agreement at any time and for any reason by providing the other party with 30 days' written notice of termination.
- 4.2 <u>Non-appropriation of Funds.</u> In the event no funds or insufficient funds are appropriated by City in any fiscal period for any payments due hereunder, City will notify Vendor of such occurrence and this Agreement will terminate on the last day of the fiscal period for which

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appropriations were received without penalty or expense to City of any kind whatsoever, except as to the portions of the payments herein agreed upon for which funds have been appropriated.

4.3 <u>Duties and Obligations of the Parties.</u> In the event that this Agreement is terminated prior to the Expiration Date, City will pay Vendor for services actually rendered up to the effective date of termination and Vendor will continue to provide City with services requested by City and in accordance with this Agreement up to the effective date of termination. Upon termination of this Agreement for any reason, Vendor will provide City with copies of all completed or partially completed documents prepared under this Agreement. In the event Vendor has received access to City Information or data as a requirement to perform services hereunder, Vendor will return all City provided data to City in a machine readable format or other format deemed acceptable to City.

#### 5. Disclosure of Conflicts and Confidential Information.

- 5.1 <u>Disclosure of Conflicts.</u> Vendor hereby warrants to City that Vendor has made full disclosure in writing of any existing or potential conflicts of interest related to Vendor's services under this Agreement. In the event that any conflicts of interest arise after the Effective Date of this Agreement, Vendor hereby agrees immediately to make full disclosure to City in writing.
- 5.2 <u>Confidential Information.</u> Vendor, for itself and its officers, agents and employees, agrees that it will treat all information provided to it by City ("City Information") as confidential and will not disclose any such information to a third party without the prior written approval of City.
- 5.3 Public Information Act. City is a government entity under the laws of the State of Texas and all documents held or maintained by City are subject to disclosure under the Texas Public Information Act. In the event there is a request for information marked Confidential or Proprietary, City will promptly notify Vendor. It will be the responsibility of Vendor to submit reasons objecting to disclosure. A determination on whether such reasons are sufficient will not be decided by City, but by the Office of the Attorney General of the State of Texas or by a court of competent jurisdiction.
- 5.4 <u>Unauthorized Access.</u> Vendor must store and maintain City Information in a secure manner and will not allow unauthorized users to access, modify, delete or otherwise corrupt City Information in any way. Vendor must notify City immediately if the security or integrity of any City Information has been compromised or is believed to have been compromised, in which event, Vendor will, in good faith, use all commercially reasonable efforts to cooperate with City in identifying what information has been accessed by unauthorized means and will fully cooperate with City to protect such City Information from further unauthorized disclosure.
- 6. Right to Audit. Vendor agrees that City will, until the expiration of three (3) years after final payment under this Agreement, or the final conclusion of any audit commenced during the said three years, have access to and the right to examine at reasonable times any directly pertinent books, documents, papers and records, including, but not limited to, all electronic records, of Vendor involving transactions relating to this Agreement at no additional cost to City. Vendor agrees that City will have access during normal working hours to all necessary Vendor facilities and will be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. City will give Vendor reasonable advance notice of intended audits.

as an independent contractor as to all rights and privileges and work performed under this Agreement, and not as agent, representative or employee of City. Subject to and in accordance with the conditions and provisions of this Agreement, Vendor will have the exclusive right to control the details of its operations and activities and be solely responsible for the acts and omissions of its officers, agents, servants, employees, Vendors, and subcontractors. Vendor acknowledges that the doctrine of *respondeat superior* will not apply as between City, its officers, agents, servants and employees, and Vendor, its officers, agents, employees, servants, contractors, and subcontractors. Vendor further agrees that nothing herein will be construed as the creation of a partnership or joint enterprise between City and Vendor. It is further understood that City will in no way be considered a Co-employer or a Joint employer of Vendor or any officers, agents, servants, employees, contractors, or subcontractors. Neither Vendor, nor any officers, agents, servants, employees, contractors, or subcontractors of Vendor will be entitled to any employment benefits from City. Vendor will be responsible and liable for any and all payment and reporting of taxes on behalf of itself, and any of its officers, agents, servants, employees, or contractors.

#### 8. <u>Liability and Indemnification.</u>

- 8.1 <u>LIABILITY</u> VENDOR WILL BE LIABLE AND RESPONSIBLE FOR ANY AND ALL PROPERTY LOSS, PROPERTY DAMAGE AND PERSONAL INJURY, INCLUDING, INCLUDING, BUT NOT LIMITED TO, DEATH, TO ANY AND ALL PERSONS, OF ANY KIND OR CHARACTER, WHETHER REAL OR ASSERTED, TO THE EXTENT CAUSED BY THE NEGLIGENT ACT(S) OR OMISSION(S), MALFEASANCE OR INTENTIONAL MISCONDUCT OF VENDOR, ITS OFFICERS, REPRESENTATIVES, AGENTS, SERVANTS, EMPLOYEES, CONTRACTORS, OR SUBCONTRACTORS.
- 8.2 <u>GENERAL INDEMNIFICATION</u> VENDOR HEREBY COVENANTS AND AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND CITY, ITS OFFICERS, AGENTS, REPRESENTATIVES, SERVANTS, AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS OR LAWSUITS OF ANY KIND OR CHARACTER, WHETHER REAL OR ASSERTED, FOR EITHER PROPERTY DAMAGE OR LOSS (INCLUDING ALLEGED DAMAGE OR LOSS TO VENDOR'S BUSINESS AND ANY RESULTING LOST PROFITS) AND PERSONAL INJURY, INCLUDING, BUT NOT LIMITED TO, DEATH, TO ANY AND ALL PERSONS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, TO THE EXTENT CAUSED BY THE NEGLIGENT ACTS OR OMISSIONS OR MALFEASANCE OF VENDOR, ITS OFFICERS, AGENTS, REPRSENTATIVES, SERVANTS, EMPLOYEES, CONTRACTORS, OR SUBCONTRACTORS.
- 8.3 <u>INTELLECTUAL PROPERTY INDEMNIFICATION</u> Vendor agrees to defend, settle, or pay, at its own cost and expense, any claim or action against City for infringement of any patent, copyright, trade mark, trade secret, or similar property right arising from City's use of the software or documentation in accordance with this Agreement, it being understood that this agreement to defend, settle or pay will not apply if City modifies or misuses the software and/or documentation. So long as Vendor bears the cost and expense of payment for claims or actions against City pursuant to this section, Vendor will have the right to conduct the defense of any such claim or action and all negotiations for its settlement or compromise and to settle or compromise any such claim; however, City will have the right to fully participate in any and all such settlement, negotiations, or lawsuit as necessary to protect City's interest, and City agrees to cooperate with Vendor in doing so. In the event City, for whatever reason, assumes the responsibility for payment of costs and expenses for any claim or action brought against City for infringement arising under this Agreement, City

will have the sole right to conduct the defense of any such claim or action and all negotiations for its settlement or compromise and to settle or compromise any such claim; however, Vendor will fully participate and cooperate with City in defense of such claim or action. City agrees to give Vendor timely written notice of any such claim or action, with copies of all papers City may receive relating thereto. Notwithstanding the foregoing, City's assumption of payment of costs or expenses will not eliminate Vendor's duty to indemnify City under this Agreement. If the software and/or documentation or any part thereof is held to infringe and the use thereof is enjoined or restrained or, if as a result of a settlement or compromise, such use is materially adversely restricted, Vendor will, at its own expense and as City's sole remedy, either: (a) procure for City the right to continue to use the software and/or documentation; or (b) modify the software and/or documentation to make it noninfringing, provided that such modification does not materially adversely affect City's authorized use of the software and/or documentation; or (c) replace the software and documentation with equally suitable, compatible, and functionally equivalent non-infringing software and documentation at no additional charge to City; or (d) if none of the foregoing alternatives is reasonably available to Vendor terminate this Agreement, and refund all amounts paid to Vendor by City, subsequent to which termination City may seek any and all remedies available to City under law.

#### Assignment and Subcontracting.

- 9.1 <u>Assignment.</u> Vendor will not assign or subcontract any of its duties, obligations or rights under this Agreement without the prior written consent of City. If City grants consent to an assignment, the assignee will execute a written agreement with City and Vendor under which the assignee agrees to be bound by the duties and obligations of Vendor under this Agreement. Vendor will be liable for all obligations of Vendor under this Agreement prior to the effective date of the assignment.
- 9.2 <u>Subcontract.</u> If City grants consent to a subcontract, the subcontractor will execute a written agreement with Vendor referencing this Agreement under which subcontractor agrees to be bound by the duties and obligations of Vendor under this Agreement as such duties and obligations may apply. Vendor must provide City with a fully executed copy of any such subcontract.
- 10. <u>Insurance</u>. Vendor must provide City with certificate(s) of insurance documenting policies of the following types and minimum coverage limits that are to be in effect prior to commencement of any Services pursuant to this Agreement:

#### 10.1 Coverage and Limits

(a) Commercial General Liability:

\$1,000,000 - Each Occurrence \$2,000,000 - Aggregate

(b) Automobile Liability:

\$1,000,000 - Each occurrence on a combined single limit basis

Coverage will be on any vehicle used by Vendor, or its employees, agents, or representatives in the course of providing Services under this Agreement. "Any vehicle" will be any vehicle owned, hired and non-owned.

#### (c) Worker's Compensation:

Statutory limits according to the Texas Workers' Compensation Act or any other state workers' compensation laws where the Services are being performed

#### Employers' liability

\$100,000 -	Bodily Injury by accident; each accident/occurrence
\$100,000 -	Bodily Injury by disease; each employee
\$500,000 -	Bodily Injury by disease; policy limit
Professional I	Liability (Errors & Omissions):  Applicable  N/A
** ***	

\$1,000,000 - Each Claim Limit \$1,000,000 - Aggregate Limit

Professional Liability coverage may be provided through an endorsement to the Commercial General Liability (CGL) policy, or a separate policy specific to Professional E&O. Either is acceptable if coverage meets all other requirements. Coverage must be claims-made, and maintained for the duration of the contractual agreement and for two (2) years following completion of services provided. An annual certificate of insurance must be submitted to City to evidence coverage.

#### 10.2 General Requirements

(d)

- (a) The commercial general liability and automobile liability policies must name City as an additional insured thereon, as its interests may appear. The term City includes its employees, officers, officials, agents, and volunteers in respect to the contracted services.
- (b) The workers' compensation policy must include a Waiver of Subrogation (Right of Recovery) in favor of City.
- (c) A minimum of Thirty (30) days' notice of cancellation or reduction in limits of coverage must be provided to City. Ten (10) days' notice will be acceptable in the event of non-payment of premium. Notice must be sent to the City in accordance with the notice provision of this Agreement.
- (d) The insurers for all policies must be licensed and/or approved to do business in the State of Texas. All insurers must have a minimum rating of A-VII in the current A.M. Best Key Rating Guide, or have reasonably equivalent financial strength and solvency to the satisfaction of Risk Management. If the rating is below that required, written approval of Risk Management is required.
- (e) Any failure on the part of City to request required insurance documentation will not constitute a waiver of the insurance requirement.

- (f) Certificates of Insurance evidencing that Vendor has obtained all required insurance will be delivered to the City prior to Vendor proceeding with any work pursuant to this Agreement.
- 11. **Compliance with Laws, Ordinances, Rules and Regulations.** Vendor agrees that in the performance of its obligations hereunder, it will comply with all applicable federal, state and local laws, ordinances, rules and regulations and that any work it produces in connection with this Agreement will also comply with all applicable federal, state and local laws, ordinances, rules and regulations. If City notifies Vendor of any violation of such laws, ordinances, rules or regulations, Vendor must immediately desist from and correct the violation.
- 12. Non-Discrimination Covenant. Vendor, for itself, its personal representatives, assigns, contractors, subcontractors, and successors in interest, as part of the consideration herein, agrees that in the performance of Vendor's duties and obligations hereunder, it will not discriminate in the treatment or employment of any individual or group of individuals on any basis prohibited by law. IF ANY CLAIM ARISES FROM AN ALLEGED VIOLATION OF THIS NON-DISCRIMINATION COVENANT BY VENDOR, ITS PERSONAL REPRESENTATIVES, ASSIGNS, CONTRACTORS, SUBCONTRACTORS, OR SUCCESSORS IN INTEREST, VENDOR AGREES TO ASSUME SUCH LIABILITY AND TO INDEMNIFY AND DEFEND CITY AND HOLD CITY HARMLESS FROM SUCH CLAIM.
- 13. <u>Notices</u>. Notices required pursuant to the provisions of this Agreement will be conclusively determined to have been delivered when (1) hand-delivered to the other party, its agents, employees, servants or representatives, (2) delivered by facsimile with electronic confirmation of the transmission, or (3) received by the other party by United States Mail, registered, return receipt requested, addressed as follows:

To CITY:

City of Fort Worth

Attn: Assistant City Manager

200 Texas Street

Fort Worth, TX 76102-6314

Facsimile: (817) 392-8654

With copy to Fort Worth City Attorney's Office at

same address

To VENDOR:

Shermco Industries, Inc.

Kim Gawronski, Sr. Director Legal Risk

2425 E. Pioneer Drive

Irving, TX 75061

Facsimile:

- 14. <u>Solicitation of Employees</u>. Neither City nor Vendor will, during the term of this Agreement and additionally for a period of one year after its termination, solicit for employment or employ, whether as employee or independent contractor, any person who is or has been employed by the other during the term of this Agreement, without the prior written consent of the person's employer. Notwithstanding the foregoing, this provision will not apply to an employee of either party who responds to a general solicitation of advertisement of employment by either party.
- 15. <u>Governmental Powers</u>. It is understood and agreed that by execution of this Agreement, City does not waive or surrender any of its governmental powers or immunities.

- 16. <u>No Waiver</u>. The failure of City or Vendor to insist upon the performance of any term or provision of this Agreement or to exercise any right granted herein does not constitute a waiver of City's or Vendor's respective right to insist upon appropriate performance or to assert any such right on any future occasion.
- 17. Governing Law / Venue. This Agreement will be construed in accordance with the laws of the State of Texas. If any action, whether real or asserted, at law or in equity, is brought pursuant to this Agreement, venue for such action will lie in state courts located in Tarrant County, Texas or the United States District Court for the Northern District of Texas, Fort Worth Division.
- 18. <u>Severability</u>. If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired.
- 19. Force Majeure. City and Vendor will exercise their best efforts to meet their respective duties and obligations as set forth in this Agreement, but will not be held liable for any delay or omission in performance due to force majeure or other causes beyond their reasonable control, including, but not limited to, compliance with any government law, ordinance, or regulation; acts of God; acts of the public enemy; fires; strikes; lockouts; natural disasters; wars; riots; epidemics or pandemics; government action or inaction; orders of government; material or labor restrictions by any governmental authority; transportation problems; restraints or prohibitions by any court, board, department, commission, or agency of the United States or of any States; civil disturbances; other national or regional emergencies; or any other similar cause not enumerated herein but which is beyond the reasonable control of the Party whose performance is affected (collectively, "Force Majeure Event"). The performance of any such obligation is suspended during the period of, and only to the extent of, such prevention or hindrance, provided the affected Party provides notice of the Force Majeure Event, and an explanation as to how it prevents or hinders the Party's performance, as soon as reasonably possible after the occurrence of the Force Majeure Event, with the reasonableness of such notice to be determined by the City in its sole discretion. The notice required by this section must be addressed and delivered in accordance with Section 13 of this Agreement.
- 20. <u>Headings not Controlling</u>. Headings and titles used in this Agreement are for reference purposes only, will not be deemed a part of this Agreement, and are not intended to define or limit the scope of any provision of this Agreement.
- 21. **Review of Counsel.** The parties acknowledge that each party and its counsel have reviewed and revised this Agreement and that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement or Exhibits A, B, and C.
- 22. <u>Amendments / Modifications / Extensions</u>. No amendment, modification, or extension of this Agreement will be binding upon a party hereto unless set forth in a written instrument, which is executed by an authorized representative of each party.
- 23. <u>Counterparts</u>. This Agreement may be executed in one or more counterparts and each counterpart will, for all purposes, be deemed an original, but all such counterparts will together constitute one and the same instrument.
- 24. Warranty of Services. Vendor warrants that its services will be of a high quality and conform to generally prevailing industry standards. City must give written notice of any breach of this warranty within thirty (30) days from the date that the services are completed. In such event, at Vendor's

option, Vendor will either (a) use commercially reasonable efforts to re-perform the services in a manner that conforms with the warranty, or (b) refund the fees paid by City to Vendor for the nonconforming services.

- 25. <u>Immigration Nationality Act.</u> Vendor must verify the identity and employment eligibility of its employees who perform work under this Agreement, including completing the Employment Eligibility Verification Form (I-9). Upon request by City, Vendor will provide City with copies of all I-9 forms and supporting eligibility documentation for each employee who performs work under this Agreement. Vendor must adhere to all Federal and State laws as well as establish appropriate procedures and controls so that no services will be performed by any Vendor employee who is not legally eligible to perform such services. VENDOR WILL INDEMNIFY CITY AND HOLD CITY HARMLESS FROM ANY PENALTIES, LIABILITIES, OR LOSSES DUE TO VIOLATIONS OF THIS PARAGRAPH BY VENDOR, VENDOR'S EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, OR AGENTS. City, upon written notice to Vendor, will have the right to immediately terminate this Agreement for violations of this provision by Vendor.
- Ownership of Work Product. City will be the sole and exclusive owner of all reports, work papers, procedures, guides, and documentation that are created, published, displayed, or produced in conjunction with the services provided under this Agreement (collectively, "Work Product"). Further, City will be the sole and exclusive owner of all copyright, patent, trademark, trade secret and other proprietary rights in and to the Work Product. Ownership of the Work Product will inure to the benefit of City from the date of conception, creation or fixation of the Work Product in a tangible medium of expression (whichever occurs first). Each copyrightable aspect of the Work Product will be considered a "work-madefor-hire" within the meaning of the Copyright Act of 1976, as amended. If and to the extent such Work Product, or any part thereof, is not considered a "work-made-for-hire" within the meaning of the Copyright Act of 1976, as amended, Vendor hereby expressly assigns to City all exclusive right, title and interest in and to the Work Product, and all copies thereof, and in and to the copyright, patent, trademark, trade secret, and all other proprietary rights therein, that City may have or obtain, without further consideration, free from any claim, lien for balance due, or rights of retention thereto on the part of City.
- 27. Signature Authority. The person signing this Agreement hereby warrants that they have the legal authority to execute this Agreement on behalf of the respective party, and that such binding authority has been granted by proper order, resolution, ordinance or other authorization of the entity. This Agreement and any amendment hereto, may be executed by any authorized representative of Vendor. Each party is fully entitled to rely on these warranties and representations in entering into this Agreement or any amendment hereto.
- 28. Change in Company Name or Ownership. Vendor must notify City's Purchasing Manager, in writing, of a company name, ownership, or address change for the purpose of maintaining updated City records. The president of Vendor or authorized official must sign the letter. A letter indicating changes in a company name or ownership must be accompanied with supporting legal documentation such as an updated W-9, documents filed with the state indicating such change, copy of the board of director's resolution approving the action, or an executed merger or acquisition agreement. Failure to provide the specified documentation so may adversely impact future invoice payments.
- 29. No Boycott of Israel. If Vendor has fewer than 10 employees or this Agreement is for less than \$100,000, this section does not apply. Vendor acknowledges that in accordance with Chapter 2271 of the Texas Government Code, the City is prohibited from entering into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The terms "boycott Israel"

and "company" has the meanings ascribed to those terms in Section 2271 of the Texas Government Code. By signing this Agreement, Vendor certifies that Vendor's signature provides written verification to the City that Vendor: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the Agreement.

- 30. Prohibition on Boycotting Energy Companies. Vendor acknowledges that, in accordance with Chapter 2274 of the Texas Government Code, as added by Acts 2021, 87th Leg., R.S., S.B. 13, § 2, the City is prohibited from entering into a contract for goods or services that has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the City with a company with 10 or more full-time employees unless the contract contains a written verification from the company that it: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract. The terms "boycott energy company" and "company" have the meaning ascribed to those terms by Chapter 2274 of the Texas Government Code, as added by Acts 2021, 87th Leg., R.S., S.B. 13, § 2. To the extent that Chapter 2274 of the Government Code is applicable to this Agreement, by signing this Agreement, Vendor certifies that Vendor's signature provides written verification to the City that Vendor: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of this Agreement.
- 31. **Prohibition on Discrimination Against Firearm and Ammunition Industries**. Vendor acknowledges that except as otherwise provided by Chapter 2274 of the Texas Government Code, as added by Acts 2021, 87th Leg., R.S., S.B. 19, § 1, the City is prohibited from entering into a contract for goods or services that has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the City with a company with 10 or more full-time employees unless the contract contains a written verification from the company that it: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. The terms "discriminate," "firearm entity" and "firearm trade association" have the meaning ascribed to those terms by Chapter 2274 of the Texas Government Code, as added by Acts 2021, 87th Leg., R.S., S.B. 19, § 1. To the extent that Chapter 2274 of the Government Code is applicable to this Agreement, by signing this Agreement, Vendor certifies that Vendor's signature provides written verification to the City that Vendor: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate against a firearm entity or firearm trade association during the term of this Agreement.
- 32. <u>Electronic Signatures</u>. This Agreement may be executed by electronic signature, which will be considered as an original signature for all purposes and have the same force and effect as an original signature. For these purposes, "electronic signature" means electronically scanned and transmitted versions (e.g. via pdf file or facsimile transmission) of an original signature, or signatures electronically inserted via software such as Adobe Sign.
- 33. **Entirety of Agreement.** This Agreement contains the entire understanding and agreement between City and Vendor, their assigns and successors in interest, as to the matters contained herein. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with any provision of this Agreement.

(signature page follows)

#### IN WITNESS WHEREOF, the parties hereto have executed this Agreement in multiples.

By: Dana Burghdoff
Dana Burghdoff (Afr 26, 202014:42 CDT)

Name: Dana Burghdoff

City:

Title: Assistant City Manager

Date:

Vendor:

—DocuSigned by: Kim Gawronski

By: 1770F0E40ED44E

Title: Sr. Director, Legal and Risk

Date: 24-Apr-2023 | 1:00 PM PDT

#### FOR CITY OF FORT WORTH INTERNAL PROCESSES:

#### Approval Recommended:

By: Christopher Harder
Christopher Harder (Apr 25, 2023 09:12 CDT)

Name: Chris Harder

Title: Water Department Director

Approved as to Form and Legality:

By: DBlack (Apr 25, 2023 17:07 CDT)

Name: Doug Black

Title: Assistant City Attorney

**Contract Authorization:** 

M&C: 23-0267

Form 1295: 2023-984094

#### **Contract Compliance Manager:**

By signing I acknowledge that I am the person responsible for the monitoring and administration of this contract, including ensuring all performance and reporting requirements.

By: Shatabya Bergland
Name: Shatabya Bergland

Title: Contract Compliance Specialist

City Secretary:

By: Januare & Strate

Name: Jannette Goodall Title: City Secretary

> OFFICIAL RECORD CITY SECRETARY FT. WORTH, TX

# EXHIBIT A SCOPE OF SERVICES

See next page.

#### PART 2

#### SCOPE OF SERVICES/SPECIFICATIONS

#### 1.0 SCOPE

- 1.1 The City of Fort Worth (City) seeks bids to establish an annual agreement for electric motor repair and replacement services for the Water Department on an "as needed" basis. Prospective bidders should ensure they download all attachments for complete responses and understanding of the agreement the City intends to award from this solicitation. The successful bidder(s), known hereafter as "Contractor"/" Vendor."
- 1.2 This Agreement shall begin on the date the City Secretary Contract is executed by the Assistant City Manager ("Effective Date") and shall expire one year from that date, ("Expiration Date"), unless terminated earlier in accordance with this Agreement ("Initial Term"). Upon the expiration of the Initial Term, the Agreement shall automatically renew under the same terms and conditions for up to four (4) one-year renewal periods, unless City or Vendor provides the other party with notice of non-renewal at least 60 days before the expiration of the Initial Term or renewal period. However, if funds are not appropriated, the City may cancel the Agreement 30 calendar days after providing written notification to the Contractor / Vendor.
- Unit prices shall include all costs associated with the goods and services, including but not limited to shipping, handling, fuel charges, fees and certifications fees. NO ADDITIONAL CHARGES WILL BE ACCEPTED OR PAID BY THE CITY.
- 1.4 Following the award, additional services of the same general category that could have been encompassed in the award of this Agreement, and that are not already on the Agreement, may be added based on the discount offered and price sheet provided with the bid.
- 1.5 Any specifications/requirements that have been omitted from this scope of service that are clearly necessary or in conformance shall be considered a requirement although not directly specified or called for in the scope of services.
- 1.6 The submission of a bid by the bidder shall be considered evidence of compliance with these requirements.

#### 2.0 TENTATIVE SCHEDULE OF EVENTS

TASK	DATE		
ITB Release Date	February 1, 2023		
Pre-Bid Conference	February 7, 2023 at 2PM (Local Time)		
Deadline for Questions	February 10, 2023 at 5PM (Local Time)		
Answers Posted	February 15, 2023		
ITB Responses Due Date	February 23, 2023 AT 1:30 p.m. (Local Time)		
Recommended Vendor Selection	March 2023		
Contract Execution	April 2023		

#### 8.0 REQUIRED EQUIPMENT

- 8.1 Equipment required includes, but is not limited to the following:
  - 8.1.1 Lifting equipment to safely move electric motors and accessories;
  - 8.1.2 Cleaning capabilities;
  - 8.1.3 Machine tools;
  - 8.1.4 Welding equipment;
  - 8.1.5 Hydraulic bearing pullers;
  - 8.1.6 Lathes, milling machine, drill press;
  - 8.1.7 Dynamic balancing and trim equipment and capabilities;
  - 8.1.8 Stator core loss tester;
  - 8.1.9 Temperature regulated burn off oven and baking oven;
  - 8.1.10 Class H insulating materials of sufficient quantity to treat new windings, rewind area must be clean and temperature-controlled environment;
  - 8.1.11 Sufficient inventory of inverter-duty rated magnet wire and coil winding equipment;
  - 8.1.12 Dip tank;
  - 8.1.13 Vacuum pressure impregnation system;
  - 8.1.14 DC Hipot (high potential) tester, and
  - 8.1.15 Inventory and recordkeeping system necessary to trace, monitor, log, and provide reports on all repair work. Records shall be maintained a minimum of three (3) years.

#### 9.0 ELECTRICAL MOTOR SPECIFICATIONS

- 9.1 The City's electric motor inventory includes various frames, orientations, makes, and models ranging from two (2) Horse Power (HP) to 2500 HP running on voltages ranging from 120 volts to 4160 volts. Current electric motor inventory includes over 500 electric motors, located at various water/wastewater plants and pump stations.
- 9.2 The Contractor shall be selected for job order tasks based on repair/replacement prices, onsite trouble shooting ability (when required), estimated speed of repairs, familiarity with equipment, and capabilities of shop. It is anticipated that not all contractors shall have the shop ability to repair, troubleshoot, and test the entire range of motor sizes owned by the City. The Contractor shall only be considered for tasks which they have the capability to perform.
- 9.3 Each new motor shall be provided with two operation and maintenance manuals, which shall include technical drawings and performance data. The Contractor start-up services shall be compensated under the hourly rate on the Price Submittal Page.

- 9.4 This contract in no way restricts the City from the option of taking competitive bids for the procurement of new motors, especially large or custom motors.
- 9.5 Price for motor replacement shall be based on a percentage of the average Vaughen's "user" price. The "user" price is defined as the industry wide average price that motor repair shops charge a customer for a new motor.
- 9.6 The Contractor shall provide shop drawings to the City showing motor lay lengths, orientation of cable entry, and operating parameters prior to issuance of purchase order.

#### 10.0 CONTRACTOR'S RESPONSIBILITIES

- 10.1 The Contractor shall-
  - 10.1.1 Provide the City materials and workmanship of the highest industry standard. Unless otherwise agreed to, parts, materials and equipment purchased and installed through this contract shall be new and subject to inspection and approval by the City Representative prior to delivery.
  - 10.1.2 Be responsible for all City equipment while it is in the Contractor's custody.
  - 10.1.3 Be required to perform/provide on-site technical assistance and/or troubleshooting, as well as preventive and predictive maintenance upon request by the City. Field services shall be compensated at the hourly rate listed on the Price Submittal page.
  - 10.1.4 Provide work, services, technical expertise, materials, and equipment normally associated with pump and equipment motors.
  - 10.1.5 Perform motor repair services both on-site and at the Contractor's repair facility.
  - 10.1.6 Provide rewind, repair and replacement of various types of electric motors. Electric motor work shall be performed on, but not restricted to, pumps, water and wastewater treatment equipment.
  - 10.1.7 Provide an acceptable level of service in terms of cost, time and workmanship. If any issues regarding the services or parts are found to be unsatisfactory, the Contractor shall be given an opportunity to correct. Failure of the Contractor to correct services or parts to a satisfactory condition shall be considered grounds for terminating Agreement between the Contractor and the City.
  - 10.1.8 Inform the City when he/she arrives on site and leaves, and report his/her hours worked though completion of a work summary sheet. Hourly rates for field work will commence from the time the Vendor arrives on site and continue until the Vendor departs the site. Where appropriate, invoices shall include mileage required for pickup and delivery of equipment. Depending on the work performed, City may hold invoices until required reports are received by the City.

#### 11.0 ELECTRIC MOTOR REPAIR AND RECONDITIONING

- All repaired or completely reconditioned motors shall have a separate metal tag screwed or riveted next to the manufacturers I.D. metal plate with the Contractor's name, address, phone number, and date of motor repair.
- 11.2 Motor reconditioning shall correspond with the scope of work outlined under Vaughen's

published scope of work, to include the following basic work components:

- 11.2.1 Disassemble, inspect and perform electrical tests;
- 11.2.2 Steam clean, dip and bake, and
- 11.2.3 Assemble, test, and paint.
- 11.3 Upon completion and before delivery is taken on a motor overhaul or rewind, the motor or stator shall be certified as surge comparison tested for winding condition. This shall be performed as part of the basic reconditioning service.
- 11.4 Observations, measurements, and test results shall be provided to the City in an abbreviated report as part of this base work.
- 11.5 Costs for the City requested additional work required to recondition and/or repair motors, to include furnishing and installing two new ball bearings, dynamically balancing the rotor, bore and bush bracket, and/or metallizing one surface will be based on percentage of the Vaughen's most current published price.
- 11.6 Costs for additional work not outlined in the Vaughen's publication, to include additional machine work, testing, welding, specialty parts, etc., will be compensated based on the applicable hourly field and/or shop labor rate plus the parts and material costs.

#### 12.0 ELECTRICAL MOTOR REWINDS

- 12.1 All rewound motors shall have a separate metal tag screwed or riveted next to the manufacturers ID metal plate with the Contractor's name, address, phone number, and date of motor rewind.
- 12.2 Upon completion and before delivery is taken on a motor rewind, the motor or stator shall be certified as surge comparison tested for winding condition. This shall be performed as part of the basic rewinding service.
- 12.3 Motor rewinding shall correspond to the scope of work outlined under the most current Vaughen's published scope of work, to include the following basic work components:
  - 12.3.1 Dismantle, inspect, test, strip and clean;
  - 12.3.2 Make and install insulation;
  - 12.3.3 Make and insert coils, and
  - 12.3.4 Connect, dip and bake random wound motors, vacuum pressure impregnate form-wound motors. Provide written report to the City documenting observations, measurements, and test results as part of base work.
- 12.4 The minimum class of insulation shall be Class H, as specified by NEMA.
- 12.5 Costs for the City requested additional work required to recondition and/or repair motors, to include furnishing and installing two new ball bearings, dynamically balancing the rotor, bore and bush bracket, and metallizing one surface shall be based on percentage of the Vaughen's most current published price.
- 12.6 Costs for additional work not outlined in the Vaughen's publication, to include mechanical

repairs, machine work, testing, welding, specialty parts, etc., shall be compensated based on the applicable hourly field and/or shop labor rate plus the parts and material costs.

#### 13.0 PREDICTIVE MAINTENANCE AND DIAGNOSTICS- ELECTRIC MOTORS AND MOTOR CIRCUITS

- 13.1 Predictive maintenance and diagnostics for electric motors and circuits may include, but not be limited to the following:
  - 13.1.1 Vibration testing;
  - 13.1.2 Infrared thermography;
  - 13.1.3 Insulation resistance, polarization index, DC HiPot, and surge tests;
  - 13.1.4 Lubrication and particle wear analysis, and
  - 13.1.5 Electrical, performance and efficiency analysis.
- 13.2 Field work to perform predictive maintenance testing and analysis will be paid at the hourly rate listed on the Price Submittal page.
- 13.3 Follow up data analysis, evaluation, recommendations, and report writing will be paid at the hourly rate on the Price Submittal page.
- 13.4 Testing that occurs at the shop will be paid at the unit price for shop labor listed on the Price Submittal page.

#### 14.0 MECHANICAL REPAIRS

- 14.1 Repair shops shall have shop machining capabilities to troubleshoot and make mechanical repairs to motor, couplings, shafts, and miscellaneous motor and drive components, to include ancillary items such as gearboxes.
- 14.2 Mechanical repairs to motors and motor components will be compensated at the applicable shop labor rate plus parts and materials cost markup from the Price Submittal page.
- 14.3 When instructed by the City, mechanical repairs to electric motors shall be vibration tested prior to delivery.

#### 15.0 REPAIR ESTIMATES

- 15.1 The Contractor shall provide an estimate for repair in writing before proceeding with any repair work.
- 15.2 Estimates will be provided not later than seventy-two (72) hours after the Contractor has received the motor.
- 15.3 Estimates will include the cost of a new motor as an alternative, based on the percentage of the Vaughen's Price Index "user" price included in the bid proposal.
- 15.4 The City reserves the right to replace the motor rather than repair it. No additional costs other than the shop labor costs for tear down and assessment time shall be charged to the City if the motor is not repaired.
- 15.5 All non-repaired motors and parts will be returned to the City.

15.6 In some cases, field troubleshooting and the Contractor recommendations and a repair estimate shall occur prior to removing the motor and delivery to the Contractor's shop. In cases where a field investigation is required, the Contractor will be compensated at the applicable hourly rates on the Price Submittal page.

#### 16.0 WARRANTY

- 16.1 The Contractor shall warrant all equipment and parts furnished as new under this contract are newly manufactured and free from defects in material and workmanship for no less than one (1) year from the date the equipment is delivered.
- 16.2 The Contractor shall warrant that all rebuilt or repaired equipment and parts furnished under this contract shall meet manufacturer's specifications and are free from defects in material and workmanship for no less than one (1) year from the date the equipment is delivered.
- 16.3 The Contractor shall warrant all labor involved in the rewind and repair of electric motors and associated equipment for no less than one (1) year from the date the equipment is delivered. This includes, but is not limited to, welding and machine work.
- 16.4 The Contractor shall warrant all new motors purchased under this contract for a period of one (1) year against defects.
- 16.5 Warranty shall include accepted trade standards of quality, fitness for the intended uses, and conformance to specifications.
- 16.6 All defective products will be replaced and exchanged by the Contractor. The cost of transportation, unpacking, inspection, re-packing, re-shipping or other like expenses will be paid by the Contractor.
- 16.7 Contractor agrees to repair or replace promptly, on a one-for-one basis without additional cost to the City of Fort Worth, any and all defective work and products. The City defines "prompt" repair or replacement to be within twenty- four (24) hours after notification by authorized City personnel.
- 16.8 With respect to all warranties, expressed or implied, from manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall:
  - 16.8.1 Obtain all warranties that would be obtained in normal commercial practice;
  - 16.8.2 Enforce all warranties for the benefit of the City of Fort Worth.

#### 17.0 CITY RESPONSIBLITIES

- 17.1 Shipping/receiving reports provided by the Contractor will be signed by appropriate City of Fort Worth personnel to verify custody/acceptance of equipment.
- 17.2 Upon inspection of services completed, the City personnel shall notify the Contractor if any issues regarding the services or parts are found to be unsatisfactory.

#### 18.0 PERFORMANCE OF SERVICES

18.1 On-site motor repairs shall be performed at the following locations:

- 18.1.1 Eagle Mountain Water Treatment Plant (WTP) 6801 Bowman Roberts Road Fort Worth, TX 79179
- 18.1.2 Rolling Hills WTP 2500 SE Loop 820 Fort Worth, TX 76140
- 18.1.3 North & South Holly WTP 1500 11th Avenue Fort Worth, TX 76102
- 18.1.4 Village Creek Water Reclamation Facility 4500 Wilma Lane Arlington, TX 76012
- 18.1.5 Westside WTP 12200 Old Weatherford Road Fort Worth, TX 76008
- 18.1.6 Various Water Distribution pump stations and tanks that will be provided to the vendor upon award.
- 18.2 The Contractor shall be responsible for pick-up and delivery of all motors when and where requested by the City.
- 18.3 The Contractor shall perform all pick-up and delivery within twenty-four (24) hours of notification by the City.
- 18.4 The Contractor shall be compensated for pickup and delivery of motor/equipment at the per mile fee included on the Price Submittal page. This fee shall include all costs associated with the pickup and delivery of the equipment.
- 18.5 Hourly rates shall be invoiced to the nearest ¼ hour.
- 18.6 Normal business hours are Monday through Friday, 7:00AM- 4:00PM.
- 18.7 Overtime/emergencies are Monday through Friday 4:01PM- 6:59AM and weekends.

#### 19.0 LAWS, REGULATIONS, AND ORDINANCES

19.1 The Vendor shall be responsible for meeting all Federal: laws, ordinances and regulations; State: laws, ordinance and regulations; County: laws, ordinances and regulations; and City: laws, ordinances, and regulations for safety of people, environment, and property. This includes, but is not limited to, all Federal, State, County, and City Agencies, Administrations and Commissions such as the Environmental Protection Agency (EPA), Occupational Safety and Health Administration (OSHA), and the Texas Commission on Environmental Quality (TCEQ). In the event any law, regulation or ordinance becomes effective after the start of this Agreement, the Vendor is required to comply with new policy. Any mandates requiring the City to comply with new guidelines will also require the Vendor to comply.

#### 20.0 INVOICING REQUIREMENTS

20.1 The City of Fort Worth operates an automated invoicing system (AIM).

- 20.2 The Contractor shall send invoices electronically to our centralized Accounts Payable department invoice email address: <a href="mailto:supplierinvoices@fortworthtexas.gov">supplierinvoices@fortworthtexas.gov</a>. This email address is <a href="mailto:not monitored">not monitored</a> so please do not send correspondence to this email address. The sole purpose of the supplier invoices email address is to receipt and process supplier invoices.
- 20.3 Please include the following on the subject line of your e-mail: vendor name, invoice number, and PO number, separated by an underscore (ex: Example, Inc.\_123456\_FW013-0000001234)
- 20.4 To ensure the system can successfully process your invoice in an expedient manner, please adhere to the following requirements:
  - All invoices must be either a PDF or TIFF format.
  - Image quality must be at least 300 DPI (dots per inch).
  - Invoices must be sent as an attachment (i.e. no invoice in the body of the email).
  - One invoice per attachment (includes PDFs). Multiple attachments per email is acceptable but each invoice must be a separate attachment.
  - Please do not send handwritten invoices or invoices that contain handwritten notes.
  - Dot matrix invoice format is not accepted.
  - The invoice must contain the following information:
    - Supplier Name and Address;
    - Remit to Supplier Name and Address, if different;
    - Applicable City Department business unit# (i.e. FW013)
    - Complete City of Fort Worth PO number (i.e. the PO number must contain all preceding zeros);
    - Invoice number;
    - Invoice date; and
    - Invoices should be submitted after delivery of the goods or services.
- 20.5 To prevent invoice processing delays, please do not send invoices by mail and email and please do not send the same invoice more than once by email to <a href="mailto:supplierinvoices@fortworthtexas.gov">supplierinvoices@fortworthtexas.gov</a>. To check on the status of an invoice, please contact the City Department ordering the goods/services or the Central Accounts Payable Department by email at: <a href="mailto:ZZ FIN AccountsPayable@fortworthtexas.gov">ZZ FIN AccountsPayable@fortworthtexas.gov</a>.
- 20.6 If you are unable to send your invoice as outlined above at this time, please send your invoice to our centralized Accounts Payable department instead of directly to the individual city department. This will allow the city staff to digitize the invoice for faster processing.
- 20.7 If electronic invoicing is not possible, you may send your paper invoice to: City of Fort Worth

Attn: FMS Central Accounts Payable

200 Texas Street

Fort Worth, Texas, 76102

The City's goal is to receive 100% of invoices electronically so that all supplier payments are processed efficiently. To achieve this goal, we need the Contractor's support.

If Contractor has any questions, please contact the Accounts Payable team at (817) 392-2451 or by email to ZZ FIN AccountsPayable@fortworthtexas.gov.

20.8 Contractor shall not include Federal, State of City sales tax in its invoices. City shall furnish a tax exemption certificate upon Vendor's request.

#### 21.0 UNIT PRICE ADJUSTMENT

- Vendor may request a Price Adjustment based on Price Adjustment Verification up to one time Quarterly. Price Adjustment means an unplanned or unanticipated change, upward or downward, from the established contract price that is supported by demonstrated Price Adjustment Justification. A request for a Price Adjustment must be initiated by the Vendor. Price Adjustments shall not be allowed more frequently than once Quarterly. It is within the sole discretion of the City to determine whether an adjustment is necessary and/or acceptable.
- 21.2 Quarterly means the City's Fiscal year quarters, being each of the three (3) month periods the first of which begins October 1. Quarter (Q) 1: October 1 December 31; Q2: Jan 1 March 31; Q3P: April 1 June 30; Q4: July 1 September 30.
- 21.3 Price Adjustment Justification means documentation supporting a requested Price Adjustment and showing an objectively verifiable basis for a change in price due to the documented impact of economic conditions on labor, equipment, or materials. Examples of possible Price Adjustment Justification include, but are not limited to, cost indexes, and/or updated supplier price sheets. It is within the sole discretion of the City to determine whether Price Adjustment Justification is sufficient and/or acceptable.
- 21.4 The Vendor must submit its Price Adjustment request, in writing, at least 60 days before the effective period (1st day of a new quarter). The Vendor must provide all Price Adjustment Justification, as defined above, at the time of its request for a Price Adjustment.
- 21.5 If the City, in its sole discretion, concludes that the requested Price Adjustment is unreasonable or not fully supported by adequate Price Adjustment Justification, the City reserves the right to adjust the rate increase, or reject the requested Price Adjustment in its entirety and allow the contract to expire at the end of the contract term. If the City elects not to accept a requested Price Adjustment, the Purchasing Division may issue a new solicitation.
- 21.6 Prices offered shall be used for bid analysis and for Agreement pricing. In cases of errors in extensions or totals, the unit prices offered will govern. Upon expiration of the Agreement term the successful bidder, agrees to hold over under the terms and conditions of this Agreement for a reasonable period of time to allow the City to re-bid an Agreement, not to exceed ninety (90) days. Vendor will be reimbursed for this service at the prior Agreement rate(s). Vendor shall remain obligated to the City under all clauses of this Agreement that expressly or by their nature extends beyond and survives the expiration or termination of this Agreement.
- 21.7 Delivery of goods and/or services shall not be suspended by the Vendor without a 30-day prior written notice to the Purchasing Manager.
- 21.8 Only Published price changes will be accepted. Prices that were in effect at the time of order placement shall take precedence.
- 21.9 To submit a quarterly unit price adjustment request, email the proposed revised line item pricing and justification for the price change to <a href="mailto:FMSPurchasingResponses@fortworthtexas.gov">FMSPurchasingResponses@fortworthtexas.gov</a>.
  - 21.8.1 Emails must include "Quarterly Unit Price Adjustment Request" and the bid number on the subject line to be considered. For example: "Quarterly Unit Price Adjustment Request- Bid No. 23-0021."

#### 22.0 PERFORMANCE

22.1 Failure of the City to insist in any one or more instances upon performance of any of the terms and conditions of this Agreement shall not be construed as a waiver or relinquishment of the future performance of any terms and conditions, but the Vendor's obligation with respect to such performance shall continue in full force and effect.

#### 23.0 SUBCONTRACTING

23.1 No subcontracting of the work under this contract will be allowed without written permission from the City.

#### 24.0 HAZARDOUS CONDITIONS

- 24.1 The Vendor is required to notify the City immediately of any hazardous conditions and/or damage to any property.
- 24.2 Hazardous materials shall be handled with care and workers shall wear Personal Protective Equipment (PPE) while handling hazardous material. If there are questions regarding how to dispose of materials, the Contractor shall contact City of Fort Worth Code Compliance at 817-392-1234.

#### 25.0 CONTRACT ADMINISTRATION AND TERMINATION

- 25.1 Contract administration will be performed by the City Department. In the event the Vendor fails to perform according to the terms of the agreement, The Department head or his/her designee will notify the Vendor, in writing, of its failures. A meeting may be arranged to discuss the Vendor's deficiencies. A written cure notice may be prepared giving the Vendor 14 calendar days to cure any deficiency.
- 25.2 In the event the Vendor continues with unsatisfactory performance, the department will promptly notify the Senior Purchasing Manager who will take appropriate action to cure the performance problem(s), which could include cancellation, termination for convenience or default. If the agreement is terminated for default, the Vendor may be held liable for excess cost and/or liquidated damages.
- 25.3 The Vendor will be paid only those sums due and owing under the agreement for services satisfactorily rendered, subject to offset for damages and other amounts which are, or which may become, due and owing to the City.
- 25.4 The City reserves the right to terminate this agreement, or any part hereof, for its sole convenience. In the event of such termination, the Vendor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subVendors to cease work. Subject to the terms of this agreement, the Vendor shall be paid a percentage of the agreement price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Vendor can demonstrate to the satisfaction of the City using its standard record keeping system, have resulted from the termination. However, in no event shall the total of all amounts paid to the Vendor exceed the agreement price. The Vendor shall not be reimbursed for any profits which may have been anticipated, but which have not been earned up to the date of termination.

#### 26.0 RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

26.1 If the Federal award meets the definition of "funding eCFR — Code of Federal Regulations agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the

# EXHIBIT B PAYMENT SCHEDULE

See next page.



## PRICE SUBMITTAL

Event ID CFW01-23-0021			Pag
Event Round	Version		
1	1		
Event Name ITB Electric Mot	or Repair and	Replacement	Services
Start Time		Finish Time	
02/01/2023 08:00	:00 CST	02/23/2023	13:30:00 CST

**PUBLIC EVENT DETAILS** Invited:

Submit To: City of Fort Worth
FINANCIAL MANAGEMENT SERVICES
FINANCE - City Hall Purchasing
200 Texas St. (Lower Level Rm 1500)
Fort Worth TX 76102-6314

**United States** 

Email: FMSPurchasingResponses@fortworthtexas.gov

Qty	Unit	UnitPrice	Total
550.00	DH		
300.00		1.50	825.00
Qty	Unit	UnitPrice	Total
910.00	HR		
		80.00	72,800.00
Otv	Unit	UnitPrice	Total
	Series proper description	Omerice	iotai
700.00		120.00	84,000.00
Otv	Unit	UnitPrice	Total
900.00	HR	Onn 1136	rwall
		85.00	76,500.00
0 2000			
		UnitPrice	Total
700.00	HK		
		125.00	87,500.00
	W. A.	Uda	<b>-</b> 1
		UnitPrice	Total
1000.00	7.08	85.00	85,000.00
Qty	Unit	UnitPrice	Total
25.00	HR		
		85.00	2,125.00
Otv	Unit	UnitPrice	Total
	Transfer of the second	Onto rice	Total
	3.332	85.00	2,125.00
04	11-2	11-110-1	n=_1000
	100000000000000000000000000000000000000	UnitPrice	Total
300.00	ПК	85.00	42,500.00
			.)
Qty	Unit	UnitPrice	Total
125000.00	DO		
		25,000.00	150,000.00
	Qty 700.00  Qty 900.00  Qty 1000.00  Qty 25.00  Qty 25.00	Qty         Unit           700.00         HR           Qty         Unit           900.00         HR           Qty         Unit           700.00         HR           Qty         Unit           1000.00         HR           Qty         Unit           25.00         HR           Qty         Unit           25.00         HR           Qty         Unit           500.00         HR	Qty         Unit         UnitPrice           910.00         HR         80.00           Qty         Unit         UnitPrice           700.00         HR         120.00           Qty         Unit         UnitPrice           900.00         HR         85.00           Qty         Unit         UnitPrice           1000.00         HR         85.00           Qty         Unit         UnitPrice           25.00         HR         85.00           Qty         Unit         UnitPrice           25.00         HR         85.00           Qty         Unit         UnitPrice           500.00         HR         85.00



### PRICE SUBMITTAL

Event ID CFW01-23-0021				Page 5
Event Round	Version			
1	1			
Event Name ITB Electric Mot	or Repair and	Replacement	Services	
Start Time		Finish Time	13.30.00 CST	

Invited: **PUBLIC EVENT DETAILS** 

Submit To: City of Fort Worth
FINANCIAL MANAGEMENT SERVICES
FINANCE - City Hall Purchasing
200 Texas St. (Lower Level Rm 1500)
Fort Worth TX 76102-6314

**United States** 

Email: FMSPurchasingResponses@fortworthtexas.gov

Line: 11				
Description:	Qty	Unit	UnitPrice	Total
Services, Rewind Motor, per Vaughen's	50000.00	DO		- Control of the Cont
Basic Scope of Work, Cost + $20$ % Markup			10,000.00	60,000.00
Line: 12			1150	
Description:	Qty	Unit	UnitPrice	Total
Services, Furnish/Install Ball Bearings, per Vaughen's	49375.00	DO		
Basic Scope of Work, Cost + 20 % Markup			9,875.00	59,250.00
Line: 13	-	22121	DANSE K	
Description:	Qty	Unit	UnitPrice	Total
Services, Dynamic Balance, per Vaughen's	25000.00	DO		
Scope of Work, Cost + 50 % Markup			12,500.00	37,500.00
Line: 14		-	VM INDOGENIA PORTO	
Description:	Qty	Unit	UnitPrice	Total
Services, Metalize One Surface, per Vaughen's Scope of Work, Cost + $\underline{100}$ % Markup	125000.00	DO	125,000.00	250,000.00
Line: 15				
Description:	Qty	Unit	UnitPrice	Total
Services, Bore and Brush End Bracket, per	105000.00	DO		
Vaughen's Scope of Work, Cost + 50 % Markup	A TO THE TOTAL OF	100000		457 500 00
			52,500.00	157,500.00
Line: 16				
Description:	Qty	Unit	UnitPrice	Total
New or Replacement Motor, per Vaughen's	350000.00	DO		
Scope of Work, Cost + 50 % Markup			175,000.00	525,000.00
Line: 17				
Description:	Qty	Unit	UnitPrice	Total
Miscellaneous parts and materials, Cost +	225000.00	DO	0	
% Markup. Quantity listed is the			40,500.00	265.500.00
estimated annual cost. An example of the			10,000,00	200,000,000
total to be listed on this line item				
is \$225000 + \$22,500 (10% MARKUP) =			Total Bid Amount:	1,948,125.00
\$247,500.				

A bid of "0" will be interpreted by the City as a no-charge (free) item and the City will not expect to pay for that item. A bid of "no bid" or no response (space left blank) will be interpreted by the City that the Offeror does not wish to bid on that item. Be advised, a "no bid" or no response may be considered as non-responsive and may result in disqualification of this bid.

Prompt Payment Discount Terms:	N/A	Percent N/A	Days (i.e. 3	3% Net	15, etc.)

#### City of Fort Worth, Texas

## Mayor and Council Communication

**DATE:** 04/11/23 **M&C FILE NUMBER:** M&C 23-0267

LOG NAME: 13P ITB 23-0021 ELECTRIC MOTOR REPAIR AND REPLACEMENT AW WATER

#### SUBJECT

(ALL) Authorize Execution of Agreements with Evans Enterprises, Inc. and Shermco Industries, Inc. for Electric Motor Repair and Replacement Services for the Water Department in a Combined Annual Amount Up to \$2,000,000.00 and Authorize Four, One-Year Renewals for the Same Annual Amount

#### RECOMMENDATION:

It is recommended that the City Council authorize execution of agreements with Evans Enterprises, Inc. and Shermco Industries, Inc. for electric motor repair and replacement services for the Water Department in a combined annual amount up to \$2,000,000.00 and authorize four, one-year renewals for the same annual amount.

#### DISCUSSION:

The Water Department approached the Purchasing Division for assistance with securing an agreement for electric motor repair and replacement services on an as-needed basis. Under the proposed agreements, the vendors will provide field and shop repairs on various sized electric motors located at water and wastewater treatment plants, and pump stations. In the event the motor cannot be repaired, the vendors will offer options of replacement motors to ensure all the electric motors are properly functioning, and do not impede the delivery of services. Purchasing issued an Invitation to Bid (ITB) that consisted of detailed specifications including the certification and licensing requirements of prospective vendors, the equipment required to perform repairs, and the response time needed to ensure repairs are performed in a timely manner.

The ITB was advertised in the *Fort Worth Star-Telegram* on February 1, 2023, February 8, 2023, February 15, 2023, and February 22, 2023. The City received three responses. However, upon evaluation one bidder, Brandon & Clark, did not score at least 50% or more of the total available points for technical criteria and, therefore, was not qualified to receive pricing points.

An evaluation panel consisting of representatives from the Water Department reviewed and scored the submittal using Best Value criteria. The individual scores were averaged for each of the criteria and the final scores are listed in the table below.

Bidder	Evaluation Factors					
	а	b	С	d	Total score	
Evans Enterprises, Inc.	13.33	10.67	14.17	35.00	72.50	
Brandon and Clark, Inc.	7.33	10.00	12.50	Bidder did not meet technical points; therefore, cost was not evaluated	Bidder did not meet technical points; therefore, cost was not evaluated	
Shermco Industries, Inc.	10.00	9.33	13.33	30.36	63.03	

#### Best Value Criteria:

- a. Contractor's availability of equipment, inventory, and personnel to perform repairs
- b. Contractor's ability to perform services in a timely manner
- c. Extent to which the services meet the City's needs (capacity to perform work such as voltages they can handle, etc.)
- d. Cost of service.

After evaluation, the panel concluded that Evans Enterprises, Inc. and Shermco Industries, Inc. presented the best value. Therefore, the panel recommends that Council authorize agreements with Evans Enterprises, Inc. and Shermco Industries, Inc. No guarantee was made that a specific amount of services would be purchased. Staff certifies that the recommended vendors' bids met specifications.

FUNDING: The maximum amount allowed under this agreement for the initial term will be \$2,000,000.00; however, the actual amount used will be based on the need of the department and available budget.

DocuSign Envelope ID: 5044C558-7A43-487C-95DC-4717CBA68FD4

e Wastewater Departments rollup within the Water & Sewer Fund.

DVIN-BE: A waiver of the goal for Business Equity subcontracting requirement is approved by the DVIN-BE, in accordance with the Business Equity Ordinance, because the purchase of goods or services is from sources where subcontracting or supplier opportunities are negligible.

AGREEMENT TERMS: Upon City Council approval, this agreement shall begin upon execution and expire one year from that date.

RENEWAL TERMS: This agreement may be renewed for four additional, one-year terms at the amount authorized through this M&C. This action does not require specific City Council approval provided that the City Council has appropriated sufficient funds to satisfy the City's obligations during the renewal term.

ADMINISTRATIVE CHANGE ORDER: An administrative change order or increase may be made by the City Manager up to the amount allowed by relevant law and the Fort Worth City Code and does not require specific City Council approval as long as sufficient funds have been appropriated.

#### FISCAL INFORMATION / CERTIFICATION:

The Director of Finance certifies that upon approval of the recommendation, funds are available in the current operating budget, as previously appropriated, in the Water & Sewer Fund. Prior to an expenditure being incurred, the Water Department has the responsibility to validate the availability of funds.

Submitted for City Manager's Office by: Reginald Zeno 8517

Dana Burghdoff 8018

Originating Business Unit Head: Reginald Zeno 8517

Christopher Harder 5020

Additional Information Contact: Jo Ann Gunn 8525

Alyssa Wilkerson 8357

Expedited

#### TARRANT REGIONAL WATER DISTRICT

#### **AGENDA ITEM 15**

**DATE:** June 17, 2025

**SUBJECT: Panther Island Canal and Bridge Construction Update** 

**FUNDING:** Proposed Fiscal Year 2026 Budget

#### RECOMMENDATION:

Management is not recommending any action at this time. This item is to inform the Board about future Board action with the FY2026 budget and construction contracts related to the canal system.

#### **DISCUSSION:**

TRWD engaged U3 Advisors to provide guidance on a property disposition strategy on Panther Island. The goal is to catalyze private development to maximize land values that will fund construction of the canal system and support the Tax Increment Finance district that is funding the local obligations of the Central City project.

U3 is recommending that TRWD construct canal C and a portion of canal D and market approximately 6 acres to potential developers later this year. This recommendation considered the following:

- Canal bridge funding by the City and the North Central Texas Council of Governments will impact the timing and sequencing of canal construction. It is anticipated that the North Main bridges will be recommended for federal funding to allow construction beginning in 2028. As a result, the focus is on the east side of Main Street with Canal C bridges at Commerce and Calhoun to be funded with Regional Toll Revenue and City resources in 2026 and 2027.
- Adjacency to existing activation nodes such as the pavilion and playground at the Coyote Drive-In located on planned open space.
- Provision of sufficient drainage storage and conveyance to open private acreage for development in the corridor.
- Support for active development partners in the corridor.

Management anticipates that the design of a substantial portion of the canal system will be completed by the end of the calendar year. Cost analysis and drainage performance of the recommended portions is being completed to include consideration of a temporary swale in lieu of the full construction of canal D. In addition, costs are being evaluated for TRWD to construct portions of the paseo between North Main and the planned open space. This will allow connectivity to the activation opportunities and provide a tangible demonstration of the vision and accelerate the interest of developers. Private developers will be responsible for enhancements to and potentially future segments of the paseo.

Finally, discussions are underway with the City to develop a strategy for the street infrastructure that is needed in this target area to support development.

It is anticipated that the Board will be asked to consider funding for canal and paseo construction as part of the FY2026 budget adoption. In addition, construction contracts will be presented in spring of 2026 to include final limits of the proposed project.

This item was reviewed by the Finance and Administration and Policy Committees on June 10, 2025. This item was also reviewed by the Construction and Operations Committee on June 12, 2025.

#### Submitted By:

Susan Alanis Panther Island Program Director

#### TARRANT REGIONAL WATER DISTRICT

#### **AGENDA ITEM 16**

**DATE:** June 17, 2025

SUBJECT: CONSIDER APPROVAL OF AMENDMENT TO THE MASTER

RESOLUTION TO AUTHORIZE THE ISSUANCE AND PAYMENT OF UP TO \$400,000,000 AGGREGATE PRINCIPAL AMOUNT OF THE WATER

REVENUE BONDS - EXTENDABLE COMMERICAL PAPER MODE

FUNDING: N/A

#### **RECOMMENDATION:**

Management recommends amending the Master Resolution that established the Tarrant Regional Water District, a Water Control and Improvement District, Extendable Commercial Paper Mode to authorize from \$150,000,000 to up \$400,000,000 aggregate principal amount of the ECP Bonds.

#### **DISCUSSION:**

As part of the District's cost savings strategy, we issue bonds based on cash flow projections, which reduces the overall bond issues and related expenses. Increasing the aggregate principal of the Extendable Commercial Paper Bond program will allow us to enter into contracts without having to issue bonds for the full contract amount at the time of approval.

The District's financial advisors and Bond Counsel have advised the District on the need for this Amendment. Please see attached the Amendment to the Master Resolution.

This item was reviewed by the Finance Committee on June 13, 2025.

#### Submitted By:

Sandy Newby Chief Financial Officer

#### **RESOLUTION NO. 25-**

#### **AMENDING**

# MASTER RESOLUTION ESTABLISHING THE TARRANT REGIONAL WATER DISTRICT, A WATER CONTROL AND IMPROVEMENT DISTRICT EXTENDABLE COMMERCIAL PAPER FINANCING PROGRAM AND AUTHORIZING WATER REVENUE BONDS – EXTENDABLE COMMERCIAL PAPER MODE

WHEREAS, the Tarrant Regional Water District, a Water Control and Improvement District (the "District" or the "Issuer") is a political subdivision of the State of Texas, being a conservation and reclamation district created and functioning under Article 16, Section 59, of the Texas Constitution, pursuant to the general laws of the State of Texas, including Chapters 49 and 51, Texas Water Code, and pursuant to the provisions of Chapter 268, Acts of 1957, 55th Legislature of Texas, Regular Session, as amended (collectively the "District Act"); and has outstanding long-term indebtedness that is rated by a nationally recognized rating agency for municipal securities in one of the four highest rating categories for long-term obligations; and

WHEREAS, the Board of Directors of the District (the "Board") authorized the issuance and payment of up to \$150,000,000 aggregate principal amount of "Tarrant Regional Water District, A Water Control and Improvement District Water Revenue Bond—Extendable Commercial Paper Mode, Series A (Tax-Exempt)" and "Tarrant Regional Water District, A Water Control and Improvement District Water Revenue Bond—Extendable Commercial Paper Mode, Series A (Taxable)" (the "ECP Bonds") issued pursuant to the "Master Resolution Establishing the Tarrant Regional Water District, a Water Control and Improvement District Extendable Commercial Paper Financing Program and Authorizing Water Revenue Bonds — Extendable Commercial Paper Mode" adopted on June 21, 2016 (the "Master Resolution"), providing for the issuance of the ECP Bonds; and

WHEREAS, the Board now desires to amend the Master Resolution to authorize the issuance and payment of up to \$400,000,000 aggregate principal amount of the ECP Bonds; and

WHEREAS, the meeting was open to the public and public notice of the time, place and purpose of said meeting was given pursuant to Chapter 551, Texas Government Code; NOW, THEREFORE,

THE BOARD OF DIRECTORS OF THE TARRANT REGIONAL WATER DISTRICT, A WATER CONTROL AND IMPROVEMENT DISTRICT, HEREBY CERTIFY AS FOLLOWS:

<u>Section 1.</u> <u>Recitals; Definitions.</u> The statements, findings, representations, and determinations set forth in the recitals to this Resolution are hereby incorporated into and made a part of this Resolution for all purposes. Capitalized terms not defined herein have the same meaning as assigned in the Master Resolution.

- <u>Section 2.</u> <u>Amendments to Master Resolution.</u> (a) Pursuant to Section 6.02(a)(v) of the Master Resolution, the defined term "Authorized Amount" contained in the Master Resolution is hereby amended and restated in its entirety as follows:
  - "Authorized Amount" means \$400,000,000; provided that such amount may be issued in one or more Series and provided, further, that the aggregate amount outstanding under this Master Resolution at any one time among all Series may not exceed such Authorized Amount.
- (b) Pursuant to Section 6.02(a)(ii) of the Master Resolution, the defined term "TRWD Authorized Representative" contained in the Master Resolution is hereby amended and restated in its entirety as follows:
  - "TRWD Authorized Representative" means one or more of the following officers or employees of the District: the General Manager, the Deputy General Manager, the Chief Financial Officer, Finance Director, or such other officer or employee of the District authorized by the Board to act as a TRWD Authorized Representative."

The amendments shall take effect upon the approval of the Attorney General of the State of this Resolution, and other agreements and proceedings as may be required in connection therewith, as described in Section 4 hereof. Any and all of the terms and provisions of the Master Resolution shall, except as amended hereby, remain in full force and effect.

#### Section 3. Dealer Agreement; Issuing and Paying Agent Agreement.

- (a) A TRWD Authorized Representative, acting for and on behalf of the Issuer, is authorized to approve, enter into and carry out amendments and supplements to the Dealer Agreement dated as of August 15, 2016 (the "Dealer Agreement"), between the Issuer and J.P. Morgan Securities LLC, that are necessary or acceptable in connection with the amendment of the Master Resolution.
- (b) A TRWD Authorized Representative, acting for and on behalf of the Issuer, is authorized to approve, enter into and carry out amendments and supplements to the Issuing and Paying Agent Agreement dated as of August 15, 2016 (the "Issuing and Paying Agent Agreement"), between the Issuer and U.S. Bank National Association, as Issuing and Paying Agent, that are necessary or acceptable in connection with the amendment of the Master Resolution.
- Section 4. Approval of Attorney General and Fees. The amendment to the Master Resolution herein authorized shall not become effective until the Attorney General of the State shall have approved this Resolution, and other agreements and proceedings as may be required in connection therewith, all as is required by the Acts. The Issuer hereby authorizes and directs payment, from legally available funds of the Issuer, of the nonrefundable examination fee of the Attorney General of the State of Texas required by Section 1202.004, Texas Government Code,

as amended.

Section 5. Further Procedures. The President and Secretary, respectively, of the Board of Directors of the Issuer, any TRWD Authorized Representative, and all other officers, employees and agents of the Issuer are hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents which they may deem necessary or advisable in order to effectuate the purposes of this Resolution, the Master Resolution, the Dealer Agreement, and the Issuing and Paying Agent Agreement. In addition, the President and Secretary, any TRWD Authorized Representative, and Bond Counsel are hereby authorized to approve, subsequent to the date of adoption of this Resolution, any amendments to the above named documents, and any technical amendments to this Resolution as may be required by a Rating Agency as a condition to the granting or maintaining of a rating on the ECP Bonds acceptable to a TRWD Authorized Representative, or as may be required by the Office of the Attorney General of the State in connection with the approval of this Resolution or to correct any ambiguity or mistake or properly or more completely document the transactions contemplated and approved by this Resolution.

[remainder of page left intentionally blank]

#### TARRANT REGIONAL WATER DISTRICT

#### **AGENDA ITEM 17**

**DATE:** June 17, 2025

SUBJECT: CONSIDER APPROVAL OF RESOLUTION AUTHORIZING THE

ISSUANCE, SALE, AND DELIVERY OF TARRANT REGIONAL WATER DISTRICT, A WATER CONTROL AND IMPROVEMENT DISTRICT, WATER REVENUE ECP SERIES A REFUNDING BONDS, PLEDGING REVENUES FOR THE PAYMENT OF THE BONDS, APPROVING AN OFFICIAL STATEMENT, AND AUTHORIZING OTHER INSTRUMENTS

AND PROCEDURES RELATING THERETO

FUNDING: N/A

#### RECOMMENDATION:

Management recommends approval of a resolution authorizing the issuance, sale, and delivery of the Tarrant Regional Water District, a Water Control and Improvement District, Water Revenue ECP Series A Refunding Bonds, pledging revenues for the payment of the bonds, approving an official statement, and authorizing other instruments and procedures relating thereto.

#### **DISCUSSION:**

The resolution authorizes the sale of ECP Series A (Enterprise Fund) Refunding Bonds to refund any ECP Bonds outstanding under the District's Extendable Commercial Paper Financing Program. This resolution gives the District the flexibility to refund the Extendable Commercial Paper Bonds ("ECP") to long-term fixed rate bonds at any time over the next 12 months. This Resolution is necessary should the District need quick access to the bond market if the ECP Bonds are no longer marketable at a cost effective interest rate. The decision to refund will depend on the market conditions, costs and/or market accessibility. There are currently no outstanding ECP Bonds issued on this program.

The District's financial advisors and Bond Counsel have advised the District on the need for this resolution. Please see attached the resolution for the sale.

This item was reviewed by the Finance Committee on June 13, 2025.

#### Submitted By:

Sandy Newby Chief Financial Officer RESOLUTION AUTHORIZING THE ISSUANCE, SALE, AND DELIVERY OF TARRANT REGIONAL WATER DISTRICT, A WATER CONTROL AND IMPROVEMENT DISTRICT, WATER REVENUE ECP SERIES A REFUNDING BONDS, PLEDGING REVENUES FOR THE PAYMENT OF THE BONDS, APPROVING AN OFFICIAL STATEMENT, AND AUTHORIZING OTHER INSTRUMENTS AND PROCEDURES RELATING THERETO

THE STATE OF TEXAS	§
COUNTY OF TARRANT	§
TARRANT REGIONAL WATER DISTRICT	
A WATER CONTROL AND IMPROVEMENT DISTRICT	§

WHEREAS, Tarrant Regional Water District, a Water Control and Improvement District, (formerly known as "Tarrant County Water Control and Improvement District Number One") (the "Issuer" or the "District") is a political subdivision of the State of Texas, being a conservation and reclamation district created and functioning under Article 16, Section 59 of the Texas Constitution, pursuant to the general laws of the State of Texas, including Chapters 49 and 51, Texas Water Code, and pursuant to the provisions of Chapter 268, Acts of 1957, 55th Legislature of Texas, Regular Session, as amended (collectively the "District Act"); and

WHEREAS, among other bonds, pursuant to a Master Resolution Establishing the Tarrant Regional Water District, A Water Control and Improvement District, Extendable Commercial Paper Financing Program And Authorizing Water Revenue Bonds - Extendable Commercial Paper Mode, adopted on June 21, 2016 (the "Master Resolution"), the Issuer has previously authorized to be outstanding the following described junior lien bonds:

Tarrant Regional Water District, a Water Control and Improvement District, Water Revenue Bonds - Extendable Commercial Paper Mode, Series A (Tax-Exempt) and

Tarrant Regional Water District, a Water Control and Improvement District, Water Revenue Bonds - Extendable Commercial Paper Mode, Series A (Taxable), in the original principal amount not to exceed \$400,000,000 (collectively, the "ECP Series A Bonds"); and

WHEREAS, the Issuer now desires to authorize refunding bonds to refund all or part of the of the outstanding ECP Series A Bonds (the "Refundable Bonds"), and those Refundable Bonds designated by the Authorized Officer in the Approval Certificate, each as defined herein, the "Refunded Bonds"; and

WHEREAS, the issuance of the Bonds and the application of the proceeds of the Bonds to refund the Refunded Bonds, which consist of bonds in an extendable commercial paper mode, makes it impracticable to determine the maximum amount by which the aggregate amount of payments to be made under the Bonds exceeds the aggregate amount of payments that would have been made under the terms of the Refunded Bonds for purposes of Section 1207.008(a)(2), Texas Government Code; and

WHEREAS, the Issuer will authorize the ECP Series A Refunding Bonds (hereinafter defined) pursuant to the District Act and Chapters 1207 and 1371, Texas Government Code, as amended; and

WHEREAS, the meeting was open to the public and public notice of the time, place and purpose of said meeting was given pursuant to Chapter 551, Texas Government Code.

THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF TARRANT REGIONAL WATER DISTRICT, A WATER CONTROL AND IMPROVEMENT DISTRICT, THAT:

- Section 1. AMOUNT AND PURPOSE OF THE BONDS. Bonds of the Issuer are hereby authorized to be issued for the purpose of obtaining funds (i) to refund a portion of the Issuer's outstanding Refundable Bonds, and (ii) to pay costs of issuance of such bonds.
- Section 2. DESIGNATION OF THE BONDS. Each bond issued pursuant to this Resolution shall be designated: "TARRANT REGIONAL WATER DISTRICT, A WATER CONTROL AND IMPROVEMENT DISTRICT, WATER REVENUE ECP SERIES A REFUNDING BOND." Initially there shall be issued, sold, and delivered hereunder a single fully registered bond, without interest coupons, payable in installments of principal (the "Initial Bond"), but the Initial Bond may be assigned and transferred and/or converted into and exchanged for a like aggregate amount of fully registered bonds, without interest coupons, having serial maturities, and in the denomination or denominations of \$5,000 or any integral multiple of \$5,000, all in the manner hereinafter provided. The term "ECP Series A Refunding Bonds" as used in this Resolution shall mean and include collectively the Initial Bond and all substitute bonds exchanged therefor, as well as all other substitute bonds and replacement bonds issued pursuant hereto, and the term "ECP Series A Refunding Bond" shall mean any of the ECP Series A Refunding Bonds.
- Section 3. INITIAL DATE, DENOMINATION, NUMBER, MATURITIES, INITIAL REGISTERED OWNER, AND CHARACTERISTICS OF THE INITIAL BOND. (a) As authorized by Chapters 1207 and 1371, Texas Government Code, as amended, the General Manager, the Deputy General Manager, and the Chief Financial Officer of the Issuer are each hereby designated as an "Authorized Officer" of the Issuer, and each is hereby authorized, appointed, and designated as the officer or employee of the Issuer authorized to act on behalf of the Issuer, which actions shall be evidenced by a certificate executed by such Authorized Officer (the "Approval Certificate") for a period not to extend beyond June 17, 2026, in selling and delivering the ECP Series A Refunding Bonds, determining which of the Refundable Bonds shall be refunded and constitute "Refunded Bonds" in this Resolution and carrying out the other procedures specified in this Resolution, including the use of a book-entry only system with respect to the ECP Series A Refunding Bonds and the execution of an appropriate letter of representations if deemed appropriate, the determining and fixing of the date and the date of delivery of the ECP Series A Refunding Bonds, any additional or different designation or title by which the Bond shall be known (including, if the ECP Series A Bonds are issued on a taxable basis, inclusion of an appropriate designation as such), the price at which the ECP Series A Refunding Bonds will be sold (but in no event less than 95% of the principal amount of the ECP Series A Refunding Bonds), the principal amount (not exceeding \$400,000,000) of the ECP Series A Refunding Bonds, the amount of each maturity of principal

thereof, the due date of each such maturity (not exceeding thirty years from the date of the ECP Series A Refunding Bonds), the rate of interest, to be borne by each such maturity (but in no event to result in the net effective interest rate on the ECP Series A Refunding Bonds exceeding 10% per annum), the initial interest payment date, the date or dates of any optional redemption thereof, any mandatory sinking fund redemption provisions, and approving modifications to this Resolution and executing such instruments, documents and agreements as may be necessary with respect thereto, and all other matters relating to the issuance, sale and delivery of the ECP Series A Refunding Bonds and the refunding of the Refunded Bonds.

- (b) The Initial Bond is hereby authorized to be issued, sold, and delivered hereunder as a single fully registered Bond, without interest coupons, in the denomination and aggregate principal amount set forth in the Approval Certificate (not exceeding \$400,000,000), numbered TR-1, payable in annual installments of principal to the initial registered owner thereof or to the registered assignee or assignees of said Bond or any portion or portions thereof (in each case, the "registered owner"), with the annual installments of principal of the Initial Bond to be payable on the dates, respectively, and in the principal amounts, respectively, and may and shall be prepaid or redeemed prior to the respective scheduled due dates of installments of principal thereof, all as set forth in the Approval Certificate.
- (c) The Initial Bond (i) may, and if so provided in the Approval Certificate, shall be prepaid or paid on the respective scheduled due dates of installments of principal thereof, (ii) may be assigned and transferred, (iii) may be converted and exchanged for other bonds, (iv) shall have the characteristics, and (v) shall be signed and sealed, and the principal of and interest on the Initial Bond shall be payable, all as provided, and in the manner required or indicated, in the FORM OF INITIAL BOND set forth in this Resolution.
- Section 4. INTEREST. The unpaid principal balance of the Initial Bond shall bear interest from the date of delivery (the "Issue Date") of the Initial Bond to the Underwriters (as defined in Section 31 hereof) to the respective scheduled due dates, or to the respective dates of prepayment or redemption, of the installments of principal of the Initial Bond, and such interest shall be payable in the manner, at the rates, and on the dates, respectively, as provided in the Approval Certificate and the FORM OF INITIAL BOND set forth in this Resolution.
- Section 5. FORM OF INITIAL BOND. The form of the Initial Bond, including the form of Registration Certificate of the Comptroller of Public Accounts of the State of Texas to be endorsed on the Initial Bond, shall be substantially as follows, with blank or bracketed information to be completed or deleted based upon the Approval Certificate:

F	ORM OF INITIAL BOND	
		Ф

NO. TR-1

UNITED STATES OF AMERICA
STATE OF TEXAS
TARRANT REGIONAL WATER DISTRICT,
A WATER CONTROL AND IMPROVEMENT DISTRICT,
WATER REVENUE ECP SERIES A REFUNDING BOND

<sup>\*</sup> From Approval Certificate.

IMPROVEMENT hereby promises assignees of this	T DISTRICT to pay to: Bond or any pal amount of prince	(the "Issuer"), portion or portion	being a politions hereof (in	T, A WATER CONTROL A tical subdivision of the State of Te  * or to the registered assigned a each case, the "registered owner";  arch 1 in each of the years, and in schedule:	exas, ee or the
		Principal		Principal	
	Year*	Amount*	Year*	Amount*	
from the date of (hereinafter defin	and to pay interest, calculated on the basis of a 360-day year composed of twelve 30-day months, from the date of initial delivery of this Bond to the Underwriters (as defined in the Bond Resolution (hereinafter defined)), on the balance of each such installment of principal, respectively, from time to time remaining unpaid, at the rates as follows:				
	Year*	Rate*	Year*	Rate*	
with said interes	0	•		arch 1 and September 1, commen	cing
	*, while thi	s Bond or any p	ortion hereof	f is outstanding and unpaid.	
payable in lawfu	l money of the	United States of	of America, w	D THE INTEREST ON this Bond without exchange or collection char	ges.

payable in lawful money of the United States of America, without exchange or collection charges. The installments of principal and the interest on this Bond are payable to the registered owner hereof through the services of BOKF, NA, which is the "Paying Agent/Registrar" for this Bond. Payment of all principal of and interest on this Bond shall be made by the Paying Agent/Registrar to the registered owner hereof on each principal and/or interest payment date by check, dated as of such date, drawn by the Paying Agent/Registrar on, and payable solely from, funds of the Issuer required by the resolution authorizing the issuance of this Bond (the "Bond Resolution") to be on deposit with the Paying Agent/Registrar for such purpose as hereinafter provided; and such check shall be sent by the Paying Agent/Registrar by United States mail, first-class postage prepaid, on each such

<sup>\*</sup> From Approval Certificate.

principal and/or interest payment date, to the registered owner hereof, at the address of the registered owner, as it appeared at the close of business on the 15th day of the month next preceding each such date (the "Record Date") on the Registration Books kept by the Paying Agent/ Registrar, as hereinafter described. The Issuer covenants with the registered owner of this Bond that on or before each principal and/or interest payment date for this Bond it will make available to the Paying Agent/Registrar, from the "Interest and Redemption Fund" created by the Bond Resolution, the amounts required to provide for the payment, in immediately available funds, of all principal of and interest on this Bond, when due.

IF THE DATE for the payment of the principal of or interest on this Bond shall be a Saturday, Sunday, a legal holiday, or a day on which banking institutions in the City where the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day on which banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due.

the same force and effect as if made on the original date payment was due.		
of Texas in the principal amoun refund a portion of the Issuer's ou Improvement District, Water Rev Exempt)" and "Tarrant Regional	athorized in accordance with the Constitution and laws of the State at of \$*, for the purpose of obtaining funds (i) to atstanding "Tarrant Regional Water District, A Water Control and Venue Bonds - Extendable Commercial Paper Mode, Series A (Tax-Water District, A Water Control and Improvement District, Water mmercial Paper Mode, Series A (Taxable) and (ii) to pay costs of	
Bond may be prepaid or redeemed funds derived from any available and designate the installment or in if less than a whole principal Agent/Registrar to call by lot or principal installment to be redeen	or any date thereafter, the unpaid installments of principal of this d prior to their scheduled due dates, at the option of the Issuer, with a source, as a whole, or in part, and, if in part, the Issuer shall select installments of principal, and the amount that is to be redeemed, and installment is to be called, the Issuer shall direct the Paying other customary method of random selection the portion of the med (only in an integral multiple of \$5,000), at the redemption price prepaid or redeemed, plus accrued interest to the date fixed for	
March 1, are subject to maprice equal to the principal amou	STALLMENTS OF THIS BOND maturing on March 1, and andatory prepayment or redemption prior to maturity in part, at a unt of this Bond or portions hereof to be prepaid or redeemed plus payment or redemption, on March 1 in the each of years and in the	
Princi	ipal Installment due on March 1,	
Years	Amounts	

<sup>\*</sup> From Approval Certificate.

<sup>\*\*</sup> From Approval Certificate, if applicable.

The amount of any principal installment of this Bond required to be prepaid or redeemed pursuant to the operation of such mandatory prepayment or redemption provisions shall be reduced, at the option of the Issuer, by the principal amount of such principal installment of this Bond which, at least 50 days prior to the mandatory prepayment or redemption date (1) shall have been acquired by the Issuer at a price not exceeding such principal amount plus accrued interest to the date of purchase thereof, (2) shall have been purchased by the Paying Agent/Registrar at the request of the Issuer at a price not exceeding such principal amount plus accrued interest to the date of purchase, or (3) shall have been prepaid or redeemed pursuant to the optional prepayment or redemption provisions and not theretofore credited against a mandatory prepayment or redemption requirement.]

AT LEAST 30 days prior to the date fixed for any such prepayment or redemption a written notice of such prepayment or redemption shall be mailed by the Paying Agent/Registrar to the registered owner hereof. By the date fixed for any such prepayment or redemption due provision shall be made by the Issuer with the Paying Agent/Registrar for the payment of the required prepayment or redemption price for this Bond or the portion hereof which is to be so prepaid or redeemed, plus accrued interest thereon to the date fixed for prepayment or redemption. If such written notice of prepayment or redemption is given, and if due provision for such payment is made, all as provided above, this Bond, or the portion thereof which is to be so prepaid or redeemed, thereby automatically shall be treated as prepaid or redeemed prior to its scheduled due date, and shall not bear interest after the date fixed for its prepayment or redemption, and shall not be regarded as being outstanding except for the right of the registered owner to receive the prepayment or redemption price plus accrued interest to the date fixed for prepayment or redemption from the Paying Agent/Registrar out of the funds provided for such payment. The Paying Agent/Registrar shall record in the Registration Books all such prepayments or redemptions of principal of this Bond or any portion hereof.

THIS BOND, to the extent of the unpaid principal balance hereof, or any unpaid portion hereof in any integral multiple of \$5,000, may be assigned by the initial registered owner hereof and shall be transferred only in the Registration Books of the Issuer kept by the Paying Agent/Registrar acting in the capacity of registrar for the Bonds, upon the terms and conditions set forth in the Bond Resolution. Among other requirements for such transfer, this Bond must be presented and surrendered to the Paying Agent/ Registrar for cancellation, together with proper instruments of assignment, in form and with guarantee of signatures satisfactory to the Paying Agent/Registrar, evidencing assignment by the initial registered owner of this Bond, or any portion or portions hereof in any integral multiple of \$5,000, to the assignee or assignees in whose name or names this Bond or any such portion or portions hereof is or are to be transferred and registered. Any instrument or instruments of assignment satisfactory to the Paying Agent/Registrar may be used to evidence the assignment of this Bond or any such portion or portions hereof by the initial registered owner hereof. A new bond or bonds payable to such assignee or assignees (which then will be the new registered owner or owners of such new Bond or Bonds) or to the initial registered owner as to any portion of this Bond which is not being assigned and transferred by the initial registered owner, shall be

delivered by the Paying Agent/Registrar in conversion of and exchange for this Bond or any portion or portions hereof, but solely in the form and manner as provided in the next paragraph hereof for the conversion and exchange of this Bond or any portion hereof. The registered owner of this Bond shall be deemed and treated by the Issuer and the Paying Agent/Registrar as the absolute owner hereof for all purposes, including payment and discharge of liability upon this Bond to the extent of such payment, and the Issuer and the Paying Agent/Registrar shall not be affected by any notice to the contrary.

AS PROVIDED above and in the Bond Resolution, this Bond, to the extent of the unpaid principal balance hereof, may be converted into and exchanged for a like aggregate principal amount of fully registered bonds, without interest coupons, payable to the assignee or assignees duly designated in writing by the initial registered owner hereof, or to the initial registered owner as to any portion of this Bond which is not being assigned and transferred by the initial registered owner, in any denomination or denominations in any integral multiple of \$5,000 (subject to the requirement hereinafter stated that each substitute bond issued in exchange for any portion of this Bond shall have a single stated principal maturity date), upon surrender of this Bond to the Paying Agent/Registrar for cancellation, all in accordance with the form and procedures set forth in the Bond Resolution. If this Bond or any portion hereof is assigned and transferred or converted each bond issued in exchange for any portion hereof shall have a single stated principal maturity date corresponding to the due date of the installment of principal of this Bond or portion hereof for which the substitute bond is being exchanged, and shall bear interest at the rate applicable to and borne by such installment of principal or portion thereof. Such bonds, respectively, shall be subject to redemption prior to maturity on the same dates and for the same prices as the corresponding installment of principal of this Bond or portion hereof for which they are being exchanged. No such bond shall be payable in installments, but shall have only one stated principal maturity date. AS PROVIDED IN THE BOND RESOLUTION, THIS BOND IN ITS PRESENT FORM MAY BE ASSIGNED AND TRANSFERRED OR CONVERTED ONCE ONLY, and to one or more assignees, but the bonds issued and delivered in exchange for this Bond or any portion hereof may be assigned and transferred, and converted, subsequently, as provided in the Bond Resolution. The Issuer shall pay the Paying Agent/Registrar's standard or customary fees and charges for transferring, converting, and exchanging this Bond or any portion thereof, but the one requesting such transfer, conversion, and exchange shall pay any taxes or governmental charges required to be paid with respect thereto. The Paying Agent/Registrar shall not be required to make any such assignment, conversion, or exchange (i) during the period commencing with the close of business on any Record Date and ending with the opening of business on the next following principal or interest payment date, or, (ii) with respect to any Bond or portion thereof called for prepayment or redemption prior to maturity, within 45 days prior to its prepayment or redemption date.

IN THE EVENT any Paying Agent/Registrar for this Bond is changed by the Issuer, resigns, or otherwise ceases to act as such, the Issuer has covenanted in the Bond Resolution that it promptly will appoint a competent and legally qualified substitute therefor, and promptly will cause written notice thereof to be mailed to the registered owner of this Bond.

IT IS HEREBY certified, recited, and covenanted that this Bond has been duly and validly authorized, issued, and delivered; that all acts, conditions, and things required or proper to be performed, exist, and be done precedent to or in the authorization, issuance, and delivery of this Bond have been performed, existed, and been done in accordance with law; that this Bond is a

special obligation of the Issuer which, together with other outstanding bonds of the Issuer, and the interest thereon, are secured by and payable equally and ratably on a parity from a first lien on and pledge of the "Pledged Revenues," as defined in the Bond Resolution, which include the "Net Revenues of the District's Water System," as defined in the Bond Resolution, which specifically include certain amounts to be received by the Issuer (i) pursuant to the "Tarrant County Regional Water Supply Facilities Contract," dated August 29, 1979, among the Issuer and the Cities of Fort Worth and Mansfield, Texas, the "Tarrant County Regional Water Supply Facilities Supplemental Contract For Trinity River Authority of Texas," dated as of March 12, 1979 between the Issuer and Trinity River Authority of Texas, and the "Tarrant County Regional Water Supply Facilities Amendatory Contract", dated September 1, 1982, among the Issuer, the Cities of Fort Worth, Arlington, and Mansfield, Texas, and Trinity River Authority of Texas, which last named amendatory contract consolidates the previous contracts between such parties with respect to the Issuer's Water System into one instrument and sets forth the entire agreement between such parties with respect to the Issuer's Water System, and (ii) pursuant to contracts with other water customers of the Issuer.

THE ISSUER has reserved the right, subject to the restrictions stated in the Bond Resolution, to issue Additional Bonds payable from and secured by a first lien on and pledge of the "Pledged Revenues" on a parity with this Bond.

THE ISSUER also has reserved the right to amend the Bond Resolution, with the approval of the owners of 51% of the outstanding bonds secured by a first lien on the Pledged Revenues, subject to the restrictions as stated in the Bond Resolution.

THE REGISTERED OWNER hereof shall never have the right to demand payment of this Bond or the interest hereon out of any funds raised or to be raised by taxation or from any source whatsoever other than specified in the Bond Resolution.

BY BECOMING the registered owner of this Bond, the registered owner thereby acknowledges all of the terms and provisions of the Bond Resolution, agrees to be bound by such terms and provisions, acknowledges that the Bond Resolution is duly recorded and available for inspection in the official minutes and records of the governing body of the Issuer, and agrees that the terms and provisions of this Bond and the Bond Resolution constitute a contract between the registered owner hereof and the Issuer.

IN WITNESS WHEREOF, the Iss	suer has caused this Bond to be signed with the man	ıual or		
facsimile signature of the President of the Board of Directors of the Issuer and countersigned with				
the manual or facsimile signature of the	he manual or facsimile signature of the Secretary or other authorized officer of the Board of			
Directors of the Issuer, has caused the off	ficial seal of the Issuer to be duly impressed, or pla	ced in		
facsimile, on this Bond and has caused this Bond to be dated as of *,				
XXXXXXX	XXXXXXX			
Secretary, Board of Directors	President, Board of Directors			
(DISTRICT SEAL)				

<sup>\*</sup> From Approval Certificate.

## FORM OF REGISTRATION CERTIFICATE OF THE COMPTROLLER OF PUBLIC ACCOUNTS:

## COMPTROLLER'S REGISTRATION CERTIFICATE: REGISTER NO.

I hereby certify that this Bond has been examined, certified as to validity, and approved by the Attorney General of the State of Texas, and that this Bond has been registered by the Comptroller of Public Accounts of the State of Texas.

	Comptroller of Public Accounts of the State of Texas
(COMPEDATIENIC CEAT)	

Witness my signature and seal this

(COMPTROLLER'S SEAL)

Section 6. CHARACTERISTICS OF THE ECP SERIES A REFUNDING BONDS. (a) Registration, Transfer, Conversion and Exchange; Authentication. (a) The Issuer shall keep or cause to be kept at the principal corporate trust office of BOKF, NA, Dallas, Texas (the "Paying Agent/Registrar") books or records for the registration of the transfer, conversion and exchange of the ECP Series A Refunding Bonds (the "Registration Books"), and the Issuer hereby appoints the Paying Agent/Registrar as its registrar and transfer agent to keep such books or records and make such registrations of transfers, conversions and exchanges under such reasonable regulations as the Issuer and Paying Agent/Registrar may prescribe; and the Paying Agent/Registrar shall make such registrations, transfers, conversions and exchanges as herein provided. The Paying Agent/Registrar shall obtain and record in the Registration Books the address of the registered owner of each ECP Series A Refunding Bond to which payments with respect to the ECP Series A Refunding Bonds shall be mailed, as herein provided; but it shall be the duty of each registered owner to notify the Paying Agent/Registrar in writing of the address to which payments shall be mailed, and such interest payments shall not be mailed unless such notice has been given. To the extent possible and under reasonable circumstances, all transfers of ECP Series A Refunding Bonds shall be made within three business days after request and presentation thereof. The Issuer shall have the right to inspect the Registration Books during regular business hours of the Paying Agent/Registrar, but otherwise the Paying Agent/Registrar shall keep the Registration Books confidential and, unless otherwise required by law, shall not permit their inspection by any other entity. The Paying Agent/Registrar's standard or customary fees and charges for making such registration, transfer, conversion, exchange and delivery of a substitute ECP Series A Refunding Bond or ECP Series A Refunding Bonds shall be paid as provided in the FORM OF ECP Series A Refunding Bond set forth in this Resolution. Registration of assignments, transfers, conversions and exchanges of ECP Series A Refunding Bonds shall be made in the manner provided and with the effect stated in the FORM OF ECP Series A Refunding Bond set forth in this Resolution. Each substitute ECP Series A Refunding Bond shall bear a letter and/or number to distinguish it from each other ECP Series A Refunding Bond.

An authorized representative of the Paying Agent/Registrar shall, before the delivery of any such ECP Series A Refunding Bond, date and manually sign the Paying Agent/Registrar's Authentication Certificate, and no such ECP Series A Refunding Bond shall be deemed to be issued

or outstanding unless such Certificate is so executed. The Paying Agent/Registrar promptly shall cancel all paid ECP Series A Refunding Bonds surrendered for conversion and exchange. No additional ordinances, orders, or resolutions need be passed or adopted by the governing body of the Issuer or any other body or person so as to accomplish the foregoing conversion and exchange of any ECP Series A Refunding Bond or portion thereof, and the Paying Agent/Registrar shall provide for the printing, execution, and delivery of the substitute ECP Series A Refunding Bonds in the manner prescribed herein, and said ECP Series A Refunding Bonds shall be of type composition printed on paper of customary weight and strength. Pursuant to Subchapter D, Chapter 1201, Texas Government Code, the duty of conversion and exchange of ECP Series A Refunding Bonds as aforesaid is hereby imposed upon the Paying Agent/Registrar, and, upon the execution of said Certificate, the converted and exchanged ECP Series A Refunding Bond shall be valid, incontestable, and enforceable in the same manner and with the same effect as the ECP Series A Refunding Bonds which initially were issued and delivered pursuant to this Resolution, approved by the Attorney General, and registered by the Comptroller of Public Accounts.

- (b) <u>Payment of ECP Series A Refunding Bonds and Interest</u>. The Issuer hereby further appoints the Paying Agent/Registrar to act as the paying agent for paying the principal of and interest on the ECP Series A Refunding Bonds, all as provided in this Resolution. The Paying Agent/Registrar shall keep proper records of all payments made by the Issuer and the Paying Agent/Registrar with respect to the ECP Series A Refunding Bonds.
- (c) In General. The ECP Series A Refunding Bonds (i) shall be issued in fully registered form, without interest coupons, with the principal of and interest on such ECP Series A Refunding Bonds to be payable only to the registered owners thereof, (ii) may, and if so provided in the Approval Certificate, shall be redeemed prior to their scheduled maturities, (iii) may be transferred and assigned, (iv) may be converted and exchanged for other ECP Series A Refunding Bonds, (v) shall have the characteristics, (vi) shall be signed, sealed, executed and authenticated, (vii) shall be payable as to principal and interest, and (viii) shall be administered and the Paying Agent/Registrar and the Issuer shall have certain duties and responsibilities with respect to the ECP Series A Refunding Bonds, all as provided, and in the manner and to the effect as required or indicated, in the FORM OF ECP Series A Refunding Bond set forth in this Resolution. The ECP Series A Refunding Bonds initially issued and delivered pursuant to this Resolution are not required to be, and shall not be, authenticated by the Paying Agent/Registrar, but on each substitute ECP Series A Refunding Bond issued in conversion of and exchange for any ECP Series A Refunding Bond or ECP Series A Refunding Bonds issued under this Resolution the Paying Agent/Registrar shall execute the PAYING AGENT/REGISTRAR'S AUTHENTICATION CERTIFICATE, in the form set forth in the FORM OF ECP Series A Refunding Bond.
- (d) <u>Substitute Paying Agent/Registrar</u>. The Issuer covenants with the registered owners of the ECP Series A Refunding Bonds that at all times while the ECP Series A Refunding Bonds are outstanding the Issuer will provide a competent and legally qualified bank, trust company, financial institution, or other agency to act as and perform the services of Paying Agent/Registrar for the ECP Series A Refunding Bonds under this Resolution, and that the Paying Agent/Registrar will be one entity. The Issuer reserves the right to, and may, at its option, change the Paying Agent/Registrar upon not less than 120 days written notice to the Paying Agent/Registrar, to be effective not later

than 60 days prior to the next principal or interest payment date after such notice. In the event that the entity at any time acting as Paying Agent/Registrar (or its successor by merger, acquisition, or other method) should resign or otherwise cease to act as such, the Issuer covenants that promptly it will appoint a competent and legally qualified bank, trust company, financial institution, or other agency to act as Paying Agent/Registrar under this Resolution. Upon any change in the Paying Agent/Registrar, the previous Paying Agent/Registrar promptly shall transfer and deliver the Registration Books (or a copy thereof), along with all other pertinent books and records relating to the ECP Series A Refunding Bonds, to the new Paying Agent/Registrar designated and appointed by the Issuer. Upon any change in the Paying Agent/Registrar, the Issuer promptly will cause a written notice thereof to be sent by the new Paying Agent/Registrar to each registered owner of the ECP Series A Refunding Bonds, by United States mail, first-class postage prepaid, which notice also shall give the address of the new Paying Agent/Registrar. By accepting the position and performing as such, each Paying Agent/Registrar shall be deemed to have agreed to the provisions of this Resolution, and a certified copy of this Resolution shall be delivered to each Paying Agent/Registrar.

- (e) Reporting Requirements of Paying Agent/Registrar. To the extent required by the Code and the regulations promulgated and pertaining thereto, it shall be the duty of the Paying Agent/Registrar, on behalf of the Issuer, to report to the owners of the ECP Series A Refunding Bonds and the Internal Revenue Service (i) the amount of "reportable payments," if any, subject to backup withholding during each year and the amount of tax withheld, if any, with respect to payments of the ECP Series A Refunding Bonds and (ii) the amount of interest or amount treated as interest on the ECP Series A Refunding Bonds and required to be included in gross income of the owner thereof.
- (f) <u>Book-Entry Only System</u>. The ECP Series A Refunding Bonds issued in exchange for the ECP Series A Refunding Bonds initially issued to the purchaser specified herein shall be initially issued in the form of a separate single fully registered ECP Series A Refunding Bond for each of the maturities thereof. Upon initial issuance, the ownership of each such ECP Series A Refunding Bond shall be registered in the name of Cede & Co., as nominee of Depository Trust Company of New York ("DTC"), and except as provided in subsection (f) hereof, all of the outstanding ECP Series A Refunding Bonds shall be registered in the name of Cede & Co., as nominee of DTC.

With respect to ECP Series A Refunding Bonds registered in the name of Cede & Co., as nominee of DTC, the Issuer and the Paying Agent/Registrar shall have no responsibility or obligation to any DTC Participant or to any person on behalf of whom such a DTC Participant holds an interest on the ECP Series A Refunding Bonds. Without limiting the immediately preceding sentence, the Issuer and the Paying Agent/Registrar shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co. or any DTC Participant with respect to any ownership interest in the ECP Series A Refunding Bonds, (ii) the delivery to any DTC Participant or any other person, other than a Bondholder, as shown on the Registration Books, of any notice with respect to the ECP Series A Refunding Bonds, including any notice of redemption, or (iii) the payment to any DTC Participant or any other person, other than a Bondholder, as shown in the Registration Books of any amount with respect to principal of, premium, if any, or interest on, as the case may be, the ECP Series A Refunding Bonds. Notwithstanding any other provision of this Resolution to the contrary, the Issuer and the Paying Agent/Registrar shall be entitled to treat and

consider the person in whose name each ECP Series A Refunding Bond is registered in the Registration Books as the absolute owner of such ECP Series A Refunding Bond for the purpose of payment of principal, premium, if any, and interest, as the case may be, with respect to such ECP Series A Refunding Bond, for the purpose of giving notices of redemption and other matters with respect to such ECP Series A Refunding Bond, for the purpose of registering transfers with respect to such ECP Series A Refunding Bond, and for all other purposes whatsoever. The Paying Agent/Registrar shall pay all principal of and interest on the ECP Series A Refunding Bonds only to or upon the order of the respective owners, as shown in the Registration Books as provided in this Resolution, or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge the Issuer's obligations with respect to payment of principal of, premium, if any, and interest on, or as the case may be, the ECP Series A Refunding Bonds to the extent of the sum or sums so paid. No person other than an owner, as shown in the Registration Books, shall receive a ECP Series A Refunding Bond certificate evidencing the obligation of the Issuer to make payments of principal, premium, if any, and interest, as the case may be, pursuant to this Resolution. Upon delivery by DTC to the Paying Agent/Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the provisions in this Resolution with respect to interest checks being mailed to the registered owner at the close of business on the Record Date, the word "Cede & Co." in this Resolution shall refer to such new nominee of DTC.

- (g) Successor Securities Depository; Transfers Outside Book-Entry Only System. In the event that the Issuer or the Paying Agent/Registrar determines that DTC is incapable of discharging its responsibilities described herein and in the representation letter of the Issuer to DTC and that it is in the best interest of the beneficial owners of the ECP Series A Refunding Bonds that they be able to obtain certificated ECP Series A Refunding Bonds, the Issuer or the Paying Agent/Registrar shall (i) appoint a successor securities depository, qualified to act as such under Section 17(a) of the Securities and Exchange Act of 1934, as amended, notify DTC and DTC Participants of the appointment of such successor securities depository and transfer one or more separate ECP Series A Refunding Bonds to such successor securities depository or (ii) notify DTC and DTC Participants of the availability through DTC of ECP Series A Refunding Bonds and transfer one or more separate ECP Series A Refunding Bonds to DTC Participants having ECP Series A Refunding Bonds credited to their DTC accounts. In such event, the ECP Series A Refunding Bonds shall no longer be restricted to being registered in the Registration Books in the name of Cede & Co., as nominee of DTC, but may be registered in the name of the successor securities depository, or its nominee, or in whatever name or names Bondholders transferring or exchanging ECP Series A Refunding Bonds shall designate, in accordance with the provisions of this Resolution.
- (h) <u>Payments to Cede & Co.</u> Notwithstanding any other provision of this Resolution to the contrary, so long as any ECP Series A Refunding Bond is registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal of, premium, if any, and interest on, or as the case may be, such ECP Series A Refunding Bond and all notices with respect to such ECP Series A Refunding Bond shall be made and given, respectively, in the manner provided in the representation letter of the Issuer to DTC.

Section 7. FORM OF ECP SERIES A REFUNDING SUBSTITUTE BONDS. The form of all ECP Series A Refunding Bonds issued in conversion and exchange or replacement of any other ECP Series A Refunding Bond or portion thereof, including the form of Paying Agent/Registrar's Certificate to be printed on each of such ECP Series A Refunding Bonds, and the Form of Assignment to be printed on each of the ECP Series A Refunding Bonds, shall be, respectively, substantially as follows, with blank or bracketed information to be completed or deleted based upon the Approval Certificate, and with such appropriate variations, omissions, or insertions as are permitted or required by this Resolution.

## FORM OF ECP SERIES A REFUNDING SUBSTITUTE BOND

THE FOLLOWING TWO BRACKETED PARAGRAPHS ARE TO BE DELETED IF BOND IS NOT BOOK ENTRY ONLY:

[Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC") to the Issuer or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

As provided in the Indenture referred to herein, until the termination of the system of book-entry-only transfers through DTC, and notwithstanding any other provision of the Indenture to the contrary, this Bond may be transferred, in whole but not in part, only to a nominee of DTC, or by a nominee of DTC to DTC or a nominee of DTC, or by DTC or a nominee of DTC to any successor securities depository or any nominee thereof.]

NO	PRINCIPAL AMOUNT	
	\$	

UNITED STATES OF AMERICA
STATE OF TEXAS
TARRANT REGIONAL WATER DISTRICT,
A WATER CONTROL AND IMPROVEMENT DISTRICT,
WATER REVENUE ECP SERIES A REFUNDING BOND [TAXABLE\*]

INTEREST	MATURITY		CUSIP
<u>RATE</u>	<u>DATE</u>	ISSUE DATE	<u>NO.</u>
%		**	

ON THE MATURITY DATE specified above TARRANT REGIONAL WATER DISTRICT, A WATER CONTROL AND IMPROVEMENT DISTRICT (the "Issuer"), being a political subdivision of the State of Texas, hereby promises to pay to CEDE & CO. or to the registered assignee hereof (either being hereinafter called the "registered owner") the principal amount of DOLLARS and to pay interest thereon, calculated on the basis of a 360-day year composed of twelve 30-day months, from the Issue Date specified above, to the Maturity Date specified above, or the date of redemption prior to maturity, at the interest rate per annum specified above; with interest being payable semiannually on each March 1 and September 1, commencing \*, except that if the date of authentication of this Bond is later than the first Record Date (hereinafter defined), such principal amount shall bear interest from the interest payment date next preceding the date of authentication, unless such date of authentication is after any Record Date (hereinafter defined) but on or before the next following interest payment date, in which case such principal amount shall bear interest from such next following interest payment date.

THE PRINCIPAL OF AND INTEREST ON this Bond are payable in lawful money of the United States of America, without exchange or collection charges. The principal of this Bond shall be paid to the registered owner hereof upon presentation and surrender of this Bond at maturity or upon the date fixed for its redemption prior to maturity, at the principal corporate trust office of BOKF, NA, Dallas, Texas, which is the "Paying Agent/Registrar" for this Bond. The payment of interest on this Bond shall be made by the Paying Agent/Registrar to the registered owner hereof on each interest payment date by check dated as of such interest payment date, drawn by the Paying Agent/Registrar on, and payable solely from, funds of the Issuer required by the resolution authorizing the issuance of the Bonds (the "Bond Resolution") to be on deposit with the Paying Agent/Registrar for such purpose as hereinafter provided; and such check shall be sent by the Paying Agent/Registrar by United States mail, first-class postage prepaid, on each such interest payment date, to the registered owner hereof, at the address of the registered owner, as it appeared at the close of business on the 15th day of the month next preceding each such date (the "Record Date") on the Registration Books kept by the Paying Agent/Registrar, as hereinafter described. However, notwithstanding the foregoing provisions, (1) the payment of such interest may be made by any other method acceptable to the Paying Agent/Registrar and requested by, and at the risk and expense of, the registered owner hereof and (2) upon the written request, and at the risk and expense of, the registered owner of any Bond of this Series in the amount of \$1,000,000 or more, delivered to the Paying Agent/Registrar not less than 15 days prior to any interest payment date, payment of the interest due on such Bond on such date shall be paid on such date by wire transfer to any designated account in the United States of America which has available to it the wire service facilities of the Federal Reserve Bank. Any accrued interest due upon the redemption of this Bond prior to maturity as provided herein shall be paid to the registered owner at the principal corporate trust office of the Paying Agent/Registrar upon presentation and surrender of this Bond for redemption and payment at the principal corporate trust office of the Paying Agent/Registrar. The Issuer covenants with the registered owner of this Bond that on or before each principal payment date, interest payment date, and accrued interest payment date for this Bond it will make available to the Paying Agent/Registrar, from the "Interest and Redemption Fund" created by the Bond Resolution, the amounts required to provide for the payment, in immediately available funds, of all principal of and interest on the Bonds, when due.

<sup>\*</sup> From Approval Certificate.

Saturday, Sunday, a legal holiday, or a day on which banking in Paying Agent/Registrar is located are authorized by law or executive such payment shall be the next succeeding day which is not such a or day on which banking institutions are authorized to close; and the same force and effect as if made on the original date payment	ve order to close, then the date for Saturday, Sunday, legal holiday, payment on such date shall have	
THIS BOND is one of an issue of Bonds dated as ofaccordance with the Constitution and laws of the State of Te \$* for the purpose of obtaining funds (i) to refund a parameter Tarrant Regional Water District, A Water Control and Improvement - Extendable Commercial Paper Mode, Series A (Tax-Exempt) District, A Water Control and Improvement District, Water Commercial Paper Mode, Series A (Taxable)" and (ii) to pay cost	xas in the principal amount of portion of the Issuer's outstanding at District, Water Revenue Bonds and "Tarrant Regional Water Revenue Bonds - Extendable	
ON	funds derived from any available ct and designate the maturity, or than a whole maturity is to be by lot or other customary method d (provided that the Bonds to be price of the principal amount of	
**[THE BONDS maturing on March 1, and March 1, (the "Term Bonds") are subject to mandatory redemption prior to maturity in part, by lot or other customary random method selected by the Paying Agent/Registrar, at a redemption price equal to the principal amount of the Term Bonds or portions thereof to be redeemed plus accrued interest to the redemption date, on June 1 in each of the years and in the principal amounts as follows:		
Term Bonds maturing on March 1, _		
<u>Years</u>	Amounts	
Term Bonds maturing on March 1,		
<u>Years</u>	Amounts	

IF THE DATE for the payment of the principal of or interest on this Bond shall be a

<sup>\*</sup> From Approval Certificate.
\*\* From Approval Certificate, if applicable.

The principal amount of the Term Bonds of a maturity required to be redeemed pursuant to the operation of such mandatory redemption provisions shall be reduced, at the option of the Issuer, by the principal amount of the Term Bonds of such maturity which, at least 50 days prior to the mandatory redemption date (1) shall have been acquired by the Issuer at a price not exceeding the principal amount of such Term Bonds plus accrued interest to the date of purchase thereof, and delivered to the Paying Agent/Registrar for cancellation, (2) shall have been purchased and canceled by the Paying Agent/Registrar at the request of the Issuer at a price not exceeding the principal amount of such Term Bonds plus accrued interest to the date of purchase, or (3) shall have been redeemed pursuant to the optional redemption provisions and not theretofore credited against a mandatory redemption requirement.]

DURING ANY PERIOD in which ownership of the Bonds is determined by a book entry at a securities depository for the Bonds, if fewer than all of the Bonds of the same maturity and bearing the same interest rate are to be redeemed, the particular Bonds of such maturity and bearing such interest rate shall be selected in accordance with the arrangements between the Issuer and the securities depository.

AT LEAST 30 days prior to the date fixed for any redemption of Bonds or portions thereof prior to maturity at the option of the Issuer, a written notice of such redemption shall be sent by the Paying Agent/Registrar by United States mail, first-class postage prepaid, to the registered owner appearing on the Registration Books at the close of business on the day next preceding the date of mailing of such notice; provided, however, that any notice so mailed shall be conclusively presumed to have been duly given and the failure to receive such notice, or any defect therein shall not affect the validity or effectiveness of the proceedings for the redemption of any Bond at the option of the Issuer. By the date fixed for any such redemption due provision shall be made with the Paying Agent/Registrar for the payment of the required redemption price for the Bonds or portions thereof which are to be so redeemed, plus accrued interest thereon to the date fixed for redemption. If such written notice of redemption is mailed and if due provision for such payment is made, all as provided above, the Bonds or portions thereof which are to be so redeemed thereby automatically shall be treated as redeemed prior to their scheduled maturities, and they shall not bear interest after the date fixed for redemption, and they shall not be regarded as being outstanding except for the right of the registered owner to receive the redemption price plus accrued interest from the Paying Agent/Registrar out of the funds provided for such payment. If a portion of any Bond shall be redeemed a substitute Bond or Bonds having the same maturity date, bearing interest at the same rate, in any denomination or denominations in any integral multiple of \$5,000, at the written request of the registered owner, and in aggregate principal amount equal to the unredeemed portion thereof, will be issued to the registered owner upon the surrender thereof for cancellation, at the expense of the Issuer, all as provided in the Bond Resolution.

THIS BOND OR ANY PORTION OR PORTIONS HEREOF IN ANY INTEGRAL MULTIPLE OF \$5,000 may be assigned and shall be transferred only in the Registration Books of the Issuer kept by the Paying Agent/Registrar acting in the capacity of registrar for the Bonds, upon the terms and conditions set forth in the Bond Resolution. Among other requirements for such assignment and transfer, this Bond must be presented and surrendered to the Paying Agent/Registrar,

together with proper instruments of assignment, in form and with guarantee of signatures satisfactory to the Paying Agent/Registrar, evidencing assignment of this Bond or any portion or portions hereof in any integral multiple of \$5,000 to the assignee or assignees in whose name or names this Bond or any such portion or portions hereof is or are to be transferred and registered. The form of Assignment printed or endorsed on this Bond shall be executed by the registered owner or its duly authorized attorney or representative, to evidence the assignment hereof. A new Bond or Bonds payable to such assignee or assignees (which then will be the new registered owner or owners of such new Bond or Bonds), or to the previous registered owner in the case of the assignment and transfer of only a portion of this Bond, may be delivered by the Paying Agent/Registrar in conversion of and exchange for this Bond, all in the form and manner as provided in the next paragraph hereof for the conversion and exchange of other Bonds. The Issuer shall pay the Paying Agent/Registrar's standard or customary fees and charges for making such transfer, but the one requesting such transfer shall pay any taxes or other governmental charges required to be paid with respect thereto. The Paying Agent/Registrar shall not be required to make transfers of registration of this Bond or any portion hereof (i) during the period commencing with the close of business on any Record Date and ending with the opening of business on the next following principal or interest payment date, or, (ii) with respect to any Bond or any portion thereof called for redemption prior to maturity, within 45 days prior to its redemption date. The registered owner of this Bond shall be deemed and treated by the Issuer and the Paying Agent/Registrar as the absolute owner hereof for all purposes, including payment and discharge of liability upon this Bond to the extent of such payment, and the Issuer and the Paying Agent/Registrar shall not be affected by any notice to the contrary.

ALL BONDS OF THIS SERIES are issuable solely as fully registered bonds, without interest coupons, in the denomination of any integral multiple of \$5,000. As provided in the Bond Resolution, this Bond, or any unredeemed portion hereof, may, at the request of the registered owner or the assignee or assignees hereof, be converted into and exchanged for a like aggregate principal amount of fully registered bonds, without interest coupons, payable to the appropriate registered owner, assignee, or assignees, as the case may be, having the same maturity date, and bearing interest at the same rate, in any denomination or denominations in any integral multiple of \$5,000 as requested in writing by the appropriate registered owner, assignee, or assignees, as the case may be, upon surrender of this Bond to the Paying Agent/Registrar for cancellation, all in accordance with the form and procedures set forth in the Bond Resolution. The Issuer shall pay the Paying Agent/Registrar's standard or customary fees and charges for transferring, converting, and exchanging any Bond or any portion thereof, but the one requesting such transfer, conversion, and exchange shall pay any taxes or governmental charges required to be paid with respect thereto as a condition precedent to the exercise of such privilege of conversion and exchange. The Paying Agent/Registrar shall not be required to make any such conversion and exchange (i) during the period commencing with the close of business on any Record Date and ending with the opening of business on the next following principal or interest payment date, or, (ii) with respect to any Bond or portion thereof called for redemption prior to maturity, within 45 days prior to its redemption date.

IN THE EVENT any Paying Agent/Registrar for the Bonds is changed by the Issuer, resigns, or otherwise ceases to act as such, the Issuer has covenanted in the Bond Resolution that it promptly will appoint a competent and legally qualified substitute therefor, and promptly will cause written notice thereof to be mailed to the registered owners of the Bonds.

IT IS HEREBY certified, recited, and covenanted that this Bond has been duly and validly authorized, issued, and delivered; that all acts, conditions, and things required or proper to be performed, exist, and be done precedent to or in the authorization, issuance, and delivery of this Bond have been performed, existed, and been done in accordance with law; that this Bond is a special obligation of the Issuer which, together with other outstanding bonds of the Issuer, and the interest thereon, are secured by and payable equally and ratably on a parity from a first lien on and pledge of the "Pledged Revenues," as defined in the Bond Resolution, which include the "Net Revenues of the District's Water System," as defined in the Bond Resolution, which specifically include certain amounts to be received by the Issuer (i) pursuant to the "Tarrant County Regional Water Supply Facilities Contract", dated August 29, 1979, among the Issuer and the Cities of Fort Worth and Mansfield, Texas, the "Tarrant County Regional Water Supply Facilities Supplemental Contract For Trinity River Authority of Texas," dated as of March 12, 1979 between the Issuer and Trinity River Authority of Texas, and the "Tarrant County Regional Water Supply Facilities Amendatory Contract," dated September 1, 1982, among the Issuer, the Cities of Fort Worth, Arlington, and Mansfield, Texas, and Trinity River Authority of Texas, which last named amendatory contract consolidates the previous contracts between such parties with respect to the Issuer's Water System into one instrument and sets forth the entire agreement between such parties with respect to the Issuer's Water System, and (ii) pursuant to contracts with other water customers of the Issuer.

THE ISSUER has reserved the right, subject to the restrictions stated in the Bond Resolution, to issue Additional Bonds payable from and secured by a first lien on and pledge of the "Pledged Revenues" on a parity with this Bond.

THE ISSUER also has reserved the right to amend the Bond Resolution, with the approval of the owners of 51% of the outstanding bonds secured by a first lien on the Pledged Revenues, subject to the restrictions stated in the Bond Resolution.

THE REGISTERED OWNER hereof shall never have the right to demand payment of this Bond or the interest hereon out of any funds raised or to be raised by taxation or from any source whatsoever other than as specified in the Bond Resolution.

BY BECOMING the registered owner of this Bond, the registered owner thereby acknowledges all of the terms and provisions of the Bond Resolution, agrees to be bound by such terms and provisions, acknowledges that the Bond Resolution is duly recorded and available for inspection in the official minutes and records of the governing body of the Issuer, and agrees that the terms and provisions of this Bond and the Bond Resolution constitute a contract between each registered owner hereof and the Issuer.

IN WITNESS WHEREOF, the Issuer has caused this Bond to be signed with the facsimile signature of the President of the Board of Directors of the Issuer and countersigned with the facsimile signature of the Secretary or other authorized officer of the Board of Directors of the Issuer, and has caused the official seal of the Issuer to be duly impressed, or placed in facsimile, on this Bond.

XXXXXXX	xxxxxxx
Secretary, Board of Directors	President, Board of Directors
(DISTRICT SEAL)	
-	ENT/REGISTRAR'S AUTHENTICATION CERTIFICATE REGISTRAR'S AUTHENTICATION CERTIFICATE
*	Bond is not accompanied by an executed Registration roller of Public Accounts of the State of Texas)
Resolution described in the text replacement of, or in exchange for	at this Bond has been issued under the provisions of the Bond of this Bond; and that this Bond has been issued in conversion or or, a bond, bonds, or a portion of a bond or bonds of a Series which Attorney General of the State of Texas and registered by the of the State of Texas.
Dated	BOKF, NA Dallas, Texas
	ByAuthorized Representative
	FORM OF ASSIGNMENT
	ASSIGNMENT
FOR VALUE RECEIVE	D, the undersigned sells, assigns and transfers unto
Please Insert Social Security or Other Identifying Number of As	
(Name and Address of Ass the within Bond and does hereby to transfer said Bond on the book premises.	signee) irrevocably constitute and appoint is kept for registration thereof with full power of substitution in the
Date:	
Signature Guaranteed:	

NOTICE: The signature to this assignment must correspond with the name as it appears upon

the face of the within Bond in every particular, without alteration or enlargement or

any change whatever; and

NOTICE: Signature(s) must be guaranteed by an eligible guarantor institution participating in

a Securities Transfer Association recognized signature guarantee program.

Section 8. ADDITIONAL DEFINITIONS. In addition to the definitions heretofore provided for, the following terms as used in this Resolution shall have the meanings set forth below, unless the text hereof specifically indicates otherwise:

The term "Additional Bonds" shall mean the additional parity revenue bonds permitted to be authorized in the future on a parity with the Bonds, as hereinafter provided in Sections 21 and 22 hereof.

The term "Board" shall mean the Board of Directors of the District, being the governing body of the District, and it is further resolved that the declarations and covenants of the District contained in this Resolution are made by, and for and on behalf of the Board and the District, and are binding upon the Board and the District for all purposes.

The terms "Bond Resolution" and "Resolution" shall mean this resolution authorizing the ECP Series A Refunding Bonds; and it is hereby resolved and provided that Sections 8 through 24 of this Bond Resolution are applicable to all of the Bonds, as hereinafter defined, and substantially restate and are supplemental to and cumulative of Sections 8 through 24 of each of the Series 2015 Bond Resolution, the Series 2015A Bond Resolution, the Series 2016 Bond Resolution, the Series 2016A Bond Resolution, the Series 2017 Bond Resolution, the Taxable Series 2020 Bond Resolution, the Taxable Series 2020B Bond Resolution, the Series 2020C Bond Resolution, the Series 2022 Bond Resolution, and the Series 2024 Bond Resolution with the appropriate changes and additions which are required with respect to the issuance of the ECP Series A Refunding Bonds.

The term "Bonds" shall mean collectively (i) the unpaid and unrefunded Series 2015 Bonds, Series 2015A Bonds, Series 2016A Bonds, Series 2017 Bonds, Taxable Series 2020 Bonds, Taxable Series 2020B Bonds, Series 2020C Bonds, the Series 2022 Bonds, and the Series 2024 Bonds to be outstanding at any time after the delivery of the Initial Bond, and (ii) the ECP Series A Refunding Bonds.

The term "Contracts" shall mean collectively: (a) the "Tarrant County Regional Water Supply Facilities Contract", dated as of August 29, 1979, among the District and the Cities of Fort Worth and Mansfield, Texas, the "Tarrant County Regional Water Supply Facilities Supplemental Contract For Trinity River Authority of Texas", dated as of March 12, 1979, between the District and Trinity River Authority of Texas, and the "Tarrant County Regional Water Supply Facilities Amendatory Contract", dated September 1, 1982, among the District, the Cities of Fort Worth, Arlington, and Mansfield, Texas, and Trinity River Authority of Texas, which last named amendatory contract consolidates the previous contracts between such parties with respect to the System into one instrument and sets forth the entire agreement between such parties with respect to the System; and

(b) all water supply contracts heretofore or hereafter executed between the District and other cities and customers in connection with the District's Water System.

The terms "District" and "Issuer" shall mean Tarrant Regional Water District, a Water Control and Improvement District.

The term "District's Water System," "Issuer's Water System," or "System" shall mean all of the District's existing water storage, treatment, transportation, distribution, and supply facilities, including all dams, reservoirs, and other properties, wherever located, (a) which are currently being used for water supply purposes and, to the extent financed with the proceeds from the sale of the Bonds or Additional Bonds or moneys from the Contingency Fund (hereinafter created), all facilities acquired or constructed in the future, and all improvements to any of the foregoing, and (b) all other facilities which in the future are deliberately and specifically, at the option of the Board, made a part of the System by resolution of the Board, but such term does not include any oil, gas, and other mineral properties owned by the District or property disposed of from time to time in accordance with the provisions of Section 23(g) hereof, provided that any property acquired in substitution therefor shall be included in the System, along with all repairs to and other replacements of the System. In particular such term includes and shall include (i) all of the District's existing Cedar Creek Project, a dam and reservoir on Cedar Creek in Henderson and Kaufman Counties, Texas, and Eagle Mountain Dam and Reservoir and Bridgeport Dam and Reservoir, which are water supply facilities of the District on the West Fork of the Trinity River, Richland-Chambers Reservoir in Navarro and Freestone Counties, Texas, and all transportation, storage, and other facilities related to all of the foregoing and (ii) the Projects which were financed or refinanced with the proceeds from the sale of bonds originally authorized by the Series 1983 Bond Resolution, the Series 1986 Bond Resolution, Series 1999 Bond Resolution, the Series 2002 Bond Resolution, the Series 2006 Bond Resolution, the Series 2008A Bond Resolution, the Series 2008B Bond Resolution, the Series 2009 Bond Resolution, the Series 2010 Bond Resolution, the Series 2010A Bond Resolution, the Series 2010B Bond Resolution, the Series 2012 Bond Resolution, the Series 2012A Bond Resolution, the Series 2014 Bond Resolution, the Series 2015 Bond Resolution, the Series 2015A Bond Resolution, the Series 2016 Bond Resolution, the Series 2016A Bond Resolution, the Series 2017 Bond Resolution, the Taxable Series 2020 Bond Resolution, the Taxable Series 2020B Bond Resolution, the Series 2020C Bond Resolution, the Series 2022 Bond Resolution, the Series 2024 Bond Resolution, and the Master Resolution and made a part of the System. Unless deliberately added to the System by the Board, at its option, in the manner prescribed above, said term does not include any District flood control facilities or facilities which provide waste treatment or other wastewater services of any kind. Said term does not include any facilities acquired or constructed by the District with the proceeds from the issuance of "Special Facilities Bonds," which are hereby defined as being revenue obligations of the District, which are not issued as Additional Bonds, and which are payable from any source, contract, or revenues whatsoever other than the Pledged Revenues; and Special Facilities Bonds may be issued for any lawful purpose and made payable from any source, contract, or revenues whatsoever other than the Pledged Revenues.

The term "ECP Series A Refunding Bonds" shall mean collectively the Initial Bond as described and defined in Sections 1, 2, and 3 of this Bond Resolution, and all substitute bonds exchanged therefor, as well as all other substitute bonds and replacement bonds issued pursuant to

this Resolution, all as provided for herein; and the ECP Series A Refunding Bonds are Additional Bonds issued to be payable from and secured by a first lien on and pledge of the Pledged Revenues equally and ratably on a parity with all of the other Bonds, as permitted by Sections 21 and 22 of the Series 2015 Bond Resolution, the Series 2015A Bond Resolution, the Series 2016 Bond Resolution, the Series 2016 Bond Resolution, the Taxable Series 2020 Bond Resolution, the Taxable Series 2020 Bond Resolution, the Series 2022 Bond Resolution, and the Series 2024 Bond Resolution.

The term "Gross Revenues of the System" shall mean all of the revenues, income, rentals, rates, fees, and charges of every nature derived by the Board or the District from the operation and/or ownership of the System (except as hereinafter provided), including specifically all payments and amounts received by the Board or the District from Contracts, and any interest income from the investment of money in any Funds created or maintained pursuant to any resolution authorizing the issuance of Bonds or Additional Bonds, excepting only any Construction Fund created pursuant to any resolution authorizing any Bonds or Additional Bonds. There is excepted from such term, and such term does not include (i) revenues derived by the District from the production of oil, gas, and other minerals owned by the District, or the revenues derived from the granting, sale, or lease of the right to explore for and produce same, or (ii) the royalties, rentals, license fees, and other income (other than from water sales) derived by the District from (a) lands and assets owned by the District as flood control facilities or (b) property of the District at Eagle Mountain Dam and Reservoir and Bridgeport Dam and Reservoir on the West Fork of the Trinity River.

The term "Master Resolution" shall have meaning given to it in the Preamble hereto.

The term "Operating and Maintenance Expenses of the System" or "Current Expenses" shall mean all reasonable and necessary current costs of operation and maintenance of the System including, but not limited to, repairs and replacements, operating personnel, utilities, supervision, engineering, accounting, auditing, legal services, insurance premiums, paying agents fees, and any other supplies and services, administration of the System, and equipment necessary for proper operation and maintenance of the System, as well as payments made for the use or operation of any property, and payments made by the District in satisfaction of judgments or other liabilities resulting from claims not covered by the District's insurance. Neither depreciation nor any other expense which does not represent a cash expenditure shall be considered an item of Operation and Maintenance Expense.

The terms "Net Revenues of the District's Water System", "Net Revenues of the System", and "Net Revenues" shall mean the Gross Revenues of the System less the Operation and Maintenance Expenses of the System.

The term "Pledged Revenues" shall mean: (a) the Net Revenues of the System and (b) any additional revenues, income, receipts, grants, donations, or other resources, received or to be received from any public or private source, whether pursuant to an agreement or otherwise, which in the future may, at the option of the District, be pledged to the payment of the Bonds or the Additional Bonds.

The term "Refundable Bonds" shall have the meaning give to it in the Preamble hereto.

The term "Refunded Bonds" shall mean those Refundable Bonds to be refunded as designated by the Authorized Officer in the Approval Certificate.

The term "Series 1983 Bond Resolution" shall mean the resolution adopted by the Board of Directors of the District on May 18, 1983, authorizing the Tarrant County Water Control and Improvement District Number One Water Revenue Bonds, Series 1983.

The term "Series 1986 Bond Resolution" shall mean the resolution adopted by the Board of Directors of the District on July 15, 1986, authorizing the Tarrant County Water Control and Improvement District Number One Water Revenue Bonds, Series 1986.

The term "Series 1999 Bond Resolution" shall mean the Resolution adopted by the Board of Directors of the District on May 18, 1999, authorizing Tarrant Regional Water District, a Water Control and Improvement District, Water Revenue Refunding and Improvement Bonds, Series 1999.

The term "Series 2002 Bond Resolution" shall mean the Resolution adopted by the Board of Directors of the District on December 17, 2002, authorizing Tarrant Regional Water District, a Water Control and Improvement District, Water Revenue Refunding and Improvement Bonds, Series 2002.

The term "Series 2006 Bond Resolution" shall mean the Resolution adopted by the Board of Directors of the District on March 21, 2006, authorizing Tarrant Regional Water District, a Water Control and Improvement District, Water Revenue Bonds, Series 2006.

The term "Series 2008A Bond Resolution" shall mean the Resolution adopted by the Board of Directors of the District on June 17, 2008, authorizing Tarrant Regional Water District, a Water Control and Improvement District, Water Revenue Bonds, Series 2008A.

The term "Series 2008B Bond Resolution" shall mean the Resolution adopted by the Board of Directors of the District on June 17, 2008, authorizing Tarrant Regional Water District, a Water Control and Improvement District, Water Revenue Bonds, Series 2008B.

The term "Series 2009 Bond Resolution" shall mean the Resolution adopted by the Board of Directors of the District on January 20, 2009, authorizing Tarrant Regional Water District, a Water Control and Improvement District, Water Revenue Refunding and Improvement Bonds, Series 2009.

The term "Series 2010 Bond Resolution" shall mean the Resolution adopted by the Board of Directors of the District on January 19, 2010, authorizing Tarrant Regional Water District, a Water Control and Improvement District, Water Revenue Bonds, Series 2010.

The term "Series 2010A Bond Resolution" shall mean the Resolution adopted by the Board of Directors of the District on May 18, 2010, authorizing Tarrant Regional Water District, a Water Control and Improvement District, Water Revenue Bonds, Series 2010A.

The term "Series 2010B Bond Resolution" shall mean the Resolution adopted by the Board of Directors of the District on May 18, 2010, authorizing Tarrant Regional Water District, a Water Control and Improvement District, Water Revenue Bonds, Series 2010B.

The term "Series 2012 Bond Resolution" shall mean the Resolution adopted by the Board of Directors of the District on January 17, 2012, authorizing Tarrant Regional Water District, a Water Control and Improvement District, Water Revenue Refunding and Improvement Bonds, Series 2012.

The term "Series 2012A Bond Resolution" shall mean the Resolution adopted by the Board of Directors of the District on September 18, 2012, authorizing Tarrant Regional Water District, a Water Control and Improvement District, Water Revenue Refunding and Improvement Bonds, Series 2012A.

The term "Series 2014 Bond Resolution" shall mean the Resolution adopted by the Board of Directors of the District on January 21, 2014, authorizing Tarrant Regional Water District, a Water Control and Improvement District, Water Revenue Refunding and Improvement Bonds, Series 2014.

The term "Series 2015 Bond Resolution" shall mean the Resolution adopted by the Board of Directors of the District on January 20, 2015, authorizing Tarrant Regional Water District, a Water Control and Improvement District, Water Revenue Refunding and Improvement Bonds, Series 2015.

The term "Series 2015 Bonds" shall mean all unpaid and unrefunded Series 2015 Bonds authorized by the Series 2015 Bond Resolution.

The term "Series 2015A Bond Resolution" shall mean the Resolution adopted by the Board of Directors of the District on October 20, 2015, authorizing Tarrant Regional Water District, a Water Control and Improvement District, Water Revenue Bonds, Series 2015A.

The term "Series 2015A Bonds" shall mean all unpaid and unrefunded Series 2015A Bonds authorized by the Series 2015A Bond Resolution.

The term "Series 2016 Bond Resolution" shall mean the Resolution adopted by the Board of Directors of the District on January 19, 2016, authorizing Tarrant Regional Water District, a Water Control and Improvement District, Water Revenue Bonds, Series 2016.

The term "Series 2016 Bonds" shall mean all unpaid and unrefunded Series 2016 Bonds authorized by the Series 2016 Bond Resolution.

The term "Series 2016A Bond Resolution" shall mean the Resolution adopted by the Board of Directors of the District on March 15, 2016, authorizing Tarrant Regional Water District, a Water Control and Improvement District, Water Revenue Refunding Bonds, Series 2016A.

The term "Series 2016A Bonds" shall mean all unpaid and unrefunded Series 2016A Bonds authorized by the Series 2016A Bond Resolution.

The term "Series 2017 Bond Resolution" shall mean the Resolution adopted by the Board of Directors of the District on July 18, 2017, authorizing Tarrant Regional Water District, a Water Control and Improvement District, Water Revenue Refunding Bonds, Series 2017.

The term "Series 2017 Bonds" shall mean all unpaid and unrefunded Series 2017 Bonds authorized by the Series 2017 Bond Resolution.

The term "Series 2020C Bond Resolution" shall mean the Resolution adopted by the Board of Directors of the District on October 20, 2020, authorizing Tarrant Regional Water District, a Water Control and Improvement District, Water Revenue Refunding Bonds, Series 2020C.

The term "Series 2020C Bonds" shall mean all unpaid and unrefunded Series 2020C Bonds authorized by the Series 2020C Bond Resolution.

The term "Series 2022 Bond Resolution" shall mean the Resolution adopted by the Board of Directors of the District on June 21, 2022, authorizing Tarrant Regional Water District, a Water Control and Improvement District, Water Revenue Bonds, Series 2022.

The term "Series 2022 Bonds" shall mean all unpaid and unrefunded Series 2022 Bonds authorized by the Series 2022 Bond Resolution.

The term "Series 2024 Bond Resolution" shall mean the Resolution adopted by the Board of Directors of the District on April 16, 2024, authorizing Tarrant Regional Water District, a Water Control and Improvement District, Water Revenue Refunding and Improvement Bonds, Series 2024.

The term "Series 2024 Bonds" shall mean all unpaid and unrefunded Series 2024 Bonds authorized by the Series 2024 Bond Resolution.

The term "Taxable Series 2020 Bond Resolution" shall mean the Resolution adopted by the Board of Directors of the District on January 21, 2020, authorizing Tarrant Regional Water District, a Water Control and Improvement District, Water Revenue Refunding Bonds, Taxable Series 2020.

The term "Taxable Series 2020 Bonds" shall mean all unpaid and unrefunded Taxable Series 2020 Bonds authorized by the Taxable Series 2020 Bond Resolution.

The term "Taxable Series 2020B Bond Resolution" shall mean the Resolution adopted by the Board of Directors of the District on October 20, 2020, authorizing Tarrant Regional Water District, a Water Control and Improvement District, Water Revenue Refunding Bonds, Taxable Series 2020B.

The term "Taxable Series 2020B Bonds" shall mean all unpaid and unrefunded Taxable Series 2020B Bonds authorized by the Taxable Series 2020B Bond Resolution.

The terms "year" and "fiscal year" shall mean the District's fiscal year, which currently ends on September 30, but which subsequently may be any other 12 month period hereafter established

by the District as a fiscal year for the purposes of the System and any resolution authorizing the Bonds or any Additional Bonds.

- Section 9. PLEDGE. (a) That the Bonds, as defined above, and any Additional Bonds, and the interest thereon, are and shall be secured equally and ratably on a parity by and payable from a first lien on and pledge of the Pledged Revenues; and the ECP Series A Refunding Bonds are Additional Bonds payable from and secured by a first lien on and pledge of the Pledged Revenues, as permitted by Sections 21 and 22 of the Series 2015 Bond Resolution, the Series 2015A Bond Resolution, the Series 2016Bond Resolution, the Series 2016Bond Resolution, the Series 2020B Bond Resolution, and the Series 2024Bond Resolution.
- (b) That Chapter 1208, Government Code, applies to the issuance of the Bonds and the pledge of the revenues granted by the Issuer under this Section, and is therefore valid, effective, and perfected. Should Texas law be amended at any time while the Bonds are outstanding and unpaid, the result of such amendment being that the pledge of the revenues granted by the Issuer under this Section is to be subject to the filing requirements of Chapter 9, Business & Commerce Code, in order to preserve to the registered owners of the Bonds a security interest in said pledge, the Issuer agrees to take such measures as it determines are reasonable and necessary under Texas law to comply with the applicable provisions of Chapter 9, Business & Commerce Code and enable a filing of a security interest in said pledge to occur.
- Section 10. REVENUE FUND. That there has been created and established, and there shall be maintained on the books of the District, and accounted for separate and apart from all other funds of the District, a special fund to be entitled the "Tarrant Regional Water District Water Revenue Bonds Revenue Fund" (hereinafter called the "Revenue Fund"). All Gross Revenues of the System (except investment interest and income from the other Funds hereinafter described and maintained) shall be credited to the Revenue Fund immediately upon receipt. All Operation and Maintenance Expenses of the System shall be paid from such Gross Revenues credited to the Revenue Fund, as a first charge against same.
- Section 11. INTEREST AND REDEMPTION FUND. That for the sole purpose of paying the principal of and interest on all Bonds and any Additional Bonds, as the same come due, either upon redemption or at maturity, there has been created and established, and there shall be maintained, at an official depository bank of the District, a separate fund to be entitled the "Tarrant Regional Water District Revenue Bonds Interest and Redemption Fund" (hereinafter called the "Interest and Redemption Fund").
- Section 12. THE CONTINGENCY AND IMPROVEMENT FUND AND THE RESERVE FUND. (a) That there has been created and established and there shall be maintained, at an official depository bank of the District, a separate fund to be entitled the "Tarrant Regional Water

District Water Revenue Bonds Contingency and Improvement Fund" (hereinafter called the "Contingency Fund"). The Contingency Fund shall be used solely for the purpose of paying the costs of improvements, enlargements, extensions, additions, or other capital expenditures relating to the System, and unexpected or extraordinary replacements of the System, for which System funds are not otherwise available, or for paying unexpected or extraordinary Operation and Maintenance Expenses of the System for which System Funds are not otherwise available, or for paying principal

of and interest on any Bonds or Additional Bonds, when and to the extent the amount in the Interest and Redemption Fund is insufficient for such purpose.

- That there has been created and established and there shall be maintained at an official (b) depository bank of the District, a separate fund to be entitled the "Tarrant Regional Water District Water Revenue Bonds Reserve Fund" (hereinafter called the "Reserve Fund"), solely for the further security and benefit of the Bonds and any Additional Bonds. The Reserve Fund shall be used solely for the purpose of (i) finally retiring the last of the Bonds and any Additional Bonds, and (ii) paying principal of and interest on the Bonds or any Additional Bonds when and to the extent the amounts in the Interest and Redemption Fund and Contingency Fund are insufficient for such purpose. There is now on deposit the Reserve Fund an aggregate amount of money and/or investments not less in market value than the principal and interest requirements of the Bonds during the fiscal year in which such requirements are scheduled to be the greatest. When and so long as the money and investments in the Reserve Fund are not less in market value than a "Required Amount" equal to the principal and interest requirements of the Bonds during the fiscal year in which such requirements are scheduled to be the greatest, no deposits shall be made to the credit of the Reserve Fund; but when and if the Reserve Fund at any time thereafter contains less than said "Required Amount" in market value, then, subject and subordinate to making the required deposits to the credit of the Interest and Redemption Fund, the District shall transfer from Pledged Revenues and deposit to the credit of the Reserve Fund, semiannually on or before the 25th days of each February and each August of each year, a sum equal to 1/10th of the "Required Amount" until the Reserve Fund is restored to said "Required Amount." So long as the Reserve Fund contains said "Required Amount" in market value, all amounts in excess of said "Required Amount," if any, shall, at least annually, on or before the 25th day of February of each year, be deposited to the credit of the Interest and Redemption Fund.
- Section 13. DEPOSITS OF PLEDGED REVENUES; INVESTMENTS. (a) That the Pledged Revenues shall be deposited into the Interest and Redemption Fund, the Reserve Fund, and the Contingency Fund, when and as required by this Bond Resolution, Sections 8 through 24 of which are cumulative of and supplemental to Sections 8 through 24 of the Series 2015 Bond Resolution, the Series 2015A Bond Resolution, the Series 2016 Bond Resolution, the Series 2016A Bond Resolution, the Series 2017 Bond Resolution, the Taxable Series 2020 Bond Resolution, the Taxable Series 2020B Bond Resolution, the Series 2020C Bond Resolution, the Series 2022 Bond Resolution, and the Series 2024 Bond Resolution, and Sections 8 through 24 of this Bond Resolution shall be applicable to all of the Bonds.
- (b) That money in any Fund maintained pursuant to this Bond Resolution may, at the option of the District, be placed in time deposits or certificates of deposit secured by obligations of the type hereinafter described, or be invested in direct obligations of the United States of America,

obligations guaranteed or insured by the United States of America, which, in the opinion of the Attorney General of the United States, are backed by its full faith and credit or represent its general obligations, or invested in indirect obligations of the United States of America, including, but not limited to, evidences of indebtedness issued, insured, or guaranteed by such governmental agencies as the Federal Land Banks, Federal Intermediate Credit Banks, Banks for Cooperatives, Federal Home Loan Banks, Government National Mortgage Association, United States Postal Service, Farmers Home Administration, Federal Home Loan Mortgage Association, Small Business Administration, Federal Housing Association, or Participation Certificates in the Federal Assets Financing Trust; provided that all such deposits and investments shall be made in such manner that the money required to be expended from any Fund will be available at the proper time or times. Such investments shall be valued by the District in terms of current market value as of the 20th day of February of each year. All interest and income derived from such deposits and investments immediately shall be credited to, and any losses debited to, the Fund from which the deposit or investment was made, and surpluses in any Fund shall be disposed of as herein provided. Such investments shall be sold promptly when necessary to prevent any default in connection with the Bonds or Additional Bonds.

- Section 14. FUNDS SECURED. That money in all Funds described in this Bond Resolution shall be secured in the manner prescribed by law for securing funds of the District.
- Section 15. DEBT SERVICE REQUIREMENTS. (a) That promptly after the delivery of the Initial Bond the District shall cause to be deposited to the credit of the Interest and Redemption Fund all accrued interest, if any, received from the sale and delivery of the Initial Bond, and any such deposit shall be used to pay part of the interest coming due on the ECP Series A Refunding Bonds.
- (b) That the District shall transfer from the Pledged Revenues and deposit to the credit of the Interest and Redemption Fund the amounts, at the times, as follows:
  - (1) such amounts, deposited semiannually on or before the 25th day of each February and each August of each year, as will be sufficient, together with other amounts, if any, then on hand in the Interest and Redemption Fund and available for such purpose, to pay the interest scheduled to accrue and come due on all Bonds on the next succeeding interest payment date; and
  - (2) such amounts, deposited annually, on or before the 25th day of each February, as will be sufficient, together with other amounts, if any, then on hand in the Interest and Redemption Fund and available for such purpose, to pay all principal scheduled to mature and come due on all Bonds on the next succeeding March 1, and to pay all principal of all Bonds, if any, scheduled to be redeemed prior to maturity on the next succeeding March 1 in accordance with the mandatory redemption provisions and schedules set forth in any applicable Bond Resolution.
- Section 16. CONTINGENCY REQUIREMENTS. That there is now on deposit to the credit of the Contingency Fund an amount equal to at least \$1,100,000. No additional deposits are required to be made to the credit of the Contingency Fund unless and until such amount therein is reduced or depleted. If and when such amount in the Contingency Fund is reduced or depleted then,

subject and subordinate to making the required deposits to the credit of the Interest and Redemption Fund and the Reserve Fund, such reduction or depletion shall be restored from amounts which shall be provided for such purpose in the District's Annual Budget for the next ensuing fiscal year or years; provided that the District is not required to budget more than \$100,000 for such purpose during any one fiscal year; but the District shall have the right to budget additional amounts for such purpose if it is deemed necessary or advisable by the Board. So long as the Contingency Fund contains money and investments not less than the amount of \$1,100,000 in market value, any surplus in the Contingency Fund over said amount shall, semiannually on or before February 15 and August 15 of each year, be withdrawn, deposited to the credit of the Revenue Fund, commingled with other revenues from the operation of the System, and used for any lawful purpose for which Gross Revenues of the System may be used.

Section 17. DEFICIENCIES; EXCESS PLEDGED REVENUES. (a) That if on any occasion there shall not be sufficient Pledged Revenues to make the required deposits into the Interest and Redemption Fund, the Reserve Fund, and the Contingency Fund, then such deficiency

shall be made up as soon as possible from the next available Pledged Revenues, or from any other sources available for such purpose.

- (b) That, subject to making the required deposits to the credit of the Interest and Redemption Fund, the Reserve Fund, and the Contingency Fund, when and as required by this Bond Resolution, or any resolution authorizing the issuance of Additional Bonds, the excess Pledged Revenues may be used for any lawful purpose.
- Section 18. BONDS AND ADDITIONAL BONDS NOT PAYABLE FROM TAXES. It is specifically provided that the District is not authorized to, and shall not, levy, collect, or use any tax of any nature to pay the principal of or interest on any of the Bonds or Additional Bonds.
- Section 19. PAYMENT OF BONDS AND ADDITIONAL BONDS. Semiannually on or before each March 1 and September 1 while any of the Bonds or Additional Bonds are outstanding and unpaid, the District shall make available to the paying agents therefor, ratably and on a parity out of the Interest and Redemption Fund, and/or the Contingency Fund, or, from the Reserve Fund, money sufficient to pay such interest on and such principal of the Bonds or Additional Bonds as will accrue or mature, or which is scheduled to be redeemed prior to maturity, on each such March 1 and September 1, respectively. The paying agents shall destroy all paid Bonds or Additional Bonds, and the coupons, if any, appertaining thereto, and furnish the District with an appropriate certificate of cancellation or destruction.
- Section 20. DEFEASANCE OF BONDS. (a) Any Bond and the interest thereon shall be deemed to be paid, retired, and no longer outstanding (a "Defeased Bond") within the meaning of this Resolution, except to the extent provided in subsection (d) of this Section, when payment of the principal of such Bond, plus interest thereon to the due date (whether such due date be by reason of maturity, or otherwise) either (i) shall have been made or caused to be made in accordance with the terms thereof or (ii) shall have been provided for on or before such due date by irrevocably depositing with or making available to the Paying Agent/Registrar in accordance with an escrow

agreement or other instrument (the "Future Escrow Agreement") for such payment (1) lawful money of the United States of America sufficient to make such payment or (2) Defeasance Securities that mature as to principal and interest in such amounts and at such times as will insure the availability, without reinvestment, of sufficient money to provide for such payment, and when proper arrangements have been made by the Issuer with the Paying Agent/Registrar for the payment of its services until all Defeased Bonds shall have become due and payable. At such time as a Bond shall be deemed to be a Defeased Bond hereunder, as aforesaid, such Bond and the interest thereon shall no longer be secured by, payable from, or entitled to the benefits of, the revenues herein pledged as provided in this Resolution, and such principal and interest shall be payable solely from such money or Defeasance Securities. Notwithstanding any other provision of this Resolution to the contrary, it is hereby provided that any determination not to redeem Defeased Bonds that is made in conjunction with the payment arrangements specified in subsection 20(a)(i) or (ii) shall not be irrevocable, provided that: (1) in the proceedings providing for such payment arrangements, the Issuer expressly reserves the right to call the Defeased Bonds for redemption; (2) the Issuer gives notice of the reservation of that right to the owners of the Defeased Bonds immediately following the making of the payment arrangements, and (3) the Issuer directs that notice of the reservation be included in any redemption notices that it authorizes.

- (b) Any moneys so deposited with the Paying Agent/Registrar may at the written direction of the Issuer also be invested in Defeasance Securities, maturing in the amounts and times as hereinbefore set forth, and all income from such Defeasance Securities received by the Paying Agent/Registrar that is not required for the payment of the Bonds and interest thereon, with respect to which such money has been so deposited, shall be turned over to the Issuer, or deposited as directed in writing by the Issuer. Any Future Escrow Agreement pursuant to which the money and/or Defeasance Securities are held for the payment of Defeased Bonds may contain provisions permitting the investment or reinvestment of such moneys in Defeasance Securities or the substitution of other Defeasance Securities upon the satisfaction of the requirements specified in subsection 20(a)(i) or (ii). All income from such Defeasance Securities received by the Paying Agent/Registrar which is not required for the payment of the Defeased Bonds, with respect to which such money has been so deposited, shall be remitted to the Issuer or deposited as directed in writing by the Issuer.
- (c) The term "Defeasance Securities" means (i) direct, noncallable obligations of the United States of America, including obligations that are unconditionally guaranteed by the United States of America, (ii) noncallable obligations of an agency or instrumentality of the United States of America, including obligations that are unconditionally guaranteed or insured by the agency or instrumentality and that, on the date of the purchase thereof are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent, and (iii) noncallable obligations of a state or an agency or a county, municipality, or other political subdivision of a state that have been refunded and that, on the date the governing body of the Issuer adopts or approves the proceedings authorizing the financial arrangements are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent.
- (d) Until all Defeased Bonds shall have become due and payable, the Paying Agent/Registrar shall perform the services of Paying Agent/Registrar for such Defeased Bonds the

same as if they had not been defeased, and the Issuer shall make proper arrangements to provide and pay for such services as required by this Resolution.

- (e) In the event that the Issuer elects to defease less than all of the principal amount of Bonds of a maturity, the Paying Agent/Registrar shall select, or cause to be selected, such amount of Bonds by such random method as it deems fair and appropriate.
- Section 21. ADDITIONAL BONDS. (a) That the District shall have the right and power at any time and from time to time, and in one or more Series or issues, to authorize, issue, and deliver additional bonds (herein called "Additional Bonds"), which may be payable from and secured by a first lien on and pledge of the Pledged Revenues. No Additional Bonds shall be payable from or secured by ad valorem or other taxes.
- (b) Additional Bonds, if and when authorized, issued, and delivered in accordance with the provisions hereof, shall be payable from the Interest and Redemption Fund, and shall be payable from and secured by a first lien on and pledge of the Pledged Revenues, equally and ratably on a parity with the Bonds and all other outstanding Additional Bonds.
- (c) That the principal of all Additional Bonds must be scheduled to be paid or mature on March 1 of the years in which such principal is scheduled to be paid or mature; and all interest thereon must be payable on March 1 and September 1.
- Section 22. FURTHER REQUIREMENTS FOR ADDITIONAL BONDS. (a) That Additional Bonds shall be issued only in accordance with the provisions hereof, and then applicable laws, and may be issued in any amounts, for any lawful purpose relating to the System, including the refunding of any Bonds or Additional Bonds. No installment, Series, or issue of Additional Bonds shall be issued or delivered unless the President and the Secretary or other authorized officer of the Board sign a written certificate to the effect (i) that the District is not in default as to any covenant, condition, or obligation in connection with all outstanding Bonds and Additional Bonds, and the resolutions authorizing the same, (ii) that the Interest and Redemption Fund and the Reserve Fund contain the amount then required to be therein, and (iii) that either (1) the Pledged Revenues in each fiscal year, commencing (A) with the third complete fiscal year following the execution of such certificate or report, or (B) with the fiscal year following the estimated completion date of any project for which the then proposed Additional Bonds are being issued (whichever of (A) or (B) is later) are estimated, based on a report of an independent engineer or firm of engineers, to be at least equal to 1.25 times the average annual principal and interest requirements of all Bonds and Additional Bonds to be outstanding after delivery of the then proposed Additional Bonds, or (2) based upon an opinion of legal counsel to the District, there are Contracts then in effect pursuant to which parties to such Contracts are obligated to make minimum payments to the District on a "take or pay" basis at such times and in such amounts as shall be necessary to provide to the District Pledged Revenues sufficient to pay when due all principal of and interest on all Bonds and Additional Bonds.
- (b) That each resolution authorizing the issuance of Additional Bonds shall confirm the Reserve Fund as additional security for all such Additional Bonds, and the Reserve Fund shall be increased to the extent required to cause the Reserve Fund to be maintained in an amount not less

than the principal and interest requirements, during the fiscal year in which such requirements are scheduled to be the greatest, of all Bonds and Additional Bonds to be outstanding after the issuance of such then proposed Additional Bonds (or any greater amount as may, at the option of the District, be provided for in any resolution authorizing the issuance of any Additional Bonds), and shall make provision for funding such Reserve Fund from Pledged Revenues, or, at the option of the District, from bond proceeds or other available sources. Such Reserve Fund may be funded in whole or in part initially, or may be funded in whole or in part from Pledged Revenues by approximately equal periodic payments, not less than annual, and within not more than five years from the date of such then proposed Additional Bonds.

(c) That all calculations of principal and interest requirements of any bonds made in connection with the issuance of any then proposed Additional Bonds shall be made as of the date of such Additional Bonds; and also in making calculations for such purpose, or for any other purpose under any resolution authorizing any Bonds or Additional Bonds, the principal amounts of any Bonds or Additional Bonds which must be redeemed prior to maturity pursuant to any applicable mandatory redemption requirements shall be deemed to be maturing amounts of principal.

## Section 23. GENERAL COVENANTS, REPRESENTATIONS, AND WARRANTIES. That the District further covenants, represents, warrants, and agrees that:

- (a) PERFORMANCE. It will faithfully perform at all times any and all covenants, undertakings, stipulations, and provisions contained in each resolution authorizing the issuance of the Bonds and any Additional Bonds, and in each and every Bond and Additional Bond; that it will promptly pay or cause to be paid the principal of and interest on every Bond and Additional Bond, on the dates and in the places and manner prescribed in such resolutions and Bonds or Additional Bonds, and that it will, at the times and in the manner prescribed, deposit or cause to be deposited the amounts required to be deposited into the Interest and Redemption Fund; and any holder of the Bonds or Additional Bonds may require the District, its Board, and its officials and employees, to carry out, respect, or enforce the covenants and obligations of each resolution authorizing the issuance of the Bonds and any Additional Bonds, by all legal and equitable means, including specifically, but without limitation, the use and filing of mandamus proceedings, in any court of competent jurisdiction, against the District, its Board, and its officials and employees.
- (b) DISTRICT'S LEGAL AUTHORITY. It is a duly created and existing conservation and reclamation district of the State of Texas pursuant to Article 16, Section 59, of the Texas Constitution, and the laws of the State of Texas, and is duly authorized under the laws of the State of Texas to create and issue the Bonds; that all action on its part for the creation and issuance of the Bonds has been duly and effectively taken, and that the Bonds in the hands of the holders and owners thereof are and will be valid and enforceable obligations of the District in accordance with their terms.
- (c) TITLE. It has acquired and constructed, and will operate and maintain the System, and has or will obtain lawful title to, or the lawful right to use and operate, the lands, buildings, and facilities constituting the System, that it warrants that it will defend the title to or lawful right to use and operate, all of the aforesaid lands, buildings, and facilities, and every part thereof, for the benefit of the holders and owners of the Bonds and Additional Bonds against the claims and demands of all

persons whomsoever, and is lawfully qualified to pledge the Pledged Revenues to the payment of the Bonds and Additional Bonds in the manner prescribed herein, and has lawfully exercised such rights.

- (d) LIENS. It will from time to time and before the same become delinquent pay and discharge all taxes, assessments, and governmental charges, if any, which shall be lawfully imposed upon it, or the System, that it will pay all lawful claims for rents, royalties, labor, materials, and supplies which if unpaid might by law become a lien or charge thereon, the lien of which would be prior to or interfere with the liens hereof, so that the priority of the liens granted hereunder shall be fully preserved in the manner provided herein, and that it will not create or suffer to be created any mechanic's, laborer's, materialman's, or other lien or charge which might or could be prior to the liens hereof, or do or suffer any matter or thing whereby the liens hereof might or could be impaired; provided, however, that no such tax, assessment, or charge, and that no such claims which might be used as the basis of a mechanic's, laborer's, materialman's, or other lien or charge, shall be required to be paid so long as the validity of the same shall be contested in good faith by the District.
- (e) OPERATION OF THE SYSTEM. While the Bonds or any Additional Bonds are outstanding and unpaid it will cause the System to be continuously and efficiently operated and maintained in good condition, repair, and working order, and at a reasonable cost.
- outstanding and unpaid, it will not additionally encumber the Pledged Revenues in any manner, except as permitted hereby in connection with Additional Bonds, unless said encumbrance is made junior and subordinate in all respects to the liens, pledges, covenants, and agreements of each resolution authorizing the issuance of the Bonds and any Additional Bonds; but the right of the District and the Board to issue revenue bonds for any lawful purpose payable from a subordinate lien on the Pledged Revenues is specifically recognized and retained. This Resolution does not and is not intended to affect, limit, or prohibit the issuance of bonds payable solely from ad valorem taxes.
- and unpaid, it will maintain its current legal corporate status as a conservation and reclamation district, and it will not sell, convey, mortgage, or in any manner transfer title to, or lease or otherwise dispose of the entire System, or any significant or substantial part thereof; provided that whenever the District deems it necessary to dispose of any real or personal property, machinery, fixtures, or equipment, it may sell or otherwise dispose of such real or personal property, machinery, fixtures, or equipment when it has made arrangements to replace the same or provide substitutes therefor, unless it is determined by resolution of the Board that no such replacement or substitute is necessary; and all proceeds from the sale thereof shall be credited to the Revenue Fund. In all events counsel to the Issuer shall opine as to the validity of the Resolution, as supplemented and amended and counsel to the Contracting Parties shall opine on the validity of the obligation of the Contracting Parties under the Contract.
- (h) INSURANCE. (1) It will carry or cause to be carried such insurance as usually would be carried by corporations or other business entities operating like properties and engaged in similar activities, with a responsible insurance company or companies; provided that no insurance shall be

required to the extent that the Board determines, based on the advise of legal counsel, that no substantial liability can or will arise under a particular hazard. At any time while any contractor engaged in construction work shall be fully responsible therefor, the District shall not be required to carry insurance on the works being constructed, if the contractor is required to carry appropriate insurance. All such policies shall be open to the inspection of the owners or holders of the Bonds and Additional Bonds and their representatives at all reasonable times.

- (2) Upon the happening of any loss or damage covered by insurance from one or more of said causes, the District shall make due proof of loss and shall do all things necessary or desirable to cause the insuring companies to make payment in full directly to the District. The proceeds of insurance covering such property, together with any other funds necessary and available for such purpose, shall be used forthwith by the District for repairing the property damaged or replacing the property destroyed; provided, however, that if said insurance proceeds and other funds are insufficient for such purpose, then said insurance proceeds pertaining to the System shall be used promptly as follows:
  - (a) for the redemption prior to maturity of the Bonds and Additional Bonds, if any, ratably in the proportion that the outstanding principal of each Series or issue of Bonds or Additional Bonds bears to the total outstanding principal of all Bonds and Additional Bonds; provided that if on any such occasion the principal of any such Series or issue is not subject to redemption, it shall not be regarded as outstanding in making the foregoing computation; or
  - (b) if none of the outstanding Bonds or Additional Bonds is subject to redemption, then for the purchase on the open market and retirement of said Bonds and Additional Bonds, in the same proportion as prescribed in the foregoing clause (a), to the extent practicable; provided that the purchase price for any such Bond or Additional Bonds shall not exceed the redemption price of such Bond or Additional Bond on the first date upon which it becomes subject to redemption; or
  - (c) to the extent that the foregoing clauses (a) and (b) cannot be complied with at the time, the insurance proceeds, or the remainder thereof, shall be deposited in a special and separate trust fund, at an official depository of the District, to be designated the Insurance Account. The Insurance Account shall be held until such time as the foregoing clauses (a) and/or (b) can be complied with, or until other funds become available which, together with the Insurance Account, will be sufficient to make the repairs or replacements originally required, whichever of said events occurs first.
- (3) The annual audit hereinafter required shall contain a list of all such insurance policies carried, together with a statement as to whether or not all insurance premiums upon such policies have been paid.
- (i) RATE COVENANT. It will fix, establish, maintain, revise (if and when necessary), and collect such rates, charges, and fees for the sale of water from the System and for the use and availability of the System as are necessary to produce Gross Revenues of the System sufficient, together with any other Pledged Revenues and any taxes as may be levied by the District for such

- purpose, (1) to pay all Operation and Maintenance Expenses of the System, and (2) to produce Pledged Revenues adequate to provide for all payments and deposits required to be made into the Interest and Redemption Fund, the Reserve Fund, and the Contingency Fund, when and as required by the resolutions authorizing all Bonds and Additional Bonds.
- (j) RECORDS. It will keep proper books of records and accounts in which full, true, and correct entries will be made of all dealings, activities, and transactions relating to the System, the Pledged Revenues, and all Funds created pursuant to each resolution authorizing the issuance of the Bonds and Additional Bonds; and all books, documents, and vouchers relating thereto shall at all reasonable times be made available for inspection upon request of any bondholder.
- (k) AUDITS. Each year while any of the Bonds or Additional Bonds are outstanding, an audit will be made of its books and accounts relating to the System and the Pledged Revenues by an independent certified public accountant or an independent firm of certified public accountants. As soon as practicable after the close of each year, and when said audit has been completed and made available to the District, a copy of such audit for the preceding year shall be mailed to the Municipal Advisory Council of Texas and to any bondholders who shall so request in writing. Such annual audit reports shall be open to the inspection of the owners or holders of the Bonds and Additional Bonds and their agents and representatives at all reasonable times.
- (1) GOVERNMENTAL AGENCIES. It will comply with all of the terms and conditions of any and all franchises, permits, and agreements applicable to the System and the Bonds or Additional Bonds entered into between the District and any governmental agency, and the District will take all action necessary to enforce said terms and conditions; and the District will obtain and keep in full force and effect all franchises, permits, and other requirements necessary with respect to the acquisition, construction, operation, and maintenance of the System.
- (m) CONTRACTS. It will comply with the terms and conditions of the Contracts and will cause the other parties to the Contracts to comply with all of their obligations thereunder by all lawful means; and the Contracts will not be rescinded, modified, or amended in any way which would have a materially adverse effect on the operation of the System or the rights of the owners of the Bonds and Additional Bonds.
- (n) ANNUAL BUDGET. On or before August 1 of each calendar year, it will prepare the preliminary Annual Budget of Operation and Maintenance Expenses of the System for the ensuing fiscal year, and such budget shall include a showing as to the proposed expenditures for such ensuing fiscal year, and shall show the estimated amount of Net Revenues of the System for such year. If the owners or holders of 25% in aggregate principal amount of the Bonds and Additional Bonds then outstanding shall so request on or before the 15th day of the aforesaid month, the Board shall hold a public hearing on or before the 15th day of the following month, at which any bondholder may appear in person or by agent or attorney and present any objections he may have to the final adoption of such budget. Notice of the time and place of such hearing shall be published twice, once in each of two successive weeks, in a newspaper of general circulation published in the District, with the date of the first publication to be at least fourteen days before the date fixed for the hearing; and copies of such notice shall be mailed at least ten days before the hearing to each bondholder who

shall have filed his name and address with the Secretary of the Board for such purpose. The District further covenants that on or before October 1 of each calendar year it will finally adopt the Annual Budget of Operation and Maintenance Expenses of the System for such fiscal year (hereinafter sometimes called the "Annual Budget"). If for any reason the Board shall not have adopted the Annual Budget before the first day of any fiscal year, the budget for the preceding fiscal year shall be deemed to be in force until the adoption of the Annual Budget. The Operation and Maintenance Expenses of the System incurred in any fiscal year will not exceed the reasonable and necessary

amount thereof. The District may, at any time deemed necessary by the Board, adopt an Amended or Supplemental Budget for the remainder of the then current fiscal year.

Section 24. AMENDMENT OF RESOLUTION. (a) The holders and registered owners of Bonds and Additional Bonds (hereinafter collectively called "holders") aggregating 51% in principal amount of the aggregate principal amount of then outstanding Bonds and Additional Bonds shall have the right from time to time to approve any amendment to any resolution authorizing the issuance of any Bonds or Additional Bonds, which may be deemed necessary or desirable by the District, provided, however, that nothing herein contained shall permit or be construed to permit the amendment of the terms and conditions in said resolutions or in the Bonds or Additional Bonds so as to:

- (1) Make any change in the maturity of the outstanding Bonds or Additional Bonds;
- (2) Reduce the rate of interest borne by any of the outstanding Bonds or Additional Bonds;
- (3) Reduce the amount of the principal payable on the outstanding Bonds or Additional Bonds;
- (4) Modify the terms of payment of principal of or interest on the outstanding Bonds or Additional Bonds, or impose any conditions with respect to such payment;
- (5) Effect any change in the rights of the holders of the Bonds and Additional Bonds then outstanding, other than a change which similarly affects all such holders;
- (6) Change the minimum percentage of the principal amount of Bonds and Additional Bonds necessary for consent to such amendment.
- (b) If at any time the District shall desire to amend a resolution under this Section, the District shall cause notice of the proposed amendment to be published in a financial newspaper or journal published in The City of New York, New York, once during each calendar week for at least two successive calendar weeks. Such notice shall briefly set forth the nature of the proposed amendment and shall state that a copy thereof is on file at the principal office of each Paying Agent/Registrar for the Bonds and Additional Bonds, for inspection by all holders of Bonds and Additional Bonds. Such publication is not required, however, if notice in writing is given to each holder of Bonds and Additional Bonds.

- (c) Whenever at any time not less than thirty days, and within one year, from the date of the first publication of said notice or other service of written notice the District shall receive an instrument or instruments executed by the holders of at least 51% in aggregate principal amount of all Bonds and Additional Bonds then outstanding, which instrument or instruments shall refer to the proposed amendment described in said notice and which specifically consent to and approve such amendment in substantially the form of the copy thereof on file as aforesaid, the District may adopt the amendatory resolution in substantially the same form.
- (d) Upon the adoption of any amendatory resolution pursuant to the provisions of this Section, the resolution being amended shall be deemed to be amended in accordance with the amendatory resolution, and the respective rights, duties, and obligations of the District and all the holders of then outstanding Bonds and Additional Bonds and all future Additional Bonds shall thereafter be determined, exercised, and enforced hereunder, subject in all respects to such amendment.
- (e) Any consent given by the holder of a Bond or Additional Bonds pursuant to the provisions of this Section shall be irrevocable for a period of six months from the date of the first publication of the notice provided for in this Section, and shall be conclusive and binding upon all future holders of the same Bond or Additional Bond during such period. Such consent may be revoked at any time after six months from the date of the first publication of such notice by the holder who gave such consent, or by a successor in title, by filing notice thereof with each Paying Agent/Registrar for the Bonds and Additional Bonds, and the District, but such revocation shall not be effective if the holders of 51% in aggregate principal amount of the then outstanding Bonds and Additional Bonds as in this Section defined have, prior to the attempted revocation, consented to and approved the amendment.
- (f) For the purpose of this Section, the fact of the holding of Bonds or Additional Bonds by any holder of Bonds or Additional Bonds which are not registered and which are payable to bearer, and the amount and numbers of such registered Bonds and Additional Bonds, and the date of their holding same, may be provided by the affidavit of the person claiming to be such holder, or by a certificate executed by any trust company, bank, banker, or any other depository wherever situated showing that at the date therein mentioned such person had on deposit with such trust company, bank, banker, or other depository, the Bonds or Additional Bonds described in such certificate. The District may conclusively assume that such ownership continues until written notice to the contrary is served upon the District. All matters relating to the ownership of registered Bonds and Additional Bonds shall be determined from the bond registration books kept by the registrar therefor.
- Section 25. DAMAGED, MUTILATED, LOST, STOLEN, OR DESTROYED ECP SERIES A REFUNDING BONDS. (a) <u>Replacement Bonds</u>. In the event any outstanding ECP Series A Refunding Bond is damaged, mutilated, lost, stolen, or destroyed, the Paying Agent/Registrar shall cause to be printed, executed, and delivered, a new bond of the same principal amount, maturity, and interest rate, as the damaged, mutilated, lost, stolen, or destroyed Bond, in replacement for such ECP Series A Refunding Bond in the manner hereinafter provided.

- (b) Application for Replacement Bonds. Application for replacement of damaged, mutilated, lost, stolen, or destroyed ECP Series A Refunding Bonds shall be made by the registered owner thereof to the Paying Agent/Registrar. In every case of loss, theft, or destruction of a ECP Series A Refunding Bond, the registered owner applying for a replacement bond shall furnish to the Issuer and to the Paying Agent/Registrar such security or indemnity as may be required by them to save each of them harmless from any loss or damage with respect thereto. Also, in every case of loss, theft, or destruction of a ECP Series A Refunding Bond, the registered owner shall furnish to the Issuer and to the Paying Agent/Registrar evidence to their satisfaction of the loss, theft, or destruction of such ECP Series A Refunding Bond, as the case may be. In every case of damage or mutilation of a ECP Series A Refunding Bond, the registered owner shall surrender to the Paying Agent/Registrar for cancellation the ECP Series A Refunding Bond so damaged or mutilated.
- (c) <u>No Default Occurred.</u> Notwithstanding the foregoing provisions of this Section, in the event any such ECP Series A Refunding Bond shall have matured, and no default has occurred which is then continuing in the payment of the principal of, redemption premium, if any, or interest on the ECP Series A Refunding Bond, the Issuer may authorize the payment of the same (without surrender thereof except in the case of a damaged or mutilated ECP Series A Refunding Bond) instead of issuing a replacement ECP Series A Refunding Bond, provided security or indemnity is furnished as above provided in this Section.
- (d) <u>Charge for Issuing Replacement Bonds.</u> Prior to the issuance of any replacement bond, the Paying Agent/Registrar shall charge the registered owner of such ECP Series A Refunding Bond with all legal, printing, and other expenses in connection therewith. Every replacement bond issued pursuant to the provisions of this Section by virtue of the fact that any ECP Series A Refunding Bond is lost, stolen, or destroyed shall constitute a contractual obligation of the Issuer whether or not the lost, stolen, or destroyed ECP Series A Refunding Bond shall be found at any time, or be enforceable by anyone, and shall be entitled to all the benefits of this Resolution equally and proportionately with any and all other ECP Series A Refunding Bonds duly issued under this Resolution.
- (e) <u>Authority for Issuing Replacement Bonds</u>. In accordance with Chapter 1201, Texas Government Code, this Section of this Resolution shall constitute authority for the issuance of any such replacement bond without necessity of further action by the governing body of the Issuer or any other body or person, and the duty of the replacement of such bonds is hereby authorized and imposed upon the Paying Agent/Registrar, and the Paying Agent/Registrar shall authenticate and deliver such ECP Series A Refunding Bonds in the form and manner and with the effect, as provided in this Resolution for ECP Series A Refunding Bonds issued in conversion and exchange for other ECP Series A Refunding Bonds.
- Section 26. CUSTODY, APPROVAL, AND REGISTRATION OF ECP Series A Refunding Bonds; BOND COUNSEL'S OPINION, CUSIP NUMBERS, PREAMBLE, AND INSURANCE. The President of the Board of Directors of the Issuer is hereby authorized to have control of the Initial Bond issued hereunder and all necessary records and proceedings pertaining to said Initial Bond pending its delivery and its investigation, examination, and approval by the

Attorney General of the State of Texas, and its registration by the Comptroller of Public Accounts of the State of Texas. Upon registration of said Initial Bond said Comptroller of Public Accounts (or a deputy designated in writing to act for said Comptroller) shall manually sign the Comptroller's Registration Certificate on said Initial Bond, and the seal of said Comptroller shall be impressed, or placed in facsimile, on said Initial Bond. The approving legal opinion of the Issuer's Co-Bond Counsel and the assigned CUSIP numbers may, at the option of the Issuer, be printed on said Initial Bond or on any ECP Series A Refunding Bonds issued and delivered in conversion of and exchange or replacement of any ECP Series A Refunding Bond, but neither shall have any legal effect, and shall be solely for the convenience and information of the registered owners of the ECP Series A Refunding Bonds. The preamble to this Resolution is hereby adopted and made a part hereof for all purposes. If insurance is obtained by the Underwriter (as defined in Section 31 hereof) on any of the ECP Series A Refunding Bonds, the Initial Bond and all the ECP Series A Refunding Bonds so insured shall bear an appropriate legend concerning insurance as provided by the insurer.

- Section 27. COVENANTS REGARDING TAX EXEMPTION. If the ECP Series A Refunding Bonds are to be issued on a tax-exempt basis, the following shall apply:
- (a) <u>Covenants</u>. The Issuer covenants to take any action necessary to assure, or refrain from any action that would adversely affect, the treatment of the ECP Series A Refunding Bonds as obligations described in section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), the interest on which is not includable in the "gross income" of the ECP Series A Refunding Bonds holder for purposes of federal income taxation. In furtherance thereof, the Issuer covenants as follows:
  - (1) to take any action to assure that no more than 10 percent of the proceeds of the ECP Series A Refunding Bonds (less amounts deposited to a reserve fund, if any) are used for any "private business use," as defined in section 141(b)(6) of the Code or, if more than 10 percent of the proceeds or the projects financed therewith are so used, such amounts, whether or not received by the Issuer, with respect to such private business use, do not, under the terms of this Resolution or any underlying arrangement, directly or indirectly, secure or provide for the payment of more than 10 percent of the debt service on the ECP Series A Refunding Bonds, in contravention of section 141(b)(2) of the Code;
  - (2) to take any action to assure that in the event that the "private business use" described in subsection (1) hereof exceeds 5 percent of the proceeds of the ECP Series A Refunding Bonds or the projects financed therewith (less amounts deposited into a reserve fund, if any) then the amount in excess of 5 percent is used for a "private business use" that is "related" and not "disproportionate," within the meaning of section 141(b)(3) of the Code, to the governmental use;
  - (3) to take any action to assure that no amount that is greater than the lesser of \$5,000,000, or 5 percent of the proceeds of the ECP Series A Refunding Bonds (less amounts deposited into a reserve fund, if any) is directly or indirectly used to finance loans to persons, other than state or local governmental units, in contravention of section 141(c) of the Code;

- (4) to refrain from taking any action that would otherwise result in the ECP Series A Refunding Bonds being treated as "private activity bonds" within the meaning of section 141(b) of the Code;
- (5) to refrain from taking any action that would result in the ECP Series A Refunding Bonds being "federally guaranteed" within the meaning of section 149(b) of the Code;
- (6) to refrain from using any portion of the proceeds of the ECP Series A Refunding Bonds, directly or indirectly, to acquire or to replace funds that were used, directly or indirectly, to acquire investment property (as defined in section 148(b)(2) of the Code) that produces a materially higher yield over the term of the ECP Series A Refunding Bonds, other than investment property acquired with
  - (A) proceeds of the ECP Series A Refunding Bonds invested for a reasonable temporary period of 3 years or less or, in the case of a refunding bond, for a period of 90 days or less until such proceeds are needed for the purpose for which the ECP Series A Refunding Bonds are issued,
  - (B) amounts invested in a bona fide debt service fund, within the meaning of section 1.148-1(b) of the Treasury Regulations, and
  - (C) amounts deposited in any reasonably required reserve or replacement fund to the extent such amounts do not exceed 10 percent of the proceeds of the ECP Series A Refunding Bonds;
- (7) to otherwise restrict the use of the proceeds of the ECP Series A Refunding Bonds or amounts treated as proceeds of the ECP Series A Refunding Bonds, as may be necessary, so that the ECP Series A Refunding Bonds do not otherwise contravene the requirements of section 148 of the Code (relating to arbitrage;
- (8) to refrain from using the proceeds of the Bonds or proceeds of any prior bonds to pay debt service on another issue more than 90 days after the date of issue of the Bonds in contravention of the requirements of section 149(d) of the Code (relating to advance refundings); and
- (9) to pay to the United States of America at least once during each five-year period (beginning on the date of delivery of the ECP Series A Refunding Bonds) an amount that is at least equal to 90 percent of the "Excess Earnings," within the meaning of section 148(f) of the Code and to pay to the United States of America, not later than 60 days after the ECP Series A Refunding Bonds have been paid in full, 100 percent of the amount then required to be paid as a result of Excess Earnings under section 148(f) of the Code.
- (b) Rebate Fund. In order to facilitate compliance with the above covenant (a)(9), a "Rebate Fund" is hereby established by the Issuer for the sole benefit of the United States of

America, and such Fund shall not be subject to the claim of any other person, including without limitation the Bondholders. The Rebate Fund is established for the additional purpose of compliance with section 148 of the Code.

- Compliance with Code. The Issuer understands that the term "proceeds" includes (c) "disposition proceeds" as defined in the Treasury Regulations and, in the case of refunding bonds, transferred proceeds (if any) and proceeds of the refunded bonds expended prior to the date of issuance of the refunding bonds. It is the understanding of the Issuer that the covenants contained herein are intended to assure compliance with the Code and any regulations or rulings promulgated by the U.S. Department of the Treasury pursuant thereto. In the event that regulations or rulings are hereafter promulgated that modify or expand provisions of the Code, as applicable to the ECP Series A Refunding Bonds, the Issuer will not be required to comply with any covenant contained herein to the extent that such failure to comply, in the opinion of nationally recognized bond counsel, will not adversely affect the exemption from federal income taxation of interest on the ECP Series A Refunding Bonds under section 103 of the Code. In the event that regulations or rulings are hereafter promulgated that impose additional requirements applicable to the ECP Series A Refunding Bonds, the Issuer agrees to comply with the additional requirements to the extent necessary, in the opinion of nationally recognized bond counsel, to preserve the exemption from federal income taxation of interest on the ECP Series A Refunding Bonds under section 103 of the Code. In furtherance of such intention, the Issuer hereby authorizes and directs the President of the Board of Directors, the General Manager, the Deputy General Manager, or the Chief Financial Officer to execute any documents, certificates or reports required by the Code and to make such elections, on behalf of the Issuer, that may be permitted by the Code as are consistent with the purpose for the issuance of the ECP Series A Refunding Bonds.
- (d) <u>Written Procedures</u>. Unless superseded by another action of the Issuer to ensure compliance with the covenants contained herein regarding private business use, remedial actions, arbitrage and rebate, the Issuer hereby adopts and establishes the instructions attached hereto as Exhibit A as their written procedures applicable to the Bonds and any Additional Bonds.

Section 28. ALLOCATION OF, AND LIMITATION ON, EXPENDITURES FOR THE PROJECT. If the ECP Series A Refunding Bonds are issued on a tax-exempt basis, the Issuer covenants to account for the expenditure of sale proceeds and investment earnings to be used for the purposes described in Section 1 of this Resolution (the "Project") on its books and records by allocating proceeds to expenditures within 18 months of the later of the date that (1) the expenditure is made, or (2) the Project is completed; but in no event later than three years after the date on which the original expenditure is paid. The foregoing notwithstanding, the Issuer shall not expend sale proceeds or investment earnings thereon more than 60 days after the earlier of (1) the fifth anniversary of the delivery of the ECP Series A Refunding Bonds, or (2) the date the ECP Series A Refunding Bonds are retired, unless the Issuer obtains an opinion of nationally-recognized bond counsel that such expenditure will not adversely affect the tax-exempt status of the ECP Series A Refunding Bonds. For purposes hereof, the Issuer shall not be obligated to comply with this covenant if it obtains an opinion that such failure to comply will not adversely affect the excludability for federal income tax purposes from gross income of the interest.

Section 29. DISPOSITION OF PROJECT. If the ECP Series A Refunding Bonds are issued on a tax-exempt basis, the Issuer covenants that the property constituting the Project refinanced by the ECP Series A Refunding Bonds will not be sold or otherwise disposed in a transaction resulting in the receipt by the Issuer of cash or other compensation, unless the Issuer obtains an opinion of nationally-recognized bond counsel that such sale or other disposition will not adversely affect the tax-exempt status of the ECP Series A Refunding Bonds. For purposes of the foregoing, the portion of the property comprising personal property and disposed in the ordinary course shall not be treated as a transaction resulting in the receipt of cash or other compensation. For purposes hereof, the Issuer shall not be obligated to comply with this covenant if it obtains an opinion that such failure to comply will not adversely affect the excludability for federal income tax purposes from gross income of the interest.

Section 30. CONTINUING DISCLOSURE. (a) <u>Definitions</u>. As used in this Section, the following terms have the meanings ascribed to such terms below:

"Authority" means Trinity River Authority.

"Cities" means the Cities of Arlington, Fort Worth and Mansfield.

"MSRB" means the Municipal Securities Rulemaking Board.

"Obligated Person" means the Issuer, the Authority, and the Cities, or any person, including an issuer of municipal securities, who is either generally or through an enterprise, fund, or account of such person committed by contract or other arrangement to support payment of all, or part of the Bonds (other than providers of municipal bond insurance, letters of credit, or other liquidity facilities) in the Rule.

"Rule" means SEC Rule 15c2-12, as amended from time to time.

"SEC" means the United States Securities and Exchange Commission.

- (b) <u>General</u>. Pursuant to a Continuing Disclosure Agreement by and among the Issuer, the Cities, and the Authority, the Issuer, the Cities and the Authority have undertaken for the benefit of the beneficial owners of the ECP Series A Refunding Bonds, to the extent set forth therein, to provide continuing disclosure of financial information and operating data with respect to the Issuer, Cities and Authority in accordance with the Rule as promulgated by the SEC.
- (c) <u>Annual Reports</u>. (i) The Issuer shall provide annually to the MSRB, within six months after the end of the most recent fiscal year, financial information and operating data with respect to the Issuer of the general type included in the final Official Statement authorized by Section 32 of this Resolution, being the information described in Exhibit B. Any financial statements so to be provided shall be prepared in accordance with the accounting principles described in Exhibit B thereto, or such other accounting principles as the Issuer may be required to employ from time to time pursuant to state law or regulation, and audited, if the Issuer commissions an audit of such statements and the audit is completed within the period during which they must be provided. If the

audit of such financial statements is not complete within such period, then the Issuer shall provide audited financial statements for the applicable fiscal year to the MSRB, when and if the audit report on such statements become available.

- (ii) If the Issuer changes its fiscal year, it will notify the MSRB of the change (and of the date of the new fiscal year end) prior to the next date by which the Issuer otherwise would be required to provide financial information and operating data pursuant to this Section. The financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents or may be included by specific reference to any document (including an official statement or other offering document, if it is available from the MSRB) that theretofore has been provided to the MSRB, or filed with the SEC.
- (d) <u>Disclosure Event Notices</u>. The Issuer shall notify the MSRB, in a timely manner, of any of the following events with respect to the ECP Series A Refunding Bonds, not in excess of ten Business Days after occurrence of the event:
  - 1. Principal and interest payment delinquencies;
  - 2. Non-payment related defaults, if material;
  - 3. Unscheduled draws on debt service reserves reflecting financial difficulties;
  - 4. Unscheduled draws on credit enhancements reflecting financial difficulties;
  - 5. Substitution of credit or liquidity providers, or their failure to perform;
  - 6. Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security;
    - 7. Modifications to the rights of security holders, if material;
    - 8. Bond calls, if material, and tender offers;
    - 9. Defeasances;
  - 10. Release, substitution or sale of property securing repayment of the securities, if material:
    - 11. Rating changes;
  - 12. Bankruptcy, insolvency, receivership or similar event of the Issuer, any of the Cities or the Authority;

- 13. The consummation of a merger, consolidation, or acquisition involving the Issuer or the sale of all or substantially all of the assets of the Issuer, any of the Cities, or the Authority, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
- 14. Appointment of a successor or additional trustee or the change of name of a trustee, if material;
- 15. Incurrence of a Financial Obligation of the Issuer or an Obligated Person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the Issuer or an Obligated Person, any of which affect security holders, if material; and
- 16. Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the Issuer or an Obligated Person, any of which reflect financial difficulties.

For these purposes, (a) any event described in the immediately preceding paragraph (12) is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the Issuer in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Issuer, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers of the Issuer in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Issuer, and (b) as used in clauses 15 and 16 above, the term "Financial Obligation" means: (i) a debt obligation; (ii) a derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (iii) a guarantee of (i) or (ii). The term Financial Obligation shall not include Municipal Securities as to which a final official statement has been provided to the MSRB consistent with the Rule; the term "Municipal Securities" means securities which are direct obligations of, or obligations guaranteed as to principal or interest by, a state or any political subdivision thereof, or any agency or instrumentality of a state or any political subdivision thereof, or any municipal corporate instrumentality of one or more states and any other Municipal Securities described by Section 3(a)(29) of the Securities Exchange Act of 1934, as the same may be amended from time to time.

The Issuer shall notify the MSRB, in a timely manner, of any failure by the Issuer to provide financial information or operating data in accordance with Section 30(c) of this Resolution by the time required by such Section. As used in clause 12 above, the phrase "bankruptcy, insolvency, receivership or similar event" means the appointment of a receiver, fiscal agent, or similar officer for the Issuer in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state

or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Issuer, or if jurisdiction has been assumed by leaving the Board of Directors and official or officers of the Issuer in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Issuer.

- (e) <u>Limitations, Disclaimers, and Amendments</u>. (i) The Issuer shall be obligated to observe and perform the covenants specified in this Section for so long as, but only for so long as, the Issuer remains an "obligated person" with respect to the ECP Series A Refunding Bonds within the meaning of the Rule, except that the Issuer in any event will give notice of any deposit made in accordance with this Resolution or applicable law that causes ECP Series A Refunding Bonds no longer to be outstanding.
- (ii) The provisions of this Section are for the sole benefit of the holders and beneficial owners of the ECP Series A Refunding Bonds, and nothing in this Section, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The Issuer undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Section and does not hereby undertake to provide any other information that may be relevant or material to a complete presentation of the Issuer's financial results, condition, or prospects or hereby undertake to update any information provided in accordance with this Section or otherwise, except as expressly provided herein. The Issuer does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell ECP Series A Refunding Bonds at any future date.
- (iii) UNDER NO CIRCUMSTANCES SHALL THE ISSUER BE LIABLE TO THE HOLDER OR BENEFICIAL OWNER OF ANY ECP Series A Refunding Bond OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE ISSUER, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS SECTION, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE.
- (iv) No default by the Issuer in observing or performing its obligations under this Section shall comprise a breach of or default under this Resolution for purposes of any other provision of this Resolution. Nothing in this Section is intended or shall act to disclaim, waive, or otherwise limit the duties of the Issuer under federal and state securities laws.
- (v) The provisions of this Section may be amended by the Issuer from time to time to adapt to changed circumstances that arise from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the Issuer, but only if (1) the provisions of this Section, as so amended, would have permitted an underwriter to purchase or sell ECP Series A Refunding Bonds in the primary offering of the ECP Series A Refunding Bonds in compliance with the Rule, taking into account any amendments or interpretations of the Rule since

such offering as well as such changed circumstances and (2) either (a) the holders of a majority in aggregate principal amount (or any greater amount required by any other provision of this Resolution that authorizes such an amendment) of the Outstanding ECP Series A Refunding Bonds consent to such amendment or (b) a person that is unaffiliated with the Issuer (such as bond counsel) determines that such amendment will not materially impair the interest of the holders and beneficial owners of the ECP Series A Refunding Bonds. If the Issuer so amends the provisions of this Section, it shall include with any amended financial information or operating data next provided in accordance with subsection (a) of this Section an explanation, in narrative form, of the reason for the amendment and of the impact of any change in the type of financial information or operating data so provided. The Issuer may also amend or repeal the provisions of this continuing disclosure agreement if the SEC amends or repeals the applicable provision of the Rule or a court of final jurisdiction enters judgment that such provisions of the Rule are invalid, but only if and to the extent that the provisions of this sentence would not prevent an underwriter from lawfully purchasing or selling ECP Series A Refunding Bonds in the primary offering of the ECP Series A Refunding Bonds.

Section 31. SALE OF ECP SERIES A REFUNDING BONDS. Pursuant to the authorizations in Section 3 hereof, as approved by the Authorized Officer, the ECP Series A Refunding Bonds may be sold either pursuant to the taking of bids therefor as provided in the Official Notice of Sale or pursuant to a purchase agreement (the "Purchase Agreement") with a purchaser or purchasers (collectively, the "Underwriters") to be approved by the Authorized Officer, and any supplements thereto which may be necessary to accomplish the issuance of Bonds. Such Purchase Agreement is hereby authorized to be dated, executed and delivered on behalf of the Issuer by an Authorized Officer, with such changes therein as shall be approved by the Authorized Officer, the execution thereof by the Authorized Officer to constitute evidence of such approval. The delegation of authority to the Authorized Officer to approve the final terms of the Bonds as set forth in this Resolution is, and the decisions made by the Authorized Officer pursuant to such delegated authority will be, in the best interests of the Issuer, and the Authorized Officer is authorized to make a finding to such effect in the Approval Certificate.

Section 32. APPROVAL OF OFFICIAL STATEMENT. A Preliminary Official Statement relating to the ECP Series A Refunding Bonds, will be approved and authorized to be distributed to prospective investors and other interested parties in connection with the underwriting and sale of the ECP Series A Refunding Bonds, with such changes therein as shall be approved by an Authorized Officer, including such changes as are necessary for distribution as a final Official Statement. The use and distribution by the Underwriters of the Official Statement relating to the ECP Series A Refunding Bonds, is hereby approved. For the purpose of review by the Underwriters prior to purchasing the ECP Series A Refunding Bonds, an Authorized Officer may deem said Preliminary Official Statement to have been "final as of its date" within the meaning of Securities and Exchange Commission Rule 15c2-12.

Section 33. REFUNDING OF REFUNDED BONDS. (a) The Refunded Bonds shall be paid upon the earlier of their stated maturity dates or the earliest redemption dates for which notice of redemption can be given pursuant to the Master Resolution, in each case at a price of par plus accrued interest to the date of payment. As soon as practicable after sale of the ECP Series A Refunding Bonds, appropriate notices of redemption shall be delivered to the paying agent/registrar

for the Refunded Bonds to notify, in accordance with the requirements of the Master Resolution, the owners of the Refunded Bonds of the call for redemption thereof.

- Concurrently with the delivery of the ECP Series A Refunding Bonds, the Issuer shall cause to be deposited an amount from the proceeds from the sale of the ECP Series A Refunding Bonds, together with, to the extent necessary, available funds of the Issuer, with the paying agent/registrar for the Refunded Bonds, sufficient to provide for the refunding and redemption, on the date or dates fixed for redemption, of all of the Refunded Bonds, in accordance with Subchapter C of Chapter 1207, Texas Government Code, as amended. The President of the Board of Directors of the Issuer and the Secretary or other authorized officer of the Board of Directors of the Issuer are hereby authorized, for and on behalf of the Issuer, to execute a Deposit Agreement in substantially the form set forth in Exhibit C hereto to accomplish such purpose. In addition, the Authorized Officer is authorized to transfer and deposit such cash from available funds (including surplus funds in the Interest and Redemption Fund and/or the Reserve Fund), as may be necessary for the Payment Account described in such Deposit Agreement. It is hereby found and determined that the refunding of the Refunded Bonds, which consist of bonds in an extendable commercial paper mode, makes it impracticable to determine the maximum amount by which the aggregate amount of payments to be made under the Bonds exceeds the aggregate amount of payments that would have been made under the terms of the Refunded Bonds for purposes of Section 1207.008(a)(2), Texas Government Code.
- Section 34. ATTORNEY GENERAL FEES. The Issuer hereby authorizes and directs payment, from legally available funds of the Issuer, of the nonrefundable examination fee of the Attorney General of the State of Texas required by Section 1202.004, Texas Government Code, as amended.
- Section 35. FURTHER PROCEDURES. The President and the Secretary of the Board of Directors, the General Manager, the Deputy General Manager, and the Chief Financial Officer of the Issuer, and all other officers, employees, and agents of the Issuer, and each of them, shall be and they are hereby expressly authorized, empowered, and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge, and deliver in the name and on behalf of the Issuer all such instruments, whether or not herein mentioned, as may be necessary or desirable in order to carry out the terms and provisions of this Resolution, and all details in connection therewith. In case any officer whose signature shall appear on any ECP Series A Refunding Bond shall cease to be such officer before the delivery of such ECP Series A Refunding Bond, such signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.
- Section 36. REPEAL OF CONFLICTING RESOLUTIONS. All resolutions and all parts of any resolutions which are in conflict or inconsistent with this Resolution are hereby repealed and shall be of no further force or effect to the extent of such conflict or inconsistency.
- Section 37. PUBLIC NOTICE. It is hereby officially found and determined that public notice of the time, place and purpose of said meeting was given, all as required by the Government Code, Chapter 551.

Section 38. EFFECTIVENESS. This Resolution shall be effective from the date and after the date of adoption by the Issuer; provided, however, if an Approval Certificate for the ECP Series A Refunding Bonds authorized by this Resolution is not executed prior to June 17, 2026, this Resolution shall be void ab initio and shall be of no force and effect.

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### EXHIBIT "A"

# WRITTEN PROCEDURES RELATING TO CONTINUING COMPLIANCE WITH FEDERAL TAX COVENANTS

A. <u>Arbitrage</u>. With respect to the investment and expenditure of the proceeds of the ECP Series A Refunding Bonds and any Additional Bonds (the "Obligations") the Issuer's General Manager, Deputy General Manager, and Chief Financial Officer (the "Responsible Persons") will:

For Obligations issued for newly acquired property or constructed property:

- instruct the appropriate person or persons that the construction, renovation or acquisition of the facilities must proceed with due diligence and that binding contracts for the expenditure of at least 5% of the proceeds of the Obligations will be entered into within 6 months of the Issue Date;
- monitor that at least 85% of the proceeds of the Obligations to be used for the construction, renovation or acquisition of any facilities are expended within 3 years of the date of delivery of the Obligations ("Issue Date");
- restrict the yield of the investments (other than those in the Reserve Fund) to the yield on the Obligations after 3 years of the Issue Date;
- monitor all amounts deposited into a sinking fund or funds, e.g., the Interest and Redemption Fund and the Reserve Fund, to assure that the maximum amount invested at a yield higher than the yield on the Obligations does not exceed an amount equal to the debt service on the Obligations in the succeeding 12 month period plus a carryover amount equal to one-twelfth of the principal and interest payable on the Obligations for the immediately preceding 12-month period;
- assure that no more than 50% of the proceeds of the Obligations are invested in an investment with a guaranteed yield for 4 years or more;
- assure that the maximum amount of the Reserve Fund invested at a yield higher than the yield on the Obligations will not exceed the lesser of (1) 10% of the original principal amount of the Obligations, (2) 125% of the average annual debt service on the Obligations measured as of the Issue Date, or (3) 100% of the maximum annual debt service on the Obligations as of the Issue Date;

# For Obligations issued for refunding purposes:

monitor the actions of the escrow agent (to the extent an escrow is funded with proceeds) to assure compliance with the applicable provisions of the escrow agreement, including with respect to reinvestment of cash balances;

# For all Obligations:

- maintain any official action of the Issuer (such as a reimbursement resolution) stating its intent to reimburse itself with the proceeds of the Obligations any amount expended prior to the Issue Date for the acquisition, renovation or construction of the facilities;
- assure that the applicable information return (e.g., IRS Form 8038-G, 8038-GC, or any successor forms) is timely filed with the IRS;
- assure that, unless excepted from rebate and yield restriction under section 148(f) of the Code, excess investment earnings are computed and paid to the U.S. government at such time and in such manner as directed by the IRS (i) at least every 5 years after the Issue Date and (ii) within 30 days after the date the Obligations are retired.
- B. <u>Private Business Use</u>. With respect to the use of the facilities financed or refinanced with the proceeds of the Obligations the Responsible Persons will:
- monitor the date on which the facilities are substantially complete and available to be used for the purpose intended;
- monitor whether, at any time the Obligations are outstanding, any person, other than the Issuer, the employees of the Issuer, the agents of the Issuer or members of the general public has any contractual right (such as a lease, purchase, management or other service agreement) with respect to any portion of the facilities;
- monitor whether, at any time the Obligations are outstanding, any person, other than the Issuer, the employees of the Issuer, the agents of the Issuer or members of the general public has a right to use the output of the facilities (e.g., water, gas, electricity);
- monitor whether, at any time the Obligations are outstanding, any person, other than the Issuer, the employees of the Issuer, the agents of the Issuer or members of the general public has a right to use the facilities to conduct or to direct the conduct of research;
- determine whether, at any time the Obligations are outstanding, any person, other than the Issuer, has a naming right for the facilities or any other contractual right granting an intangible benefit;
- determine whether, at any time the Obligations are outstanding, the facilities are sold or otherwise disposed of; and
- take such action as is necessary to remediate any failure to maintain compliance with the covenants contained in the resolution authorizing the Obligations.
- C. <u>Record Retention</u>. The Responsible Persons will maintain or cause to be maintained all records relating to the investment and expenditure of the proceeds

of the Obligations and the use of the facilities financed or refinanced thereby for a period ending three (3) years after the complete extinguishment of the Obligations. If any portion of the Obligations is refunded with the proceeds of another series of tax-exempt obligations, such records shall be maintained until the three (3) years after the refunding obligations are completely extinguished. Such records can be maintained in paper or electronic format.

D. <u>Responsible Persons</u>. Each Responsible Person shall receive appropriate training regarding the Issuer's accounting system, contract intake system, facilities management and other systems necessary to track the investment and expenditure of the proceeds and the use of the facilities financed with the proceeds of the Obligations. The foregoing notwithstanding, the Responsible Persons are authorized and instructed to retain such experienced advisors and agents as may be necessary to carry out the purposes of these instructions.

### EXHIBIT B

## DESCRIPTION OF ANNUAL FINANCIAL INFORMATION

The following information is referred to in Section 30 of this Resolution.

# I. Annual Financial Statements and Operating Data of the Issuer

The financial information and operating data with respect to the Issuer to be provided annually in accordance with such Section are as specified (and included in the Appendix or under the headings of the Official Statement and Tables referred to) below:

Tables 1 through 9 in the Official Statement and in Appendix B

# **Accounting Principles**

The accounting principles referred to in such Section are the accounting principles described in the notes to the financial statements referred to in paragraph 1 above.

### EXHIBIT "C"

### FORM OF DEPOSIT AGREEMENT

### **DEPOSIT AGREEMENT**

THIS DEPOSIT AGREEMENT (the "Agreement"), dated as of \_\_\_\_\_\_, \_\_\_\_, made by and between Tarrant Regional Water District, a Water Control and Improvement District (the "Issuer"), a political subdivision of the State of Texas acting by and through the President and Secretary or other authorized officer of the Board of Directors of the Issuer (the "Board"), and U.S. Bank National Association (the "Bank"), a banking association organized and existing under the laws of the United States of America,

### WITNESSETH:

WHEREAS, the Issuer has heretofore issued and delivered and there is currently outstanding the obligations described on Exhibit "A" hereto (hereinafter called the "Refunded Obligations"); and

WHEREAS, in accordance with the provisions of Chapter 1207, Texas Government Code (the "Act"), the Issuer is authorized to sell refunding bonds in an amount sufficient to provide for the full and complete payment of obligations, deposit the proceeds of such refunding bonds with the place of payment for the obligations being refunded and enter into an escrow or similar agreement with such place of payment for the safekeeping, investment, reinvestment, administration and disposition of such deposit, upon such terms and conditions as the parties may agree; and

WHEREAS, the Issuer on \_\_\_\_\_\_\_, \_\_\_\_\_\_, pursuant to a resolution (the "Bond Resolution") passed and adopted by the Board, authorized the issuance of bonds known as "Tarrant Regional Water District, a Water Control and Improvement District, Water Revenue ECP Series A Refunding Bonds" (the "Bonds"), and such Bonds are being issued to refund, discharge and make final payment of the principal of and interest on the Refunded Obligations; and

WHEREAS, a portion of the proceeds of sale of the Bonds, together with other available funds of the Issuer, are to be deposited with the Bank under this Agreement, which deposit of funds will be sufficient to pay and redeem in full the Refunded Obligations on \_\_\_\_\_\_\_, (the Redemption Date);

NOW, THEREFORE, in consideration of the mutual agreements herein contained and the payment to the Bank of amounts provided in Section 8 hereof, and to secure the payment of the principal of and the interest on the Refunded Obligations, the Issuer and the Bank hereby agree as follows:

<u>SECTION 1</u>. A trust clearing account (hereinafter called the "Payment Account") shall be maintained at the Bank for the benefit of the holders of the Refunded Obligations, and,

immediately following the delivery of the Bonds, the Issuer agrees and covenants to cause to be deposited with the Bank for the credit of the Payment Account the sum of \$\_\_\_\_\_.

The Bank agrees to establish such Payment Account and further agrees to receive said moneys, apply the same as set forth herein, and to hold uninvested the cash deposited and credited to the Payment Account for application and disbursement for the payment and redemption of the Refunded Obligations on the Redemption Date.

SECTION 2. In reliance upon the Sufficiency Certificate of Financial Advisor, a copy of which is attached hereto as Exhibit "B", the Issuer represents that the amount deposited to the credit of the Payment Account, as provided in Section 1 hereof, will be sufficient to pay and redeem in full all the Refunded Obligations on the Redemption Date, and the Bank acknowledges the sufficiency of the deposit for said purpose.

The Bank acknowledges receipt of a copy of the Bond Resolution providing for the redemption of the Refunded Obligations on the Redemption Date at the price of par and accrued interest and acknowledges receipt of the form of notice of redemption attached hereto. The Bank will give the notice of redemption as required by the order authorizing the issuance of the Refunded Bonds.

SECTION 3. The Bank agrees that all funds held in the Payment Account shall constitute a dedicated interest and sinking fund for the payment of the principal of and interest on the Refunded Obligations which will mature and become due on and after the date of this Agreement, such funds deposited to the credit of the Payment Account shall be applied solely in accordance with the provisions of this Agreement and the Issuer shall have no right or title with respect thereto, except as otherwise provided herein. Such funds shall not be subject to checks or drafts drawn by the Issuer.

<u>SECTION 4</u>. If, for any reason, the funds on hand in the Payment Account shall be insufficient to pay the redemption price of the Refunded Obligations on the Redemption Date, notice of any such insufficiency shall be immediately given by the Bank to the Issuer by the fastest means possible.

<u>SECTION 5</u>. The Bank represents that the deposit covered by this Agreement shall constitute firm banking arrangements to insure payment of the Refunded Obligations and such deposit is collateralized to insure against any loss or diminution by virtue of any action of the Bank or as a result of its lack of financial integrity by a pledge of direct obligations of the United States of America, in the par or face amount at least equal to the principal amount of said monies to the extent such money is not insured by the Federal Deposit Insurance Corporation.

<u>SECTION 6</u>. The Bank, as paying agent for the Refunded Obligations, shall, without further direction from anyone, including the Issuer, cause to be paid with funds on deposit in the Payment Account the amount required to pay and redeem in full the Refunded Obligations on the Redemption Date when such obligations are presented for payment in accordance with their terms.

<u>SECTION 7</u>. The Bank shall have no lien whatsoever upon any of the moneys deposited to the credit of the Payment Account for payment of services rendered hereunder, services rendered as Paying Agent for the Refunded Obligations, or for any costs or expenses incurred hereunder and reimbursable from the Issuer.

SECTION 8. Moneys on deposit in the Payment Account shall be held uninvested pending the disbursement of moneys. In consideration for the services rendered hereunder, the Issuer shall pay to the Bank the sum of \$\_\_\_\_\_. No investment of funds deposited to the credit of the Payment Account shall be made on or after the Redemption Date. Neither the Issuer nor the Bank shall invest any moneys deposited in the Payment Account.

SECTION 9. The Bank hereby agrees that the compensation noted in Section 8 is full and complete payment for the administration of this Agreement, and the Bank acknowledges and agrees that such amount is and represents the total amount of compensation due the Bank for services rendered as paying agent for the Refunded Obligations. The Bank hereby agrees to pay, assume and be fully responsible for any additional charges that it may incur in the performance of its duties and responsibilities as paying agent for the Refunded Obligations.

SECTION 10. The Bank shall not be responsible for any recital herein, except with respect to its organization, its powers and authority and to the safety and security of the deposit of funds to be made by the Issuer hereunder. As to the existence or nonexistence of any fact relating to the Issuer or as to the sufficiency or validity of any instrument, paper or proceedings relating to the Issuer, the Bank shall be entitled to rely upon a certificate signed on behalf of the Issuer by its Issuer Secretary or other authorized officer as sufficient evidence of the facts therein contained. The Bank may accept a certificate of the Secretary or other authorized officer of the Board under the Issuer's seal, to the effect that a resolution or other instrument in the form therein set forth has been adopted by the Board, as conclusive evidence that such resolution or other instrument has been duly adopted and is in full force and effect.

The duties and obligations of the Bank shall be determined solely by the express provisions of this Agreement, and the Bank shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Agreement, and no implied covenants or obligations shall be read into this Agreement against the Bank.

In the absence of bad faith on the part of the Bank, the Bank may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificate or opinion furnished to the Bank, conforming to the requirements of this Agreement; but notwithstanding any provision of this Agreement to the contrary, in the case of any such certificate or opinion or any evidence which by any provision hereof is specifically required to be furnished to the Bank, the Bank shall be under a duty to examine the same to determine whether it conforms to the requirements of this Agreement.

The Bank shall not be liable for any error of judgment made in good faith by a Responsible Officer or Officers of the Bank unless it shall be proved that the Bank was negligent in ascertaining or acting upon the pertinent facts. The Bank shall not be responsible or liable to

any person in any manner whatever for the sufficiency, correctness, genuineness, effectiveness, or validity of the deposits made pursuant to this Agreement, or for the form or execution thereof, or for the identity or authority or any person making or executing such deposits.

The term "Responsible Officers" of the Bank, as used in this Agreement, shall mean and include the Chairman of the Board of Directors, the President, any Vice President and any Second Vice President, the Secretary and any Assistant Secretary, the Treasurer and any Assistant Treasurer, and ever other officer and assistant officer of the Bank customarily performing functions similar to those performed by the persons who at the time shall be officers, respectively, or to whom any corporate trust matter is referred, because of his knowledge of an familiarity with a particular subject; and the term "Responsible Officer" of the Bank, as used in this Agreement, shall mean and include any of said officers or persons.

SECTION 11. This Agreement is between the Issuer and the Bank only, and in connection herewith the Bank is authorized by the Issuer to rely upon the representations of the Issuer with respect to this Agreement and the deposits made pursuant hereto and as to the Issuer's right and power to execute and deliver this Agreement, and the Bank shall not be liable in any manner as a result of such reliance. The duties of the Bank hereunder shall only be to the Issuer and the holders of the Refunded Obligations. In the event conflicting demands or notices are made upon the Bank growing out of or relating to this Agreement or the Bank in good faith is in doubt as to what action should be taken hereunder, the Bank shall have the right at its election to:

- (a) Withhold and stop all further proceedings in, and performance of, this Agreement with respect to the issue in question and of all instructions received hereunder in regard to such issue; and
- (b) File a suit in interpleader and obtain an order from a court of appropriate jurisdiction requiring all persons involved to interplead and litigate in such court their several claims and rights among themselves.

In the event the Bank becomes involved in litigation in connection with this Section, the Issuer, to the extent permitted by law agrees to indemnify and save the Bank harmless from all loss, cost, damages, expenses and attorney fees suffered or incurred by the Bank as a result thereof. The obligations of the Bank under this Agreement shall be performable at the principal corporate office of the Bank in Dallas, Texas.

The Bank may consult with legal counsel in the event of any dispute or question regarding the construction of any of the provisions hereof or its duties hereunder, and in the absence of negligence or bad faith on the part of the Bank, no liability shall be incurred by the Bank for any action taken pursuant to this Section and the Bank shall be fully protected in acting in accordance with the opinion and instructions of legal counsel that is knowledgeable and has expertise in the field of law addressed in any such legal opinion with respect to the instructions given.

Nothing in this Agreement shall be construed to require the Bank to expend or risk its own funds in the performance of any of its duties or the exercise of any of its rights hereunder.

<u>SECTION 12</u>. Time shall be of the essence in the performance of obligations from time to time imposed upon the Bank by this Agreement.

SECTION 13. Following the final payment and redemption of the Refunded Obligations, the Bank shall forward by letter to the Issuer, to the attention of the President, or other designated official of the Issuer, a final accounting statement with respect to the payment and discharge of the Refunded Obligations, together with all canceled Refunded Obligations.

<u>SECTION 14</u>. Any notice, authorization, request or demand required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given when mailed by registered or certified mail, postage prepaid addressed as follows:

Tarrant Regional Water District, a Water Control and Improvement District 800 East North Side Drive FortWorth, Texas 76102-1097

Attention: Chief Financial Officer

U.S. Bank National Association 100 Wall Street, Suite 1600 New York, New York 10005

Attention: Corporate Trust Services

The United States Post Office registered or certified mail receipt showing delivery of the aforesaid shall be conclusive evidence of the date and fact of delivery.

Any party hereto may change the address to which notices are to be delivered by giving to the other parties not less than ten (10) days prior notice thereof.

SECTION 15. Whenever under the terms of this Agreement the performance date of any provision hereof, including the date of maturity of interest on or principal of the Refunded Obligations, shall be a Sunday or a legal holiday or a day on which the Bank is authorized by law to close, then the performance thereof, including the payment of principal of and interest on the Refunded Obligations, need not be made on such date but may performed or paid, as the case may be, on the next succeeding business day of the Bank with the same force and effect as if made on the date of performance or payment and with respect to a payment, no interest shall accrue for the period after such date.

SECTION 16. The Issuer covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Agreement, in any and every said Refunded Obligation as executed, authenticated and delivered and in all proceedings pertaining thereto as said Refunded Obligations shall have been modified as provided in this Agreement. The Issuer covenants that it is duly authorized under the Constitution and laws of the State of Texas to execute and deliver this Agreement, that all actions on its part for the payment of

said Refunded Obligations as provided herein and the execution and delivery of this Agreement have been duly and effectively taken and that said Refunded Obligations and coupons in the hands of the holders and owners thereof are and will be valid and enforceable obligations of the Issuer according to the import thereof as provided in this Agreement.

SECTION 17. If any one or more of the covenants or agreements provided in this Agreement on the part of the parties to be performed should be determined by a court of competent jurisdiction to be contrary to law, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Agreement.

SECTION 18. This Agreement shall terminate either (i) when the Refunded Obligations and coupons appertaining thereto have been paid and discharged in accordance with the provisions of this Agreement or (ii) at the expiration of four (4) years after the Redemption Date, whichever circumstance shall first occur. Subject to applicable unclaimed property laws of the State, moneys held in the Payment Account at the termination of this Agreement shall be remitted and transferred to the Issuer.

<u>SECTION 19</u>. Neither the Issuer nor the Bank shall assign or attempt to assign or transfer any interest hereunder or any portion of any such interest. Any such assignment or attempted assignment shall be in direct conflict with this Agreement and be without effect.

SECTION 20. This Agreement shall inure to the benefit of and be binding upon the Bank and the Issuer and their respective successors.

SECTION 21. This Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument. This Agreement shall be governed by the laws of the State of Texas.

IN WITNESS WHEREOF, the parties hereto have each caused this Agreement to be executed by their duly authorized officers and attested as of the date first written above.

# TARRANT REGIONAL WATER DISTRICT, A WATER CONTROL AND IMPROVEMENT DISTRICT

President
U.S. BANK NATIONAL ASSOCIATION

# EXHIBIT "A"

Schedule of Refunded Obligations

# TARRANT REGIONAL WATER DISTRICT

### **AGENDA ITEM 18**

**DATE:** June 17, 2025

SUBJECT: Consider Approval of Request for Property Tax Exemption Under

Texas Property Tax Code Section 11.1825 From Owner of a Rent-

**Restricted Apartment Complex** 

**FUNDING:** \$576.72

### RECOMMENDATION:

Management recommends approval of the Request for Property Tax Exemption.

### DISCUSSION:

On May 12, 2025 the Tarrant Regional Water District (TRWD) received a written request from the owner of a rent-restricted apartment complex at 1800 E. Robert Street in Fort Worth seeking a property tax exemption under section 11.1825 of the Texas Property Tax Code.

Section 11.1825 provides a property tax exemption for an organization that owns property that it constructs or rehabilitates and uses to provide housing to individuals or families meeting certain income eligibility requirements. The Tarrant Appraisal District determines whether an organization meets the statutory qualifications for such exemptions. The amount of the exemption under the statute is 50% of the appraised value of the property. The amount of this exemption request is approximately \$576.72.

An organization may not receive an exemption by a taxing unit if the taxing unit is located in a county with a population of at least 2.1 million <u>unless</u> the exemption is approved by the governing body of the taxing unit. To receive an exemption under section 11.1825, an organization must submit to the governing body of a taxing unit a written request for approval of the exemption for the property. The governing body of the taxing unit that receives such a request must either (1) approve the exemption in the statutory amount; (2) approve the exemption in a reasonable amount other than the statutory amount; or (3) deny the exemption if the governing body determines that (a) the taxing unit cannot afford the loss of revenue involved or (b) additional income-based housing is not needed in the territory of the taxing unit.

This item was reviewed by the Finance Committee on June 13, 2025.

# Submitted By:

Stephen Tatum General Counsel

# TARRANT REGIONAL WATER DISTRICT

# **AGENDA ITEM 19**

**DATE:** June 17, 2025

**SUBJECT: Consider Board Appointments for Tax Increment Financing Districts** 

FUNDING: N/A

# **RECOMMENDATION:**

Management recommends making the Tax Increment Financing District appointments indicated below.

# **DISCUSSION:**

By statute, each taxing authority participating in a Tax Increment Financing (TIF) District makes recommendations for its Board representatives to the City. As of June 17, 2025, Tarrant Regional Water District appointments are as follows:

# **CURRENT TRWD TIF APPOINTMENTS**

TIF District	Appointee(s)	<b>Term Expires</b>
3 Downtown	Leah King	Dec. 31, 2027
8 Lancaster	Paxton Motheral	Dec. 31, 2026
9 Trinity River Vision	C.B. Team	Dec. 31, 2026
12 East Berry Renaissance	Dan Buhman	Dec. 31, 2027
13 Woodhaven	Dan Buhman	Dec. 31, 2027
14 Trinity Lakes	Dan Buhman	Dec. 31, 2027
15 Stockyards	Leah King	Dec. 31, 2027

Because TRWD has two new members on its board of directors, and because the City of Fort Worth has requested that the representative for TIFs 3 and 8 be the same person, management recommends the following appointments:

## PROPOSED NEW TRWD TIF APPOINTMENTS

TIF District	Appointee(s)	Term Expires
3 Downtown	Leah King	Dec. 31, 2027
8 Lancaster	Leah King	Dec. 31, 2026
9 Trinity River Vision	C.B. Team	Dec. 31, 2026
12 East Berry Renaissance	Jonathan Killebrew	Dec. 31, 2027
13 Woodhaven	Skylar O'Neal	Dec. 31, 2027
14 Trinity Lakes	Paxton Motheral	Dec. 31, 2027
15 Stockyards	Jonathan Killebrew	Dec. 31, 2027

Approval by this Board shall serve as a notification to the City Council of Fort Worth for TRWD's appointments to the governing body of the TIFs referenced above. The new appointees will fill the unexpired terms of the appointees they are replacing.

This item was reviewed by the Administration and Policy Committee on June 13, 2025.

# Submitted By:

Stephen Tatum General Counsel

### TARRANT REGIONAL WATER DISTRICT

### **AGENDA ITEM 20**

**DATE:** June 17, 2025

SUBJECT: Consider Approval of Annual Insurance Renewal for Property,

Casualty, and Workers' Compensation Insurance Lines of Coverage

with Texas Water Association Risk Management Fund

**FUNDING:** Proposed Fiscal Year 2026 General Fund Budget - \$1,800,000

### **RECOMMENDATION:**

Management recommends approval of insurance renewal for a one-year period **in the amount of \$1,570,000** for Property Lines of Coverage (\$1,010,000), Casualty Lines of Coverage (\$360,000), and Workers Compensation Coverage (\$200,000) with Sedgwick as the selected vendor of the Texas Water Association Risk Management Fund (TWARMF). The cost of Workers Compensation coverage will be based on actual salaries times job classification rates and the TRWD experience modifier.

## **DISCUSSION:**

The TWARMF is a self-insurance pool formed by Texas water districts and authorities to provide expert resources and access to a customized insurance program for its members.

TWARMF provides workers' compensation, liability, and property coverage programs for its members. Through the fund, members pool their risks and combine resources to obtain greater stability and economies of scale for risk management. In addition to self-insurance coverage, members receive risk management, legal, and loss prevention services tailored to meet their needs.

This item was reviewed by the Administration and Policy Committee on June 13, 2025.

# **Submitted By:**

Jennifer Mitchell
Director of Risk Management and Internal Audit

### TARRANT REGIONAL WATER DISTRICT

## **AGENDA ITEM 21**

**DATE:** June 17, 2025

SUBJECT: Consider Approval of Contract with Satellite Shelters, Inc for Lease

of Temporary Office Buildings in the Operations Compound

**FUNDING:** Fiscal Year 2025 Special Projects/Contingency Fund Budget - \$705,235

Proposed Fiscal Year 2026 Special Projects/Contingency Fund Budget -

\$593,000

## **RECOMMENDATION:**

Management recommends the approval of a contract **in an amount not-to-exceed \$340,858** with Satellite Shelters, Inc. for the provision of one triple-wide and one quadruple-wide office building for a period of 24 months.

## **DISCUSSION:**

As the local sponsor for the U.S. Army Corps of Engineers, the District holds the responsibility for the demolition of all structures within the Central City project footprint, including the District Operations offices located off Northside Drive in Fort Worth. To maintain alignment with the current USACE project schedule, it has become necessary to temporarily relocate operations staff and equipment to facilitate the commencement of demolition work. The temporary buildings included in this contract will provide essential office and meeting space for Operations staff until the completion of the new Operations Compound in North Fort Worth.

Upon the operational readiness of the new compound, the lease for the temporary buildings will be terminated. Based on the current construction timeline, it is anticipated that these temporary buildings will remain in place for approximately two years.

A Request for Proposals was issued in accordance with Texas Local Government Code Chapter 252. Fourteen vendors were solicited, and two proposals were received. Following a thorough evaluation, the team determined that Satellite Shelters, Inc. is the most qualified vendor to complete the project.

Satellite Shelters, Inc. is not a certified diverse business. There are no other subcontracting opportunities.

This item was reviewed by the Construction and Operations Committee on June 12, 2025.

# Submitted By:

Mick Maguire
Chief Administrative Officer



# 25-114 OPS Compound Temporary Building(s) Rental

Technical Quality Criteria	Total Points Available	Unico	Salellie Sh.	in in it is
Price	40.00	19.33	40.00	
	Price	\$476,600.00	\$340,858.00	
Layout/Floorplan/Design	30.00	30.00	30.00	
References	15.00	10.00	10.00	
Timeframe/Schedule/Availability	15.00	12.00	15.00	
Total	100.00	71.33	95.00	



## VENDOR SERVICES AGREEMENT

This **VENDOR SERVICES AGREEMENT** ("Agreement") is made and entered into by and between the **CITY OF FORT WORTH** ("City"), a Texas home rule municipal corporation, acting by and through its duly authorized Assistant City Manager, and **SHERMCO INDUSTRIES, INC.** ("Vendor"), a state registered company and acting by and through its duly authorized representative, each individually referred to as a "**party**" and collectively referred to as the "**parties**."

- 1. <u>Scope of Services</u>. Provide electric motor repair and replacement services as needed ("Services"), which are set forth in more detail in Exhibit "A," attached hereto and incorporated herein for all purposes.
- 2. <u>Term.</u> The initial term of this Agreement is for 1 year(s), beginning on the date that this Agreement is executed by the City's Assistant City Manager ("Effective Date"), unless terminated earlier in accordance with this Agreement ("Initial Term"). City will have the option, in its sole discretion, to renew this Agreement under the same terms and conditions, for up to 4 automatic one-year renewal option(s) (each a "Renewal Term").

# 3. Compensation.

- 3.1 Total compensation under this Agreement will not exceed **Eight Hundred Thousand Dollars and Zero Cents (\$800,000.00)**.
- 3.2 City will pay Vendor in accordance with the Prompt Payment Act (Chapter 2251 of the Texas Government Code) and provisions of this Agreement, including Exhibit "B," which is attached hereto and incorporated herein for all purposes.
- 3.3 Vendor will not perform any additional services or bill for expenses incurred for City not specified by this Agreement unless City requests and approves in writing the additional costs for such services. City will not be liable for any additional expenses of Vendor not specified by this Agreement unless City first approves such expenses in writing.

## 4. <u>Termination.</u>

- 4.1. <u>Written Notice.</u> City or Vendor may terminate this Agreement at any time and for any reason by providing the other party with 30 days' written notice of termination.
- 4.2 <u>Non-appropriation of Funds.</u> In the event no funds or insufficient funds are appropriated by City in any fiscal period for any payments due hereunder, City will notify Vendor of such occurrence and this Agreement will terminate on the last day of the fiscal period for which

OFFICIAL RECORD CITY SECRETARY FT. WORTH, TX appropriations were received without penalty or expense to City of any kind whatsoever, except as to the portions of the payments herein agreed upon for which funds have been appropriated.

4.3 <u>Duties and Obligations of the Parties.</u> In the event that this Agreement is terminated prior to the Expiration Date, City will pay Vendor for services actually rendered up to the effective date of termination and Vendor will continue to provide City with services requested by City and in accordance with this Agreement up to the effective date of termination. Upon termination of this Agreement for any reason, Vendor will provide City with copies of all completed or partially completed documents prepared under this Agreement. In the event Vendor has received access to City Information or data as a requirement to perform services hereunder, Vendor will return all City provided data to City in a machine readable format or other format deemed acceptable to City.

# 5. Disclosure of Conflicts and Confidential Information.

- 5.1 <u>Disclosure of Conflicts.</u> Vendor hereby warrants to City that Vendor has made full disclosure in writing of any existing or potential conflicts of interest related to Vendor's services under this Agreement. In the event that any conflicts of interest arise after the Effective Date of this Agreement, Vendor hereby agrees immediately to make full disclosure to City in writing.
- 5.2 <u>Confidential Information.</u> Vendor, for itself and its officers, agents and employees, agrees that it will treat all information provided to it by City ("City Information") as confidential and will not disclose any such information to a third party without the prior written approval of City.
- 5.3 Public Information Act. City is a government entity under the laws of the State of Texas and all documents held or maintained by City are subject to disclosure under the Texas Public Information Act. In the event there is a request for information marked Confidential or Proprietary, City will promptly notify Vendor. It will be the responsibility of Vendor to submit reasons objecting to disclosure. A determination on whether such reasons are sufficient will not be decided by City, but by the Office of the Attorney General of the State of Texas or by a court of competent jurisdiction.
- 5.4 <u>Unauthorized Access.</u> Vendor must store and maintain City Information in a secure manner and will not allow unauthorized users to access, modify, delete or otherwise corrupt City Information in any way. Vendor must notify City immediately if the security or integrity of any City Information has been compromised or is believed to have been compromised, in which event, Vendor will, in good faith, use all commercially reasonable efforts to cooperate with City in identifying what information has been accessed by unauthorized means and will fully cooperate with City to protect such City Information from further unauthorized disclosure.
- 6. Right to Audit. Vendor agrees that City will, until the expiration of three (3) years after final payment under this Agreement, or the final conclusion of any audit commenced during the said three years, have access to and the right to examine at reasonable times any directly pertinent books, documents, papers and records, including, but not limited to, all electronic records, of Vendor involving transactions relating to this Agreement at no additional cost to City. Vendor agrees that City will have access during normal working hours to all necessary Vendor facilities and will be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. City will give Vendor reasonable advance notice of intended audits.

as an independent contractor as to all rights and privileges and work performed under this Agreement, and not as agent, representative or employee of City. Subject to and in accordance with the conditions and provisions of this Agreement, Vendor will have the exclusive right to control the details of its operations and activities and be solely responsible for the acts and omissions of its officers, agents, servants, employees, Vendors, and subcontractors. Vendor acknowledges that the doctrine of *respondeat superior* will not apply as between City, its officers, agents, servants and employees, and Vendor, its officers, agents, employees, servants, contractors, and subcontractors. Vendor further agrees that nothing herein will be construed as the creation of a partnership or joint enterprise between City and Vendor. It is further understood that City will in no way be considered a Co-employer or a Joint employer of Vendor or any officers, agents, servants, employees, contractors, or subcontractors. Neither Vendor, nor any officers, agents, servants, employees, contractors, or subcontractors of Vendor will be entitled to any employment benefits from City. Vendor will be responsible and liable for any and all payment and reporting of taxes on behalf of itself, and any of its officers, agents, servants, employees, or contractors.

# 8. <u>Liability and Indemnification.</u>

- 8.1 <u>LIABILITY</u> VENDOR WILL BE LIABLE AND RESPONSIBLE FOR ANY AND ALL PROPERTY LOSS, PROPERTY DAMAGE AND PERSONAL INJURY, INCLUDING, INCLUDING, BUT NOT LIMITED TO, DEATH, TO ANY AND ALL PERSONS, OF ANY KIND OR CHARACTER, WHETHER REAL OR ASSERTED, TO THE EXTENT CAUSED BY THE NEGLIGENT ACT(S) OR OMISSION(S), MALFEASANCE OR INTENTIONAL MISCONDUCT OF VENDOR, ITS OFFICERS, REPRESENTATIVES, AGENTS, SERVANTS, EMPLOYEES, CONTRACTORS, OR SUBCONTRACTORS.
- 8.2 <u>GENERAL INDEMNIFICATION</u> VENDOR HEREBY COVENANTS AND AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND CITY, ITS OFFICERS, AGENTS, REPRESENTATIVES, SERVANTS, AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS OR LAWSUITS OF ANY KIND OR CHARACTER, WHETHER REAL OR ASSERTED, FOR EITHER PROPERTY DAMAGE OR LOSS (INCLUDING ALLEGED DAMAGE OR LOSS TO VENDOR'S BUSINESS AND ANY RESULTING LOST PROFITS) AND PERSONAL INJURY, INCLUDING, BUT NOT LIMITED TO, DEATH, TO ANY AND ALL PERSONS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, TO THE EXTENT CAUSED BY THE NEGLIGENT ACTS OR OMISSIONS OR MALFEASANCE OF VENDOR, ITS OFFICERS, AGENTS, REPRSENTATIVES, SERVANTS, EMPLOYEES, CONTRACTORS, OR SUBCONTRACTORS.
- 8.3 <u>INTELLECTUAL PROPERTY INDEMNIFICATION</u> Vendor agrees to defend, settle, or pay, at its own cost and expense, any claim or action against City for infringement of any patent, copyright, trade mark, trade secret, or similar property right arising from City's use of the software or documentation in accordance with this Agreement, it being understood that this agreement to defend, settle or pay will not apply if City modifies or misuses the software and/or documentation. So long as Vendor bears the cost and expense of payment for claims or actions against City pursuant to this section, Vendor will have the right to conduct the defense of any such claim or action and all negotiations for its settlement or compromise and to settle or compromise any such claim; however, City will have the right to fully participate in any and all such settlement, negotiations, or lawsuit as necessary to protect City's interest, and City agrees to cooperate with Vendor in doing so. In the event City, for whatever reason, assumes the responsibility for payment of costs and expenses for any claim or action brought against City for infringement arising under this Agreement, City

will have the sole right to conduct the defense of any such claim or action and all negotiations for its settlement or compromise and to settle or compromise any such claim; however, Vendor will fully participate and cooperate with City in defense of such claim or action. City agrees to give Vendor timely written notice of any such claim or action, with copies of all papers City may receive relating thereto. Notwithstanding the foregoing, City's assumption of payment of costs or expenses will not eliminate Vendor's duty to indemnify City under this Agreement. If the software and/or documentation or any part thereof is held to infringe and the use thereof is enjoined or restrained or, if as a result of a settlement or compromise, such use is materially adversely restricted, Vendor will, at its own expense and as City's sole remedy, either: (a) procure for City the right to continue to use the software and/or documentation; or (b) modify the software and/or documentation to make it noninfringing, provided that such modification does not materially adversely affect City's authorized use of the software and/or documentation; or (c) replace the software and documentation with equally suitable, compatible, and functionally equivalent non-infringing software and documentation at no additional charge to City; or (d) if none of the foregoing alternatives is reasonably available to Vendor terminate this Agreement, and refund all amounts paid to Vendor by City, subsequent to which termination City may seek any and all remedies available to City under law.

# Assignment and Subcontracting.

- 9.1 <u>Assignment.</u> Vendor will not assign or subcontract any of its duties, obligations or rights under this Agreement without the prior written consent of City. If City grants consent to an assignment, the assignee will execute a written agreement with City and Vendor under which the assignee agrees to be bound by the duties and obligations of Vendor under this Agreement. Vendor will be liable for all obligations of Vendor under this Agreement prior to the effective date of the assignment.
- 9.2 <u>Subcontract.</u> If City grants consent to a subcontract, the subcontractor will execute a written agreement with Vendor referencing this Agreement under which subcontractor agrees to be bound by the duties and obligations of Vendor under this Agreement as such duties and obligations may apply. Vendor must provide City with a fully executed copy of any such subcontract.
- 10. <u>Insurance</u>. Vendor must provide City with certificate(s) of insurance documenting policies of the following types and minimum coverage limits that are to be in effect prior to commencement of any Services pursuant to this Agreement:

### 10.1 Coverage and Limits

(a) Commercial General Liability:

\$1,000,000 - Each Occurrence \$2,000,000 - Aggregate

(b) Automobile Liability:

\$1,000,000 - Each occurrence on a combined single limit basis

Coverage will be on any vehicle used by Vendor, or its employees, agents, or representatives in the course of providing Services under this Agreement. "Any vehicle" will be any vehicle owned, hired and non-owned.

# (c) Worker's Compensation:

Statutory limits according to the Texas Workers' Compensation Act or any other state workers' compensation laws where the Services are being performed

# Employers' liability

\$100,000 -	Bodily Injury by accident; each accident/occurrence
\$100,000 -	Bodily Injury by disease; each employee
\$500,000 -	Bodily Injury by disease; policy limit
Professional I	Liability (Errors & Omissions):  Applicable  N/A
** ***	

\$1,000,000 - Each Claim Limit \$1,000,000 - Aggregate Limit

Professional Liability coverage may be provided through an endorsement to the Commercial General Liability (CGL) policy, or a separate policy specific to Professional E&O. Either is acceptable if coverage meets all other requirements. Coverage must be claims-made, and maintained for the duration of the contractual agreement and for two (2) years following completion of services provided. An annual certificate of insurance must be submitted to City to evidence coverage.

### 10.2 General Requirements

(d)

- (a) The commercial general liability and automobile liability policies must name City as an additional insured thereon, as its interests may appear. The term City includes its employees, officers, officials, agents, and volunteers in respect to the contracted services.
- (b) The workers' compensation policy must include a Waiver of Subrogation (Right of Recovery) in favor of City.
- (c) A minimum of Thirty (30) days' notice of cancellation or reduction in limits of coverage must be provided to City. Ten (10) days' notice will be acceptable in the event of non-payment of premium. Notice must be sent to the City in accordance with the notice provision of this Agreement.
- (d) The insurers for all policies must be licensed and/or approved to do business in the State of Texas. All insurers must have a minimum rating of A-VII in the current A.M. Best Key Rating Guide, or have reasonably equivalent financial strength and solvency to the satisfaction of Risk Management. If the rating is below that required, written approval of Risk Management is required.
- (e) Any failure on the part of City to request required insurance documentation will not constitute a waiver of the insurance requirement.

- (f) Certificates of Insurance evidencing that Vendor has obtained all required insurance will be delivered to the City prior to Vendor proceeding with any work pursuant to this Agreement.
- 11. **Compliance with Laws, Ordinances, Rules and Regulations.** Vendor agrees that in the performance of its obligations hereunder, it will comply with all applicable federal, state and local laws, ordinances, rules and regulations and that any work it produces in connection with this Agreement will also comply with all applicable federal, state and local laws, ordinances, rules and regulations. If City notifies Vendor of any violation of such laws, ordinances, rules or regulations, Vendor must immediately desist from and correct the violation.
- 12. Non-Discrimination Covenant. Vendor, for itself, its personal representatives, assigns, contractors, subcontractors, and successors in interest, as part of the consideration herein, agrees that in the performance of Vendor's duties and obligations hereunder, it will not discriminate in the treatment or employment of any individual or group of individuals on any basis prohibited by law. IF ANY CLAIM ARISES FROM AN ALLEGED VIOLATION OF THIS NON-DISCRIMINATION COVENANT BY VENDOR, ITS PERSONAL REPRESENTATIVES, ASSIGNS, CONTRACTORS, SUBCONTRACTORS, OR SUCCESSORS IN INTEREST, VENDOR AGREES TO ASSUME SUCH LIABILITY AND TO INDEMNIFY AND DEFEND CITY AND HOLD CITY HARMLESS FROM SUCH CLAIM.
- 13. <u>Notices</u>. Notices required pursuant to the provisions of this Agreement will be conclusively determined to have been delivered when (1) hand-delivered to the other party, its agents, employees, servants or representatives, (2) delivered by facsimile with electronic confirmation of the transmission, or (3) received by the other party by United States Mail, registered, return receipt requested, addressed as follows:

To CITY:

City of Fort Worth

Attn: Assistant City Manager

200 Texas Street

Fort Worth, TX 76102-6314

Facsimile: (817) 392-8654

With copy to Fort Worth City Attorney's Office at

same address

To VENDOR:

Shermco Industries, Inc.

Kim Gawronski, Sr. Director Legal Risk

2425 E. Pioneer Drive

Irving, TX 75061

Facsimile:

- 14. <u>Solicitation of Employees</u>. Neither City nor Vendor will, during the term of this Agreement and additionally for a period of one year after its termination, solicit for employment or employ, whether as employee or independent contractor, any person who is or has been employed by the other during the term of this Agreement, without the prior written consent of the person's employer. Notwithstanding the foregoing, this provision will not apply to an employee of either party who responds to a general solicitation of advertisement of employment by either party.
- 15. <u>Governmental Powers</u>. It is understood and agreed that by execution of this Agreement, City does not waive or surrender any of its governmental powers or immunities.

- 16. <u>No Waiver</u>. The failure of City or Vendor to insist upon the performance of any term or provision of this Agreement or to exercise any right granted herein does not constitute a waiver of City's or Vendor's respective right to insist upon appropriate performance or to assert any such right on any future occasion.
- 17. **Governing Law / Venue.** This Agreement will be construed in accordance with the laws of the State of Texas. If any action, whether real or asserted, at law or in equity, is brought pursuant to this Agreement, venue for such action will lie in state courts located in Tarrant County, Texas or the United States District Court for the Northern District of Texas, Fort Worth Division.
- 18. <u>Severability</u>. If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired.
- 19. Force Majeure. City and Vendor will exercise their best efforts to meet their respective duties and obligations as set forth in this Agreement, but will not be held liable for any delay or omission in performance due to force majeure or other causes beyond their reasonable control, including, but not limited to, compliance with any government law, ordinance, or regulation; acts of God; acts of the public enemy; fires; strikes; lockouts; natural disasters; wars; riots; epidemics or pandemics; government action or inaction; orders of government; material or labor restrictions by any governmental authority; transportation problems; restraints or prohibitions by any court, board, department, commission, or agency of the United States or of any States; civil disturbances; other national or regional emergencies; or any other similar cause not enumerated herein but which is beyond the reasonable control of the Party whose performance is affected (collectively, "Force Majeure Event"). The performance of any such obligation is suspended during the period of, and only to the extent of, such prevention or hindrance, provided the affected Party provides notice of the Force Majeure Event, and an explanation as to how it prevents or hinders the Party's performance, as soon as reasonably possible after the occurrence of the Force Majeure Event, with the reasonableness of such notice to be determined by the City in its sole discretion. The notice required by this section must be addressed and delivered in accordance with Section 13 of this Agreement.
- 20. <u>Headings not Controlling</u>. Headings and titles used in this Agreement are for reference purposes only, will not be deemed a part of this Agreement, and are not intended to define or limit the scope of any provision of this Agreement.
- 21. **Review of Counsel.** The parties acknowledge that each party and its counsel have reviewed and revised this Agreement and that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement or Exhibits A, B, and C.
- 22. <u>Amendments / Modifications / Extensions</u>. No amendment, modification, or extension of this Agreement will be binding upon a party hereto unless set forth in a written instrument, which is executed by an authorized representative of each party.
- 23. <u>Counterparts</u>. This Agreement may be executed in one or more counterparts and each counterpart will, for all purposes, be deemed an original, but all such counterparts will together constitute one and the same instrument.
- 24. <u>Warranty of Services</u>. Vendor warrants that its services will be of a high quality and conform to generally prevailing industry standards. City must give written notice of any breach of this warranty within thirty (30) days from the date that the services are completed. In such event, at Vendor's

option, Vendor will either (a) use commercially reasonable efforts to re-perform the services in a manner that conforms with the warranty, or (b) refund the fees paid by City to Vendor for the nonconforming services.

- 25. <u>Immigration Nationality Act.</u> Vendor must verify the identity and employment eligibility of its employees who perform work under this Agreement, including completing the Employment Eligibility Verification Form (I-9). Upon request by City, Vendor will provide City with copies of all I-9 forms and supporting eligibility documentation for each employee who performs work under this Agreement. Vendor must adhere to all Federal and State laws as well as establish appropriate procedures and controls so that no services will be performed by any Vendor employee who is not legally eligible to perform such services. VENDOR WILL INDEMNIFY CITY AND HOLD CITY HARMLESS FROM ANY PENALTIES, LIABILITIES, OR LOSSES DUE TO VIOLATIONS OF THIS PARAGRAPH BY VENDOR, VENDOR'S EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, OR AGENTS. City, upon written notice to Vendor, will have the right to immediately terminate this Agreement for violations of this provision by Vendor.
- Ownership of Work Product. City will be the sole and exclusive owner of all reports, work papers, procedures, guides, and documentation that are created, published, displayed, or produced in conjunction with the services provided under this Agreement (collectively, "Work Product"). Further, City will be the sole and exclusive owner of all copyright, patent, trademark, trade secret and other proprietary rights in and to the Work Product. Ownership of the Work Product will inure to the benefit of City from the date of conception, creation or fixation of the Work Product in a tangible medium of expression (whichever occurs first). Each copyrightable aspect of the Work Product will be considered a "work-madefor-hire" within the meaning of the Copyright Act of 1976, as amended. If and to the extent such Work Product, or any part thereof, is not considered a "work-made-for-hire" within the meaning of the Copyright Act of 1976, as amended, Vendor hereby expressly assigns to City all exclusive right, title and interest in and to the Work Product, and all copies thereof, and in and to the copyright, patent, trademark, trade secret, and all other proprietary rights therein, that City may have or obtain, without further consideration, free from any claim, lien for balance due, or rights of retention thereto on the part of City.
- 27. Signature Authority. The person signing this Agreement hereby warrants that they have the legal authority to execute this Agreement on behalf of the respective party, and that such binding authority has been granted by proper order, resolution, ordinance or other authorization of the entity. This Agreement and any amendment hereto, may be executed by any authorized representative of Vendor. Each party is fully entitled to rely on these warranties and representations in entering into this Agreement or any amendment hereto.
- 28. Change in Company Name or Ownership. Vendor must notify City's Purchasing Manager, in writing, of a company name, ownership, or address change for the purpose of maintaining updated City records. The president of Vendor or authorized official must sign the letter. A letter indicating changes in a company name or ownership must be accompanied with supporting legal documentation such as an updated W-9, documents filed with the state indicating such change, copy of the board of director's resolution approving the action, or an executed merger or acquisition agreement. Failure to provide the specified documentation so may adversely impact future invoice payments.
- 29. No Boycott of Israel. If Vendor has fewer than 10 employees or this Agreement is for less than \$100,000, this section does not apply. Vendor acknowledges that in accordance with Chapter 2271 of the Texas Government Code, the City is prohibited from entering into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The terms "boycott Israel"

and "company" has the meanings ascribed to those terms in Section 2271 of the Texas Government Code. By signing this Agreement, Vendor certifies that Vendor's signature provides written verification to the City that Vendor: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the Agreement.

- 30. Prohibition on Boycotting Energy Companies. Vendor acknowledges that, in accordance with Chapter 2274 of the Texas Government Code, as added by Acts 2021, 87th Leg., R.S., S.B. 13, § 2, the City is prohibited from entering into a contract for goods or services that has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the City with a company with 10 or more full-time employees unless the contract contains a written verification from the company that it: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract. The terms "boycott energy company" and "company" have the meaning ascribed to those terms by Chapter 2274 of the Texas Government Code, as added by Acts 2021, 87th Leg., R.S., S.B. 13, § 2. To the extent that Chapter 2274 of the Government Code is applicable to this Agreement, by signing this Agreement, Vendor certifies that Vendor's signature provides written verification to the City that Vendor: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of this Agreement.
- 31. **Prohibition on Discrimination Against Firearm and Ammunition Industries**. Vendor acknowledges that except as otherwise provided by Chapter 2274 of the Texas Government Code, as added by Acts 2021, 87th Leg., R.S., S.B. 19, § 1, the City is prohibited from entering into a contract for goods or services that has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the City with a company with 10 or more full-time employees unless the contract contains a written verification from the company that it: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. The terms "discriminate," "firearm entity" and "firearm trade association" have the meaning ascribed to those terms by Chapter 2274 of the Texas Government Code, as added by Acts 2021, 87th Leg., R.S., S.B. 19, § 1. To the extent that Chapter 2274 of the Government Code is applicable to this Agreement, by signing this Agreement, Vendor certifies that Vendor's signature provides written verification to the City that Vendor: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate against a firearm entity or firearm trade association during the term of this Agreement.
- 32. <u>Electronic Signatures</u>. This Agreement may be executed by electronic signature, which will be considered as an original signature for all purposes and have the same force and effect as an original signature. For these purposes, "electronic signature" means electronically scanned and transmitted versions (e.g. via pdf file or facsimile transmission) of an original signature, or signatures electronically inserted via software such as Adobe Sign.
- 33. **Entirety of Agreement.** This Agreement contains the entire understanding and agreement between City and Vendor, their assigns and successors in interest, as to the matters contained herein. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with any provision of this Agreement.

(signature page follows)

#### IN WITNESS WHEREOF, the parties hereto have executed this Agreement in multiples.

By: Dana Burghdoff
Dana Burghdoff (Afr 26, 202014:42 CDT)

Name: Dana Burghdoff

City:

Title: Assistant City Manager

Date:

Vendor:

—DocuSigned by: Kim Gawronski

By: 1770F0E40ED44E

Title: Sr. Director, Legal and Risk

Date: 24-Apr-2023 | 1:00 PM PDT

#### FOR CITY OF FORT WORTH INTERNAL PROCESSES:

#### Approval Recommended:

By: Christopher Harder
Christopher Harder (Apr 25, 2023 09:12 CDT)

Name: Chris Harder

Title: Water Department Director

Approved as to Form and Legality:

By: DBlack (Apr 25, 2023 17:07 CDT)

Name: Doug Black

Title: Assistant City Attorney

**Contract Authorization:** 

M&C: 23-0267

Form 1295: 2023-984094

#### **Contract Compliance Manager:**

By signing I acknowledge that I am the person responsible for the monitoring and administration of this contract, including ensuring all performance and reporting requirements.

By: Shatabya Bergland
Name: Shatabya Bergland

Title: Contract Compliance Specialist

City Secretary:

By: Januare & Strate

Name: Jannette Goodall Title: City Secretary

> OFFICIAL RECORD CITY SECRETARY FT. WORTH, TX

# EXHIBIT A SCOPE OF SERVICES

See next page.

#### PART 2

#### SCOPE OF SERVICES/SPECIFICATIONS

#### 1.0 SCOPE

- 1.1 The City of Fort Worth (City) seeks bids to establish an annual agreement for electric motor repair and replacement services for the Water Department on an "as needed" basis. Prospective bidders should ensure they download all attachments for complete responses and understanding of the agreement the City intends to award from this solicitation. The successful bidder(s), known hereafter as "Contractor"/" Vendor."
- 1.2 This Agreement shall begin on the date the City Secretary Contract is executed by the Assistant City Manager ("Effective Date") and shall expire one year from that date, ("Expiration Date"), unless terminated earlier in accordance with this Agreement ("Initial Term"). Upon the expiration of the Initial Term, the Agreement shall automatically renew under the same terms and conditions for up to four (4) one-year renewal periods, unless City or Vendor provides the other party with notice of non-renewal at least 60 days before the expiration of the Initial Term or renewal period. However, if funds are not appropriated, the City may cancel the Agreement 30 calendar days after providing written notification to the Contractor / Vendor.
- Unit prices shall include all costs associated with the goods and services, including but not limited to shipping, handling, fuel charges, fees and certifications fees. NO ADDITIONAL CHARGES WILL BE ACCEPTED OR PAID BY THE CITY.
- 1.4 Following the award, additional services of the same general category that could have been encompassed in the award of this Agreement, and that are not already on the Agreement, may be added based on the discount offered and price sheet provided with the bid.
- 1.5 Any specifications/requirements that have been omitted from this scope of service that are clearly necessary or in conformance shall be considered a requirement although not directly specified or called for in the scope of services.
- 1.6 The submission of a bid by the bidder shall be considered evidence of compliance with these requirements.

#### 2.0 TENTATIVE SCHEDULE OF EVENTS

TASK	DATE		
ITB Release Date	February 1, 2023		
Pre-Bid Conference	February 7, 2023 at 2PM (Local Time)		
Deadline for Questions	February 10, 2023 at 5PM (Local Time)		
Answers Posted	February 15, 2023		
ITB Responses Due Date	February 23, 2023 AT 1:30 p.m. (Loca Time)		
Recommended Vendor Selection	March 2023		
Contract Execution	April 2023		

#### 8.0 REQUIRED EQUIPMENT

- 8.1 Equipment required includes, but is not limited to the following:
  - 8.1.1 Lifting equipment to safely move electric motors and accessories;
  - 8.1.2 Cleaning capabilities;
  - 8.1.3 Machine tools;
  - 8.1.4 Welding equipment;
  - 8.1.5 Hydraulic bearing pullers;
  - 8.1.6 Lathes, milling machine, drill press;
  - 8.1.7 Dynamic balancing and trim equipment and capabilities;
  - 8.1.8 Stator core loss tester;
  - 8.1.9 Temperature regulated burn off oven and baking oven;
  - 8.1.10 Class H insulating materials of sufficient quantity to treat new windings, rewind area must be clean and temperature-controlled environment;
  - 8.1.11 Sufficient inventory of inverter-duty rated magnet wire and coil winding equipment;
  - 8.1.12 Dip tank;
  - 8.1.13 Vacuum pressure impregnation system;
  - 8.1.14 DC Hipot (high potential) tester, and
  - 8.1.15 Inventory and recordkeeping system necessary to trace, monitor, log, and provide reports on all repair work. Records shall be maintained a minimum of three (3) years.

#### 9.0 ELECTRICAL MOTOR SPECIFICATIONS

- 9.1 The City's electric motor inventory includes various frames, orientations, makes, and models ranging from two (2) Horse Power (HP) to 2500 HP running on voltages ranging from 120 volts to 4160 volts. Current electric motor inventory includes over 500 electric motors, located at various water/wastewater plants and pump stations.
- 9.2 The Contractor shall be selected for job order tasks based on repair/replacement prices, onsite trouble shooting ability (when required), estimated speed of repairs, familiarity with equipment, and capabilities of shop. It is anticipated that not all contractors shall have the shop ability to repair, troubleshoot, and test the entire range of motor sizes owned by the City. The Contractor shall only be considered for tasks which they have the capability to perform.
- 9.3 Each new motor shall be provided with two operation and maintenance manuals, which shall include technical drawings and performance data. The Contractor start-up services shall be compensated under the hourly rate on the Price Submittal Page.

- 9.4 This contract in no way restricts the City from the option of taking competitive bids for the procurement of new motors, especially large or custom motors.
- 9.5 Price for motor replacement shall be based on a percentage of the average Vaughen's "user" price. The "user" price is defined as the industry wide average price that motor repair shops charge a customer for a new motor.
- 9.6 The Contractor shall provide shop drawings to the City showing motor lay lengths, orientation of cable entry, and operating parameters prior to issuance of purchase order.

#### 10.0 CONTRACTOR'S RESPONSIBILITIES

- 10.1 The Contractor shall-
  - 10.1.1 Provide the City materials and workmanship of the highest industry standard. Unless otherwise agreed to, parts, materials and equipment purchased and installed through this contract shall be new and subject to inspection and approval by the City Representative prior to delivery.
  - 10.1.2 Be responsible for all City equipment while it is in the Contractor's custody.
  - 10.1.3 Be required to perform/provide on-site technical assistance and/or troubleshooting, as well as preventive and predictive maintenance upon request by the City. Field services shall be compensated at the hourly rate listed on the Price Submittal page.
  - 10.1.4 Provide work, services, technical expertise, materials, and equipment normally associated with pump and equipment motors.
  - 10.1.5 Perform motor repair services both on-site and at the Contractor's repair facility.
  - 10.1.6 Provide rewind, repair and replacement of various types of electric motors. Electric motor work shall be performed on, but not restricted to, pumps, water and wastewater treatment equipment.
  - 10.1.7 Provide an acceptable level of service in terms of cost, time and workmanship. If any issues regarding the services or parts are found to be unsatisfactory, the Contractor shall be given an opportunity to correct. Failure of the Contractor to correct services or parts to a satisfactory condition shall be considered grounds for terminating Agreement between the Contractor and the City.
  - 10.1.8 Inform the City when he/she arrives on site and leaves, and report his/her hours worked though completion of a work summary sheet. Hourly rates for field work will commence from the time the Vendor arrives on site and continue until the Vendor departs the site. Where appropriate, invoices shall include mileage required for pickup and delivery of equipment. Depending on the work performed, City may hold invoices until required reports are received by the City.

#### 11.0 ELECTRIC MOTOR REPAIR AND RECONDITIONING

- All repaired or completely reconditioned motors shall have a separate metal tag screwed or riveted next to the manufacturers I.D. metal plate with the Contractor's name, address, phone number, and date of motor repair.
- 11.2 Motor reconditioning shall correspond with the scope of work outlined under Vaughen's

published scope of work, to include the following basic work components:

- 11.2.1 Disassemble, inspect and perform electrical tests;
- 11.2.2 Steam clean, dip and bake, and
- 11.2.3 Assemble, test, and paint.
- 11.3 Upon completion and before delivery is taken on a motor overhaul or rewind, the motor or stator shall be certified as surge comparison tested for winding condition. This shall be performed as part of the basic reconditioning service.
- 11.4 Observations, measurements, and test results shall be provided to the City in an abbreviated report as part of this base work.
- 11.5 Costs for the City requested additional work required to recondition and/or repair motors, to include furnishing and installing two new ball bearings, dynamically balancing the rotor, bore and bush bracket, and/or metallizing one surface will be based on percentage of the Vaughen's most current published price.
- 11.6 Costs for additional work not outlined in the Vaughen's publication, to include additional machine work, testing, welding, specialty parts, etc., will be compensated based on the applicable hourly field and/or shop labor rate plus the parts and material costs.

#### 12.0 ELECTRICAL MOTOR REWINDS

- 12.1 All rewound motors shall have a separate metal tag screwed or riveted next to the manufacturers ID metal plate with the Contractor's name, address, phone number, and date of motor rewind.
- 12.2 Upon completion and before delivery is taken on a motor rewind, the motor or stator shall be certified as surge comparison tested for winding condition. This shall be performed as part of the basic rewinding service.
- 12.3 Motor rewinding shall correspond to the scope of work outlined under the most current Vaughen's published scope of work, to include the following basic work components:
  - 12.3.1 Dismantle, inspect, test, strip and clean;
  - 12.3.2 Make and install insulation;
  - 12.3.3 Make and insert coils, and
  - 12.3.4 Connect, dip and bake random wound motors, vacuum pressure impregnate form-wound motors. Provide written report to the City documenting observations, measurements, and test results as part of base work.
- 12.4 The minimum class of insulation shall be Class H, as specified by NEMA.
- 12.5 Costs for the City requested additional work required to recondition and/or repair motors, to include furnishing and installing two new ball bearings, dynamically balancing the rotor, bore and bush bracket, and metallizing one surface shall be based on percentage of the Vaughen's most current published price.
- 12.6 Costs for additional work not outlined in the Vaughen's publication, to include mechanical

repairs, machine work, testing, welding, specialty parts, etc., shall be compensated based on the applicable hourly field and/or shop labor rate plus the parts and material costs.

#### 13.0 PREDICTIVE MAINTENANCE AND DIAGNOSTICS- ELECTRIC MOTORS AND MOTOR CIRCUITS

- 13.1 Predictive maintenance and diagnostics for electric motors and circuits may include, but not be limited to the following:
  - 13.1.1 Vibration testing;
  - 13.1.2 Infrared thermography;
  - 13.1.3 Insulation resistance, polarization index, DC HiPot, and surge tests;
  - 13.1.4 Lubrication and particle wear analysis, and
  - 13.1.5 Electrical, performance and efficiency analysis.
- 13.2 Field work to perform predictive maintenance testing and analysis will be paid at the hourly rate listed on the Price Submittal page.
- 13.3 Follow up data analysis, evaluation, recommendations, and report writing will be paid at the hourly rate on the Price Submittal page.
- 13.4 Testing that occurs at the shop will be paid at the unit price for shop labor listed on the Price Submittal page.

#### 14.0 MECHANICAL REPAIRS

- 14.1 Repair shops shall have shop machining capabilities to troubleshoot and make mechanical repairs to motor, couplings, shafts, and miscellaneous motor and drive components, to include ancillary items such as gearboxes.
- 14.2 Mechanical repairs to motors and motor components will be compensated at the applicable shop labor rate plus parts and materials cost markup from the Price Submittal page.
- 14.3 When instructed by the City, mechanical repairs to electric motors shall be vibration tested prior to delivery.

#### 15.0 REPAIR ESTIMATES

- 15.1 The Contractor shall provide an estimate for repair in writing before proceeding with any repair work.
- 15.2 Estimates will be provided not later than seventy-two (72) hours after the Contractor has received the motor.
- 15.3 Estimates will include the cost of a new motor as an alternative, based on the percentage of the Vaughen's Price Index "user" price included in the bid proposal.
- 15.4 The City reserves the right to replace the motor rather than repair it. No additional costs other than the shop labor costs for tear down and assessment time shall be charged to the City if the motor is not repaired.
- 15.5 All non-repaired motors and parts will be returned to the City.

15.6 In some cases, field troubleshooting and the Contractor recommendations and a repair estimate shall occur prior to removing the motor and delivery to the Contractor's shop. In cases where a field investigation is required, the Contractor will be compensated at the applicable hourly rates on the Price Submittal page.

#### 16.0 WARRANTY

- The Contractor shall warrant all equipment and parts furnished as new under this contract are newly manufactured and free from defects in material and workmanship for no less than one (1) year from the date the equipment is delivered.
- 16.2 The Contractor shall warrant that all rebuilt or repaired equipment and parts furnished under this contract shall meet manufacturer's specifications and are free from defects in material and workmanship for no less than one (1) year from the date the equipment is delivered.
- 16.3 The Contractor shall warrant all labor involved in the rewind and repair of electric motors and associated equipment for no less than one (1) year from the date the equipment is delivered. This includes, but is not limited to, welding and machine work.
- 16.4 The Contractor shall warrant all new motors purchased under this contract for a period of one (1) year against defects.
- Warranty shall include accepted trade standards of quality, fitness for the intended uses, and conformance to specifications.
- 16.6 All defective products will be replaced and exchanged by the Contractor. The cost of transportation, unpacking, inspection, re-packing, re-shipping or other like expenses will be paid by the Contractor.
- 16.7 Contractor agrees to repair or replace promptly, on a one-for-one basis without additional cost to the City of Fort Worth, any and all defective work and products. The City defines "prompt" repair or replacement to be within twenty- four (24) hours after notification by authorized City personnel.
- 16.8 With respect to all warranties, expressed or implied, from manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall:
  - 16.8.1 Obtain all warranties that would be obtained in normal commercial practice;
  - 16.8.2 Enforce all warranties for the benefit of the City of Fort Worth.

#### 17.0 CITY RESPONSIBLITIES

- 17.1 Shipping/receiving reports provided by the Contractor will be signed by appropriate City of Fort Worth personnel to verify custody/acceptance of equipment.
- 17.2 Upon inspection of services completed, the City personnel shall notify the Contractor if any issues regarding the services or parts are found to be unsatisfactory.

#### 18.0 PERFORMANCE OF SERVICES

18.1 On-site motor repairs shall be performed at the following locations:

- 18.1.1 Eagle Mountain Water Treatment Plant (WTP) 6801 Bowman Roberts Road Fort Worth, TX 79179
- 18.1.2 Rolling Hills WTP 2500 SE Loop 820 Fort Worth, TX 76140
- 18.1.3 North & South Holly WTP 1500 11th Avenue Fort Worth, TX 76102
- 18.1.4 Village Creek Water Reclamation Facility 4500 Wilma Lane Arlington, TX 76012
- 18.1.5 Westside WTP 12200 Old Weatherford Road Fort Worth, TX 76008
- 18.1.6 Various Water Distribution pump stations and tanks that will be provided to the vendor upon award.
- 18.2 The Contractor shall be responsible for pick-up and delivery of all motors when and where requested by the City.
- 18.3 The Contractor shall perform all pick-up and delivery within twenty-four (24) hours of notification by the City.
- 18.4 The Contractor shall be compensated for pickup and delivery of motor/equipment at the per mile fee included on the Price Submittal page. This fee shall include all costs associated with the pickup and delivery of the equipment.
- 18.5 Hourly rates shall be invoiced to the nearest ¼ hour.
- 18.6 Normal business hours are Monday through Friday, 7:00AM- 4:00PM.
- 18.7 Overtime/emergencies are Monday through Friday 4:01PM- 6:59AM and weekends.

#### 19.0 LAWS, REGULATIONS, AND ORDINANCES

19.1 The Vendor shall be responsible for meeting all Federal: laws, ordinances and regulations; State: laws, ordinance and regulations; County: laws, ordinances and regulations; and City: laws, ordinances, and regulations for safety of people, environment, and property. This includes, but is not limited to, all Federal, State, County, and City Agencies, Administrations and Commissions such as the Environmental Protection Agency (EPA), Occupational Safety and Health Administration (OSHA), and the Texas Commission on Environmental Quality (TCEQ). In the event any law, regulation or ordinance becomes effective after the start of this Agreement, the Vendor is required to comply with new policy. Any mandates requiring the City to comply with new guidelines will also require the Vendor to comply.

#### 20.0 INVOICING REQUIREMENTS

20.1 The City of Fort Worth operates an automated invoicing system (AIM).

- 20.2 The Contractor shall send invoices electronically to our centralized Accounts Payable department invoice email address: <a href="mailto:supplierinvoices@fortworthtexas.gov">supplierinvoices@fortworthtexas.gov</a>. This email address is <a href="mailto:not monitored">not monitored</a> so please do not send correspondence to this email address. The sole purpose of the supplier invoices email address is to receipt and process supplier invoices.
- 20.3 Please include the following on the subject line of your e-mail: vendor name, invoice number, and PO number, separated by an underscore (ex: Example, Inc.\_123456\_FW013-0000001234)
- 20.4 To ensure the system can successfully process your invoice in an expedient manner, please adhere to the following requirements:
  - · All invoices must be either a PDF or TIFF format.
  - Image quality must be at least 300 DPI (dots per inch).
  - Invoices must be sent as an attachment (i.e. no invoice in the body of the email).
  - One invoice per attachment (includes PDFs). Multiple attachments per email is acceptable but each invoice must be a separate attachment.
  - Please do not send handwritten invoices or invoices that contain handwritten notes.
  - Dot matrix invoice format is not accepted.
  - · The invoice must contain the following information:
    - Supplier Name and Address;
    - Remit to Supplier Name and Address, if different;
    - Applicable City Department business unit# (i.e. FW013)
    - Complete City of Fort Worth PO number (i.e. the PO number must contain all preceding zeros);
    - Invoice number;
    - Invoice date; and
    - Invoices should be submitted after delivery of the goods or services.
- 20.5 To prevent invoice processing delays, please do not send invoices by mail and email and please do not send the same invoice more than once by email to <a href="mailto:supplierinvoices@fortworthtexas.gov">supplierinvoices@fortworthtexas.gov</a>. To check on the status of an invoice, please contact the City Department ordering the goods/services or the Central Accounts Payable Department by email at: <a href="mailto:ZZ FIN AccountsPayable@fortworthtexas.gov">ZZ FIN AccountsPayable@fortworthtexas.gov</a>.
- 20.6 If you are unable to send your invoice as outlined above at this time, please send your invoice to our centralized Accounts Payable department instead of directly to the individual city department. This will allow the city staff to digitize the invoice for faster processing.
- 20.7 If electronic invoicing is not possible, you may send your paper invoice to: City of Fort Worth

Attn: FMS Central Accounts Payable

200 Texas Street

Fort Worth, Texas, 76102

The City's goal is to receive 100% of invoices electronically so that all supplier payments are processed efficiently. To achieve this goal, we need the Contractor's support.

If Contractor has any questions, please contact the Accounts Payable team at (817) 392-2451 or by email to ZZ FIN AccountsPayable@fortworthtexas.gov.

20.8 Contractor shall not include Federal, State of City sales tax in its invoices. City shall furnish a tax exemption certificate upon Vendor's request.

#### 21.0 UNIT PRICE ADJUSTMENT

- Vendor may request a Price Adjustment based on Price Adjustment Verification up to one time Quarterly. Price Adjustment means an unplanned or unanticipated change, upward or downward, from the established contract price that is supported by demonstrated Price Adjustment Justification. A request for a Price Adjustment must be initiated by the Vendor. Price Adjustments shall not be allowed more frequently than once Quarterly. It is within the sole discretion of the City to determine whether an adjustment is necessary and/or acceptable.
- 21.2 Quarterly means the City's Fiscal year quarters, being each of the three (3) month periods the first of which begins October 1. Quarter (Q) 1: October 1 December 31; Q2: Jan 1 March 31; Q3P: April 1 June 30; Q4: July 1 September 30.
- 21.3 Price Adjustment Justification means documentation supporting a requested Price Adjustment and showing an objectively verifiable basis for a change in price due to the documented impact of economic conditions on labor, equipment, or materials. Examples of possible Price Adjustment Justification include, but are not limited to, cost indexes, and/or updated supplier price sheets. It is within the sole discretion of the City to determine whether Price Adjustment Justification is sufficient and/or acceptable.
- 21.4 The Vendor must submit its Price Adjustment request, in writing, at least 60 days before the effective period (1st day of a new quarter). The Vendor must provide all Price Adjustment Justification, as defined above, at the time of its request for a Price Adjustment.
- 21.5 If the City, in its sole discretion, concludes that the requested Price Adjustment is unreasonable or not fully supported by adequate Price Adjustment Justification, the City reserves the right to adjust the rate increase, or reject the requested Price Adjustment in its entirety and allow the contract to expire at the end of the contract term. If the City elects not to accept a requested Price Adjustment, the Purchasing Division may issue a new solicitation.
- 21.6 Prices offered shall be used for bid analysis and for Agreement pricing. In cases of errors in extensions or totals, the unit prices offered will govern. Upon expiration of the Agreement term the successful bidder, agrees to hold over under the terms and conditions of this Agreement for a reasonable period of time to allow the City to re-bid an Agreement, not to exceed ninety (90) days. Vendor will be reimbursed for this service at the prior Agreement rate(s). Vendor shall remain obligated to the City under all clauses of this Agreement that expressly or by their nature extends beyond and survives the expiration or termination of this Agreement.
- 21.7 Delivery of goods and/or services shall not be suspended by the Vendor without a 30-day prior written notice to the Purchasing Manager.
- 21.8 Only Published price changes will be accepted. Prices that were in effect at the time of order placement shall take precedence.
- 21.9 To submit a quarterly unit price adjustment request, email the proposed revised line item pricing and justification for the price change to <a href="mailto:FMSPurchasingResponses@fortworthtexas.gov">FMSPurchasingResponses@fortworthtexas.gov</a>.
  - 21.8.1 Emails must include "Quarterly Unit Price Adjustment Request" and the bid number on the subject line to be considered. For example: "Quarterly Unit Price Adjustment Request- Bid No. 23-0021."

#### 22.0 PERFORMANCE

22.1 Failure of the City to insist in any one or more instances upon performance of any of the terms and conditions of this Agreement shall not be construed as a waiver or relinquishment of the future performance of any terms and conditions, but the Vendor's obligation with respect to such performance shall continue in full force and effect.

#### 23.0 SUBCONTRACTING

23.1 No subcontracting of the work under this contract will be allowed without written permission from the City.

#### 24.0 HAZARDOUS CONDITIONS

- 24.1 The Vendor is required to notify the City immediately of any hazardous conditions and/or damage to any property.
- 24.2 Hazardous materials shall be handled with care and workers shall wear Personal Protective Equipment (PPE) while handling hazardous material. If there are questions regarding how to dispose of materials, the Contractor shall contact City of Fort Worth Code Compliance at 817-392-1234.

#### 25.0 CONTRACT ADMINISTRATION AND TERMINATION

- 25.1 Contract administration will be performed by the City Department. In the event the Vendor fails to perform according to the terms of the agreement, The Department head or his/her designee will notify the Vendor, in writing, of its failures. A meeting may be arranged to discuss the Vendor's deficiencies. A written cure notice may be prepared giving the Vendor 14 calendar days to cure any deficiency.
- 25.2 In the event the Vendor continues with unsatisfactory performance, the department will promptly notify the Senior Purchasing Manager who will take appropriate action to cure the performance problem(s), which could include cancellation, termination for convenience or default. If the agreement is terminated for default, the Vendor may be held liable for excess cost and/or liquidated damages.
- 25.3 The Vendor will be paid only those sums due and owing under the agreement for services satisfactorily rendered, subject to offset for damages and other amounts which are, or which may become, due and owing to the City.
- 25.4 The City reserves the right to terminate this agreement, or any part hereof, for its sole convenience. In the event of such termination, the Vendor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subVendors to cease work. Subject to the terms of this agreement, the Vendor shall be paid a percentage of the agreement price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Vendor can demonstrate to the satisfaction of the City using its standard record keeping system, have resulted from the termination. However, in no event shall the total of all amounts paid to the Vendor exceed the agreement price. The Vendor shall not be reimbursed for any profits which may have been anticipated, but which have not been earned up to the date of termination.

#### 26.0 RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

26.1 If the Federal award meets the definition of "funding eCFR — Code of Federal Regulations agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the

# EXHIBIT B PAYMENT SCHEDULE

See next page.



### PRICE SUBMITTAL

Event ID CFW01-23-0021				Page 4
Event Round	Version			
1	1			
Event Name ITB Electric Mot	or Repair and	Replacement	Services	
Start Time		Finish Time		
02/01/2023 08:00	:00 CST	02/23/2023	13:30:00 CST	

**PUBLIC EVENT DETAILS** Invited:

Submit To: City of Fort Worth
FINANCIAL MANAGEMENT SERVICES
FINANCE - City Hall Purchasing
200 Texas St. (Lower Level Rm 1500)
Fort Worth TX 76102-6314

**United States** 

Email: FMSPurchasingResponses@fortworthtexas.gov

Line; 1 Description:	Qty	Unit	UnitPrice	Total
Services, Pickup and Delivery, Motor(s), Rate per mile	550.00	DH	Office	Total
orroos, richap and behvery, motor(s), riale per mile	000.00	Bi.	1.50	825.00
ine: 2 escription:	Qty	Unit	UnitPrice	Total
ervices, Shop Labor, Regular Hours, Mon-	910.00	HR		
ri, 7:00 AM-4:00 PM			80.00	72,800.00
.ine: 3 Jescription:	04	Unit	UnitPrice	Total
Service, Shop Labor, Overtime or Emergency	<b>Qty</b> 700.00	HR	Onnerice	Total
Vork, Mon-Fri 4:01PM to 6:59 AM and All Day Saturday and Sunday	700.00	TIN	120.00	84,000.00
ine: 4		11-14	Hatebatas	T-4-1
Description: Services, Field Services, Regular Hours,	Qty 900.00	Unit HR	UnitPrice	Total
Mon-Fri, 7:00 AM-4:00 PM	900.00	лк	85.00	76,500.00
ine: 5	04	11-:4	H-I4D-I	T-4-1
escription: ervices, Field Services, Overtime or	<b>Qty</b> 700.00	Unit HR	UnitPrice	Total
mergency Work, Mon-Fri 4:01PM to 6:59	700.00	LIIX	405.00	
M and All Day Saturday and Sunday			125.00	87,500.00
ine: 6	~.	71.4	Uda	<b>-</b>
excription: ervices, On-site, Predictive Maintenance Field Services	Qty 1000.00	Unit HR	UnitPrice	Total
civices, or site, i redictive ivalification field delvices	1000.00	FIIX	85.00	85,000.00
Line: 7				1
Description:	Qty	Unit	UnitPrice	Total
ervices, Field Investigation Services	25.00	HR	Onto thee	TOTAL
<b>3</b>	10 <del></del>		85.00	2,125.00
.ine: 8			N=====================================	
Description:	Qty	Unit	UnitPrice	Total
ervices, Start up Services	25.00	HR	85.00	2,125.00
			55455651455	
ine: 9 escription:	Qty	Unit	UnitPrice	Total
ervices, Report Writing, Office	500.00	HR		17.50
nalysis & Data Interpretation			85.00	42,500.00
escription:	Qty	Unit	UnitPrice	Total
ine: 10 lescription: ervices, Recondition Motor, Per aughen's Basic Scope of Work, Cost +	Qty 125000.00	Unit DO	UnitPrice	Total



### PRICE SUBMITTAL

Event ID CFW01-23-0021				Page 5
Event Round	Version			
1	1			
Event Name				
ITB Electric Mot	or Repair and	Replacement	Services	
Start Time		Finish Time		
02/01/2023 08:00	:00 CST	02/23/2023	13:30:00	CST

Invited: **PUBLIC EVENT DETAILS** 

Submit To: City of Fort Worth
FINANCIAL MANAGEMENT SERVICES
FINANCE - City Hall Purchasing
200 Texas St. (Lower Level Rm 1500)
Fort Worth TX 76102-6314

**United States** 

Email: FMSPurchasingResponses@fortworthtexas.gov

Line: 11 Description:	Qty	Unit	UnitPrice	Total
Services, Rewind Motor, per Vaughen's	50000.00	DO		
Basic Scope of Work, Cost + 20 % Markup			10,000.00	60,000.00
Line: 12	V-2007			County (COS) (COS)
Description:	Qty	Unit	UnitPrice	Total
Services, Furnish/Install Ball Bearings, per Vaughen's Basic Scope of Work, Cost + 20_% Markup	49375.00	DO	9,875.00	59,250.00
Line: 13 Description:	Qty	Unit	UnitPrice	Total
Services, Dynamic Balance, per Vaughen's	25000.00	DO	Ontrice	iotai
Scope of Work, Cost + 50 % Markup	23000.00	ВО	12,500.00	37,500.00
Line: 14				
Description:	Qty	Unit	UnitPrice	Total
Services, Metalize One Surface, per Vaughen's Scope of Work, Cost + 100% Markup	125000.00	DO	125,000.00	250,000.00
Line: 15				
Description:	Qty	Unit	UnitPrice	Total
Services, Bore and Brush End Bracket, per Vaughen's Scope of Work, Cost + 50 % Markup	105000.00	DO	52,500.00	157,500.00
Line: 16	il <b>a r</b> i	1990		
Description: New or Replacement Motor, per Vaughen's	Qty 350000.00	Unit DO	UnitPrice	Total
Scope of Work, Cost + <u>50</u> % Markup	350000.00	ВО	175,000.00	525,000.00
Line: 17	120		WWW F	
Description:	Qty	Unit	UnitPrice	Total
Miscellaneous parts and materials, Cost +  Markup. Quantity listed is the  stimated annual cost. An example of the	225000.00	DO	40,500.00	265,500.00
otal to be listed on this line item s \$225000 + \$22,500 (10% MARKUP) = 5247,500.			Total Bid Amount:	1,948,125.00

A bid of "0" will be interpreted by the City as a no-charge (free) item and the City will not expect to pay for that item. A bid of "no bid" or no response (space left blank) will be interpreted by the City that the Offeror does not wish to bid on that item. Be advised, a "no bid" or no response may be considered as non-responsive and may result in disqualification of this bid.

Prompt Payment Discount Terms:	N/A	Percent N/A	Days (i.e. 3	3% Net	15, etc.)

#### City of Fort Worth, Texas

## Mayor and Council Communication

**DATE:** 04/11/23 **M&C FILE NUMBER:** M&C 23-0267

LOG NAME: 13P ITB 23-0021 ELECTRIC MOTOR REPAIR AND REPLACEMENT AW WATER

#### SUBJECT

(ALL) Authorize Execution of Agreements with Evans Enterprises, Inc. and Shermco Industries, Inc. for Electric Motor Repair and Replacement Services for the Water Department in a Combined Annual Amount Up to \$2,000,000.00 and Authorize Four, One-Year Renewals for the Same Annual Amount

#### RECOMMENDATION:

It is recommended that the City Council authorize execution of agreements with Evans Enterprises, Inc. and Shermco Industries, Inc. for electric motor repair and replacement services for the Water Department in a combined annual amount up to \$2,000,000.00 and authorize four, one-year renewals for the same annual amount.

#### DISCUSSION:

The Water Department approached the Purchasing Division for assistance with securing an agreement for electric motor repair and replacement services on an as-needed basis. Under the proposed agreements, the vendors will provide field and shop repairs on various sized electric motors located at water and wastewater treatment plants, and pump stations. In the event the motor cannot be repaired, the vendors will offer options of replacement motors to ensure all the electric motors are properly functioning, and do not impede the delivery of services. Purchasing issued an Invitation to Bid (ITB) that consisted of detailed specifications including the certification and licensing requirements of prospective vendors, the equipment required to perform repairs, and the response time needed to ensure repairs are performed in a timely manner.

The ITB was advertised in the *Fort Worth Star-Telegram* on February 1, 2023, February 8, 2023, February 15, 2023, and February 22, 2023. The City received three responses. However, upon evaluation one bidder, Brandon & Clark, did not score at least 50% or more of the total available points for technical criteria and, therefore, was not qualified to receive pricing points.

An evaluation panel consisting of representatives from the Water Department reviewed and scored the submittal using Best Value criteria. The individual scores were averaged for each of the criteria and the final scores are listed in the table below.

Bidder	Evaluation Factors					
	а	b	С	d	Total score	
Evans Enterprises, Inc.	13.33	10.67	14.17	35.00	72.50	
Brandon and Clark, Inc.	7.33	10.00	12.50	Bidder did not meet technical points; therefore, cost was not evaluated	Bidder did not meet technical points; therefore, cost was not evaluated	
Shermco Industries, Inc.	10.00	9.33	13.33	30.36	63.03	

#### Best Value Criteria:

- a. Contractor's availability of equipment, inventory, and personnel to perform repairs
- b. Contractor's ability to perform services in a timely manner
- c. Extent to which the services meet the City's needs (capacity to perform work such as voltages they can handle, etc.)
- d. Cost of service.

After evaluation, the panel concluded that Evans Enterprises, Inc. and Shermco Industries, Inc. presented the best value. Therefore, the panel recommends that Council authorize agreements with Evans Enterprises, Inc. and Shermco Industries, Inc. No guarantee was made that a specific amount of services would be purchased. Staff certifies that the recommended vendors' bids met specifications.

FUNDING: The maximum amount allowed under this agreement for the initial term will be \$2,000,000.00; however, the actual amount used will be based on the need of the department and available budget.

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e Wastewater Departments rollup within the Water & Sewer Fund.

DVIN-BE: A waiver of the goal for Business Equity subcontracting requirement is approved by the DVIN-BE, in accordance with the Business Equity Ordinance, because the purchase of goods or services is from sources where subcontracting or supplier opportunities are negligible.

AGREEMENT TERMS: Upon City Council approval, this agreement shall begin upon execution and expire one year from that date.

RENEWAL TERMS: This agreement may be renewed for four additional, one-year terms at the amount authorized through this M&C. This action does not require specific City Council approval provided that the City Council has appropriated sufficient funds to satisfy the City's obligations during the renewal term.

ADMINISTRATIVE CHANGE ORDER: An administrative change order or increase may be made by the City Manager up to the amount allowed by relevant law and the Fort Worth City Code and does not require specific City Council approval as long as sufficient funds have been appropriated.

#### FISCAL INFORMATION / CERTIFICATION:

The Director of Finance certifies that upon approval of the recommendation, funds are available in the current operating budget, as previously appropriated, in the Water & Sewer Fund. Prior to an expenditure being incurred, the Water Department has the responsibility to validate the availability of funds.

Submitted for City Manager's Office by: Reginald Zeno 8517

Dana Burghdoff 8018

Originating Business Unit Head: Reginald Zeno 8517

Christopher Harder 5020

Additional Information Contact: Jo Ann Gunn 8525

Alyssa Wilkerson 8357

Expedited

#### TARRANT REGIONAL WATER DISTRICT

#### **AGENDA ITEM 22**

**DATE:** June 17, 2025

SUBJECT: Consider Approval of Contract with Guidehouse Inc. for Workday

**Adaptive Planning Deployment** 

**FUNDING:** Fiscal Year 2025 General Fund - \$1,650,000

Proposed Fiscal Year 2026 General Fund - \$100,000

#### **RECOMMENDATION:**

Management recommends the approval of a contract **in an amount not-to-exceed \$207,075** with Guidehouse Inc. for implementation services of the Workday Adaptive Planning platform.

#### DISCUSSION:

The implementation of Workday Adaptive Planning is the second phase of the Enterprise Resource Planning (ERP) software implementation. Workday Adaptive Planning is Workday's budget platform.

Guidehouse Inc. has been selected to provide implementation services and was selected based on demonstrated success implementing the Workday Adaptive Planning platform in the state of Texas. This contract will be provided as part of the Omnia Cooperative Agreement cooperative purchasing contract number 01-139. Texas Government Code Chapter 791 enables the District to participate in this program.

The implementation is estimated to take six months and will be deployed by December 1<sup>st</sup>, in time the fiscal year 2027 budget cycle. Guidehouse will also provide two months of post implementation support under this agreement.

This item was reviewed by the Construction and Operations Committee on June 12, 2025.

#### Submitted By:

Mick Maguire
Chief Administrative Officer

#### TARRANT REGIONAL WATER DISTRICT

#### **AGENDA ITEM 24**

**DATE:** June 17, 2025

**SUBJECT: Executive Session** 

**FUNDING**: N/A

#### **RECOMMENDATION:**

Section 551.071 of the Texas Government Code, for Private Consultation with its Attorney about Pending or Contemplated Litigation or on a Matter in which the Duty of the Attorney to the Governmental Body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas Clearly Conflicts with this Chapter; and

Section 551.072 of the Texas Government Code, to Deliberate the Purchase, Exchange, Lease or Value of Real Property; and

Section 551.074 of the Texas Government Code, Regarding Personnel Matters

#### **DISCUSSION:**

- Pending litigation
- Real property issues
- Personnel matters

#### **Submitted By:**

Stephen Tatum General Counsel

## **Next Scheduled Board Meeting**

Special Called Meeting:
Budget Workshop and TAD Nomination
July 10, 2025 at 9:00am

Monthly Meeting: July 15, 2025 at 9:00am