



## **NORTH TEXAS MUNICIPAL WATER DISTRICT**

**501 E. Brown Street  
Wylie, Texas 75098  
(972) 442-5405**

### **Board of Directors Agenda**

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**Thursday, November 21, 2024**

**2:30 PM**

**REGULAR MEETING (IN PERSON  
AND BY VIDEOCONFERENCE)**

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Notice is hereby given pursuant to V.T.C.A., Government Code, Chapter 551, that the Board of Directors of North Texas Municipal Water District (NTMWD) will hold a regular meeting in person and by videoconference, accessible to the public, on Thursday, November 21, 2024, at 2:30 p.m., at the following meeting location: NTMWD Administrative Offices, 501 E. Brown Street, Wylie, Texas 75098.

The Presiding Officer and a quorum of the Board of Directors will be present at the meeting location or by videoconference with two-way video and audio communication between Board members participating at the meeting location and by videoconference. The public may attend the meeting in person at the meeting location. Audio and video of Board members participating by videoconference will be broadcast live and will be visible to members of the public. The meeting will be recorded and available on the NTMWD website after the meeting.

Members of the public wishing to listen to live audio of the meeting may do so by calling in at (469) 210-7159 or toll free (844) 621-3956 and entering the following access code: 928 587 040. Please note this line will not provide for two-way communication and public comment at the meeting must be made in person at the meeting location.

**I. CALL TO ORDER**

**II. INVOCATION**

**III. PLEDGE OF ALLEGIANCE**

**IV. PLEDGE OF ALLEGIANCE TO THE TEXAS FLAG**

**V. ROLL CALL/ANNOUNCEMENT OF QUORUM**

**VI. OPENING REMARKS**

- A. President's Remarks concerning current events, recognitions, conduct of meeting, posted agenda items, committee assignments, and related matters

- B. Executive Director’s Status Report concerning legislation and regulatory matters, strategic plan, budgets, current projects and ongoing programs of the District including the Regional Water System, Regional Wastewater System, Regional Solid Waste System, Watershed Protection, and Water Conservation

**A. November 2024 Board Memorandum**

[24B-11](#)

**VII. PUBLIC COMMENTS**

We welcome members, customers, and the public to participate during the public comment period of the meeting. Before the start of the meeting, speakers must complete and submit a “Public Comment Registration Form.” During this portion of the meeting speakers will be recognized by name and asked to provide their comments. The time limit is three (3) minutes per speaker, not to exceed a total of thirty (30) minutes for all speakers. The Texas Open Meetings Act prohibits the Board from discussing items not listed on the agenda, however, Board members may respond with factual or policy information.

**VIII. DISCUSSION ITEMS**

- A. Oklahoma Red River Boundary Commission Update

**IX. EXECUTIVE SESSION**

The Presiding Officer will announce that the meeting will move into closed executive session and identify the agenda items to be discussed in executive session. At the conclusion of the executive session, the public meeting will resume.

There are no scheduled Executive Session items

**X. RECONVENE INTO REGULAR SESSION**

In accordance with Texas Government Code, Chapter 551, the Board of Directors of NTMWD will reconvene into regular session to consider action, if any, on matters discussed in Executive Session.

There are no scheduled Executive Session items

**XI. CONSENT AGENDA ITEMS**

The Consent Agenda allows the Board of Directors to approve all routine, noncontroversial items with a single motion, without the need for discussion by the entire Board. Any item may be removed from consent and considered individually upon request of a Board member or NTMWD staff member.

**A. October 2024 Regular Board Meeting Minutes**

[24C-42](#)

The Executive Director and NTMWD staff recommend the Board of Directors approve the minutes of the regular Board meeting held on Thursday, October 24, 2024, as presented.

- B. Modification of Capital Projects Request [24C-43](#)**  
Recommend the Board of Directors approve the November 2024, Modification of Capital Projects Request as presented.
- C. Texoma Raw Water Pipeline No. 2 and Texoma Raw Water Pipeline to Leonard Water Treatment Plant (WTP) Pipeline - Request for Authorization to allow use of Alternate Project Delivery Method; Project No. 101-0633-23 and No. 101-0642-24; Resolution No. 24-48 [24C-44](#)**  
Authorize the use of Construction Manager at-Risk (CMAR) project delivery method for the Texoma Raw Water Pipeline No. 2 and the Texoma Raw Water Pipeline to Leonard Water Treatment Plant (WTP) Pipeline project.
- D. Wylie Water Treatment Plants I, II, III, and IV (I-IV) Filter Media Improvements - Request for Authorization to allow use of Alternate Project Delivery Method; Project No. 101-0615-22; Resolution No. 24-47 [24C-45](#)**  
Authorize the use of Construction Manager At-Risk (CMAR) project delivery method for the Wylie Water Treatment Plants (WTPs) I-IV Filter Improvements project.
- E. Interlocal Cooperation Agreement between the North Texas Municipal Water District and the City of Mesquite regarding Mustang Creek Interceptor Improvements; Project Number 509-0656-24, Resolution No. 24-51 [24C-46](#)**  
Authorize the execution of an Interlocal Agreement between the North Texas Municipal Water District (NTMWD) and the City of Mesquite (The City).

## **XII. AGENDA ITEMS FOR INDIVIDUAL CONSIDERATION**

### **GENERAL / ADMINISTRATIVE AGENDA ITEMS**

- A. Water System Variable Cost Rebates for Fiscal Year 2023-24 [24-6075](#)**  
Authorize the rebate of funds in the amount of \$14,205,079.46 paid by applicable Member Cities and Customers per the District's Water Variable Cost Rebate Policy, Section 6 of the Finance Policies Manual.

**WATER AGENDA ITEMS**

- B. Resolution Establishing a New Customer Rate and Premium Methodology for the Regional Water System; Resolution 24-52** [24-6076](#)
- Adopt Resolution 24-52 establishing a new customer rate and premium methodology for the Regional Water System
- C. Authorization of Wholesale Water Agreement between Royse City and Hunt County Municipal Utility District (MUD) No 4.** [24-6077](#)
- Authorize a wholesale water sales contract between the City of Royse City (City) and the Hunt County MUD No.4 which a portion is located outside the current City Limits and Extraterritorial Jurisdiction (ETJ).
- D. Leonard Treated Water Pipeline to Farmersville Delivery Point; Project No. 101-0632-23; Engineering Services Agreement Final Engineering** [24-6078](#)
- Authorize an engineering services agreement (ESA) to HDR Engineering, Inc. in the amount of \$5,199,428 for final engineering design for the Leonard Treated Water Pipeline to Farmersville Delivery Point project.
- E. North Garland Ground Storage Tank; 101-0572-20; Tabulation of Bids and Award of Contract, Additional Engineering Services, and Authorize Inspection Services** [24-6079](#)
- Authorize award of a construction contract to Felix Construction Company in the amount of \$25,269.786, additional engineering services to JQ Infrastructure, LLC in the amount of \$226,222, and Internal Inspection Services in the amount of \$577,200.

**WASTEWATER AGENDA ITEMS**

- F. Post-Transition Wastewater Operations Support Agreement Between the North Texas Municipal Water District and City of Farmersville** [24-6080](#)
- Authorize the Executive Director to execute a Post-Transition Wastewater Operation Support Agreement between the North Texas Municipal Water District (NTMWD) and the City of Farmersville (the City) allowing the City to request support as needed in operating its Wastewater Treatment Plants No. 1 and No. 2 (WWTPs) during the City's transition in operating the plants.

**REAL ESTATE AGENDA ITEMS**

- G. Texoma Raw Water Pipeline to Leonard WTP Pipeline Project No. 101-0642-24; Resolution No. 24-49; Right of Way Acquisition Program [24-6081](#)**

Authorize funding in the amount of \$8,400,000 and adoption of Resolution No. 24-49 to acquire permanent and temporary easements for the Texoma Raw Water Pipeline to Leonard WTP Pipeline project.

- H. 121 Regional Disposal Facility; Resolution No. 24-50; Second Amendment of General Warranty Deed on 65.425 Acres near the 121 Regional Disposal Facility [24-6082](#)**

Adoption of Resolution No. 24-50 extending the period for Melissa Independent School District's requirement to use 65.425 acres (Property) for school purposes by five (5) additional years for a total of twenty-five (25) years or the title shall immediately revert to the North Texas Municipal Water District (NTMWD).

- I. Preliminary Development Agreement with Bois d'Arc Lake Acquisitions, LLC [24-6083](#)**

Authorize execution of a Preliminary Development Agreement with Bois d'Arc Lake Acquisitions, LLC, a subsidiary of Lakewood Capital Group, to construct improvements and use shoreline on NTMWD property adjacent to Bois d'Arc Lake for residential purposes and authorize the subsequent execution of a Lease and Use Agreement with the future property owners association (POA) who will own the improvements as required by the Preliminary Development Agreement.

**XIII. CLOSING ITEMS**

- A. Opportunity for Board members to provide feedback or request potential future agenda items.

**XIV. ADJOURNMENT**

**REQUIRED LEGAL NOTICES**

***The Board of Directors is authorized by the Texas Open Meetings Act to convene in closed or executive session for certain purposes. These purposes include receiving legal advice from its attorney (Section 551.071); discussing real property matters (Section 551.072); discussing gifts and donations (Section 551.073); discussing personnel matters (Section 551.074); or discussing security personnel or devices (Section 551.076). If the Board of Directors determines to go into executive session on any item on this agenda, the Presiding Officer will announce that an executive session will be held and will identify the item to be discussed and provision of the Open Meetings Act that authorizes the closed or executive session.***

***Persons with disabilities who plan to attend the NTMWD meeting and who may need auxiliary aids or services are requested to contact Shannon Sauceman in the NTMWD Administrative Offices at (972) 442-5405 as soon as possible. All reasonable efforts will be taken to make the appropriate arrangements.***

***Pursuant to Section 30.05, Penal Code (criminal trespass), a person may not enter this property with a firearm. Pursuant to Section 30.06, Penal Code (trespass by license holder with a concealed handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a concealed handgun. Pursuant to Section 30.07, Penal Code (trespass by license holder with an openly carried handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a handgun that is carried openly.***



# NORTH TEXAS MUNICIPAL WATER DISTRICT

501 E. Brown Street  
Wylie, Texas 75098  
(972) 442-5405

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11/21/2024

Board Memorandum No. 24B-11

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# MEMO

**TO:** Board of Directors  
**FROM:** Jenna Covington, Executive Director  
**DATE:** November 15, 2024  
**SUBJECT:** November 21, 2024, Board Meeting

As we near Thanksgiving, we all enter a time of reflection and gratefulness. This year has been full of both challenges and victories for the District. I will always be grateful for a Board of Directors who provides both long-range vision for our region and the means to achieve it. The entire NTMWD staff daily greatly appreciate your drive, encouragement and support to provide for the needs of the 2.3 million people we serve across the region.

There are two quick reminders I wanted to mention up top. First, we are hosting an open house for the Board and staff at 1:00 PM in the Training Room before the Board Meeting. This is a chance to highlight some of the recently implemented advancements, including the new green stormwater irrigation system, GIS technologies and improvements to the Training Room. We will have cookies and drinks available for this come-and-go event.

Second, if you have not had a chance to fill out the Executive Director Evaluation Form, the deadline is November 21. The form needs to be submitted to the outside counsel. If you have any questions, please get in touch with Brian Brooks.

**Strategic Objective Highlight:** *1.4.3: Implement an Inflow and Infiltration Monitoring and Communications Plan.*

Inflow and Infiltration (I&I) is excess water that flows into wastewater pipes from groundwater and stormwater. Infiltration occurs when groundwater seeps into wastewater pipes through cracks in pipes and other infrastructure. Inflow is surface water that enters the wastewater system through opened manholes and other surface openings in the system. Inflow and infiltration impact the capacity of the wastewater conveyance and treatment facilities. As a result, wastewater conveyance systems can overflow, and wastewater treatment processes can be disrupted, allowing wastewater to be discharged to the environment.

The Wastewater Conveyance Team reviews the flow recorded at permanent billing meters throughout the system annually to identify areas experiencing elevated levels of I&I during wet weather conditions. The team visually inspects high-priority pipelines yearly based on the flow data collected. Recently, the team completed the



third year of this program and identified and corrected multiple potential sources of I&I located within District and Member/Customer systems.

Additionally, the Planning Department performs capacity assessments of the Wastewater Conveyance System on a routine basis. Through these capacity assessments, we recently completed the installation and monitoring of 150 temporary flow meters across multiple basins. Data from this effort will be utilized to calculate and evaluate I&I rates throughout the District and Member/Customer systems.

An additional component of the initiative is to broadly communicate I&I observations. I&I is a regular topic discussed at bi-monthly meetings with our partner cities and a focus of outreach efforts. The recent temporary flow monitoring project results will be shared with each city once finalized.

In Fiscal Year 2025, the Wastewater Conveyance Team is slated to install temporary flow monitors within the regional collection system at strategic locations to continue identifying locations with elevated levels of I&I.

### **Customer Premium**

This month, I am pleased to bring you the resolution to a very long-standing “big rock.” After months of engagement with members, customers, consultants, and the board, we are at a point where we can bring this decades-old issue to a close.

While this has been a very time-consuming issue, I believe the approach the District took to build consensus has led to better understanding among Members and Customers, greater trust in the transparency of the process and, ultimately, a better solution for all those involved.



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11/21/2024

Consent Agenda Item No. 24C-42

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October 2024 Regular Board Meeting Minutes

**RECOMMENDATION**

The Executive Director and NTMWD staff recommend the Board of Directors approve the minutes of the regular Board meeting held on Thursday, October 24, 2024, as presented.

Note: See the attached document for detailed information.



**NORTH TEXAS MUNICIPAL WATER DISTRICT  
501 E. Brown Street • Wylie, Texas 75098  
(972) 442-5405 – Phone  
(972) 295-6440 – Fax**

**MINUTES OF REGULAR MEETING  
OF THE BOARD OF DIRECTORS  
OCTOBER 24, 2024**

The North Texas Municipal Water District (NTMWD) Board of Directors met in a regular meeting on Thursday, October 24, 2024, at 2:30 p.m. Notice of the meeting was legally posted in accordance with Government Code, Title 551, Open Meetings.

**I. CALL TO ORDER**

Vice President David Hollifield called the meeting to order at approximately 2:30 p.m.

Vice President Hollifield advised the following regarding the meeting:

The meeting today is being conducted in person with two-way video and audio communication between Board members participating by videoconference, establishing a quorum. The public may attend the meeting in person. Audio and video of Board members participating by videoconference will be visible. Members of the public wishing to listen to live audio from the meeting may do so by calling in.

**II. INVOCATION**

Director Marvin Fuller offered the invocation.

**III. PLEDGE OF ALLEGIANCE**

Vice President Hollifield led the Pledge of Allegiance.

**IV. PLEDGE OF ALLEGIANCE TO THE TEXAS FLAG**

Vice President Hollifield led the Pledge of Allegiance to the Texas Flag.

**V. ROLL CALL/ANNOUNCEMENT OF QUORUM**

The roll was called, and attendance was confirmed as follows:

<b>DIRECTOR</b>	<b>IN PERSON</b>	<b>REMOTE</b>	<b>ABSENT</b>
Terry Sam <b>ANDERSON</b>	√		
Rick <b>CROWLEY</b>	√		
George <b>CRUMP</b>		√	
Lori Barnett <b>DODSON</b>			√
Phil <b>DYER</b>	√		
Joe <b>FARMER</b>	√		
Marvin <b>FULLER</b>	√		
David <b>HOLLIFIELD</b>	√		
Chip <b>IMRIE</b>	√		
Blair <b>JOHNSON</b>		√	
Ronald <b>KELLEY</b>	√		
James <b>KERR</b>	√		
Geralyn <b>KEVER</b>	√		
Alan <b>McCUISTION</b>	√		
Rick <b>MANN</b>	√		
Jack <b>MAY</b>	√		
Don <b>PASCHAL</b>	√		
Richard <b>PEASLEY</b>	√		
George <b>PUREFOY</b>	√		
Randy <b>ROLAND</b>		√	
Keith <b>STEPHENS</b>	√		
Ray <b>STEPHENS</b>	√		
Jody <b>SUTHERLAND</b>		√	
John <b>SWEEDEN</b>	√		
Larry <b>THOMPSON</b>		√	

The following NTMWD legal and professional consultants attended the meeting:

- Lauren Kalisek – Lloyd Gosselink Rochelle & Townsend

**VI. OPENING REMARKS**

- A. President's Remarks concerning current events, recognitions, conduct of meeting, posted agenda items, committee assignments, and related matters

Vice President Hollifield reminded Directors that during November and December the Board meetings will be held on the third Thursday rather than the fourth Thursday. The committee meeting schedule will also be moved up a week early.

He reviewed the tentative meeting schedule for November 2024 as follows:

- Wednesday, November 6: Executive and Finance Committees
- Wednesday, November 20: Legislative, Water, and Wastewater Committees
- Thursday, November 21: Board Meeting

- B. Executive Director's Status Report concerning legislation and regulatory matters, budgets, current projects and ongoing programs of the District including the Regional Water System, Regional Wastewater System, Regional Solid Waste System, Watershed Protection, and Water Conservation

Executive Director Jenna Covington said a new recruitment video targeting veterans is complete and will be available to the public beginning on Veteran's Day, November 11, 2024. Due to technical difficulties with the video during the meeting, Executive Director Jenna Covington stated it will be provided to the Board in the weekly update.

Assistant General Manager Billy George recognized members of the NTMWD Operations Challenge Competition Team, Centrifugal Force, who placed second overall at WEFTEC 2024 in New Orleans.

Mr. George also recognized supervisors from five of the District's wastewater treatment plants for having no violations during 2023. Each received a Gold Peak Performance Award from the National Association of Clean Water Awards. Recipients include:

- Rowlett Creek RWWTP (Jason Pittsinger)
- Floyd Branch RWWTP (Jason Pittsinger)
- Seis Lagos WWTP (Jason Fisher)
- Panther Creek WWTP (Baron Snelgrove)
- Buffalo Creek WWTP (Jason Fisher)
- Bear Creek WWTP (Jason Fisher)

Assistant General Manager Jeff Mayfield provided some background information on the SWANA Road-E-O competition. He recognized two employees, Robert Quiñonez and Will Tomlinson, on their first place awards.

Executive Director Covington stated that progress continues on the boundary adjustment between Texas and Oklahoma at the Texoma Pump Station site. The agreement has been approved by Texas and on October 30<sup>th</sup> the Oklahoma contingency will review and consider the boundary adjustment. Upon approval,

this will bring a final resolution to bringing the District's Texoma Pump Station back into the State of Texas.

## VII. PUBLIC COMMENTS

Prior to the start of the meeting, speakers must complete and submit a "Public Comment Registration Form." During the public comment portion of the meeting, speakers will be recognized by name and asked to provide their comments. The time limit is three (3) minutes per speaker, not to exceed a total of thirty (30) minutes for all speakers. The Board may not discuss these items but may respond with factual or policy information.

There were no requests for public comment.

## VIII. DISCUSSION ITEMS

### A. Year in Review

- Executive Director Covington provided an overview of the following major milestones:
  - Texas/Oklahoma Boundary Adjustment
  - Bois d'Arc Lake Opening
  - Conservation Plan and Water Resource Emergency Management Plan First major update since 2019
- She also reviewed progress on other major projects:
  - Customer Premium
  - Leonard Water Treatment Plant Phase II Expansion
  - PFAS Regulations
  - Solid Waste Fourth Transfer Station
  - Sister Grove Regional Water Resource Recovery Facility
  - Long-Range Water Supply
- Assistant General Manager Cesar Baptista reviewed Capital Improvements:
  - FY24 CIP – Most Successful Capital Program in NTMWD History
    - Largest CIP program ever for a single year
    - Awarded \$1.11B in total contracts
  - Keys to success
  - FY25 CIP
  - Planned award of \$1.09B
  - Growth, Aging Infrastructure, and Regulatory Requirements
  - 135 Active Projects (design and construction) with combined contract values of \$2.34B
- Assistant General Manager George reviewed Water and Wastewater Accomplishments:
  - Water Operations:
    - Regulatory
    - Annual Water Pumping
    - Major Maintenance

- Linear Assets
- Asset Management
- Training and Development

Wastewater Operations:

- Operations Improvements
  - Condition Assessments and Analysis of Conveyance System
  - Training and Development
  - Electronic Operations and Maintenance
  - New Process Plant Modeling
- Assistant General Manager Jeff Mayfield reviewed Solid Waste and Integrated Services accomplishments:
- Solid Waste:
- Maximize the Site Life of the 121 RDF
  - 121 RDF South Slope Closure
  - Negative Carbon Footprint
  - Member City Cost Below \$38.25 per Ton

Integrated Services:

- Maintenance
  - Safety
  - Information Technology
- Assistant General Manager Jeanne Chipperfield reviewed Shared Services Accomplishments:
- Human Resources:
- Expanded recruiting efforts, updated plan documents for District's 3 retirement plans
- Procurement Department:
- Began oversight of the construction bidding process and, oversight and management of p-card program
- Finance and Accounting:
- Provided one-time RWS rate adjustment to all participants due to chemical price savings; procurement of a new enterprise resource planning system underway
- Communications:
- Developed the District's first External Communications Plan
  - Launched new website
- Executive Director Covington provided an overview of recognitions and awards received by the District.

Executive Director Covington provided an overview of future projects and efforts for the next year as follows:

- \$1.34B Capital Improvement Plan
- New water supplies
- PFAS Phase II
- Lower East Fork Regional Sewer Facility

- Implementation of the second Independent Financial Review
- Industrial Pretreatment
- Major policy review and restructuring
- 89th Texas Legislative Session

Several Directors offered congratulatory remarks to the staff.

B. Review of the fiscal year 2024 Regional Water System Variable Costs

Assistant General Manager - Financial Officer Jeanne Chipperfield presented this item related to the Regional Water System. She reviewed that under Financial Policy Section 6, the Board may consider a rebate of variable costs to Members and Customers who do not exceed their annual minimum for the Water Year. Per Policy, the rebate information is to be reviewed at the October Board Meeting and, if applicable, rebate payments are placed on the November Board meeting agenda. The total funds to be rebated are calculated as the difference between the budgeted variable costs and the actual variable cost for the fiscal year. Should the variable cost budget be exceeded, then no rebate will be administered. Rebate funds are allocated to eligible Members and Customers based on the proportionate share of the underage on water minimums.

Details of the FY24 budget versus actual costs were reviewed for water gallons sold, chemicals, electric power, and purchased water. The gallons sold were 3.5 billion gallons less than the total of budgeted annual minimums. For chemicals, a rate adjustment approved in July reduced the chemical budget due to lower pricing on sodium hydroxide (\$6.4M), which was previously accounted for in the calculation. Optimizations made at the Leonard Water Treatment Plant also resulted in less chemical purchases. Additionally, electric power and purchased water were reduced due to mild and wet early summer months, leading to less water being pumped from water sources.

Ms. Chipperfield advised that the Member Cities of Garland, Mesquite, Plano, and Richardson, and several Customer Cities were under their annual minimums and will receive their proportionate share of the amount available for rebate. She advised that District staff recommends placing rebate payments on the November Board agenda for consideration. She added that the District is in sound financial condition to provide variable cost rebates to eligible Members and Customers. If approved by the Board in November, notifications and rebate payments will be sent to applicable Members and Customers within 30 days of Board approval. She noted that in February staff will provide a full update on FY24 financial results to Finance Committee.

Discussion followed as to the history of the rebate program and the possible need to review this and other policies.

**IX. EXECUTIVE SESSION**

There were no scheduled Executive Session items.



**X. RECONVENE INTO REGULAR SESSION**

In accordance with Texas Government Code, Chapter 551, the Board of Directors of NTMWD will reconvene into regular session to consider action, if any, on matters discussed in Executive Session.

There were no scheduled Executive Session items.

**XI. CONSENT AGENDA ITEMS**

Vice President Hollifield inquired whether any Director would like to remove an item from the Consent Agenda for separate discussion. There were no requests for separate discussion.

Upon a motion by Director Geralyn Kever to approve the Consent Agenda items and a second by Director Phil Dyer, the Board of Directors voted unanimously to approve the Consent Agenda items. Director Jody Sutherland was absent from the vote.

**A. September 26, 2024, Regular Board Meeting Minutes**

The Executive Director and NTMWD staff recommend the Board of Directors approve the minutes of the Board Work Session held on Thursday, September 26, 2024, as presented.

**B. September 12, 2024, Board Works Session Meeting Minutes**

The Executive Director and NTMWD staff recommend the Board of Directors approve the minutes of the regular Board meeting held on Thursday, September 12, 2024, as presented.

**C. Modification of the Capital Projects Request**

Recommend the Board of Directors approve the October 2024, Modification of Capital Projects Request as presented.

**XII. AGENDA ITEMS FOR INDIVIDUAL CONSIDERATION****GENERAL / ADMINISTRATIVE AGENDA ITEMS****A. Establish a Retirement Plan Committee for the Retirement Plan for Employees of North Texas Municipal Water District; Resolution No. 24-46**

Adoption of Resolution No 24-46 authorizing the establishment of the North Texas Municipal Water District Retirement Plan Committee.

Director Phil Dyer stated that this item was reviewed by the Personnel Committee on August 7<sup>th</sup> and October 9<sup>th</sup>. The Personnel Committee voted to recommend the Board of Directors adopt Resolution No. 24-46 authorizing the establishment of the North Texas Municipal Water District Retirement Plan Committee.

Upon a motion by Director Phil Dyer and a second by Director James Kerr, the Board of Directors voted unanimously to approve Resolution No. 24-46 as presented. Director Jody Sutherland was absent from the vote.

**WATER AGENDA ITEMS****B. Wylie Water Treatment Plant Conversion to Biologically Active Filtration; Project No. 101-0390-15; Tabulation of Bids and Award of Contract and Inspection Services**

Authorize award of a construction contract for construction of the first of three planned phases of the Wylie Water Treatment Plant (WTP) Biologically Active Filtration (BAF) project in the amount of \$22,375,000 to RAVA Construction, LLC and authorize internal inspection services in the amount of \$52,000.

Director John Sweeden said that the Water Committee reviewed this item yesterday and voted to recommend the Board authorize approval of this item.

The primary purposes of this project are to add filtered water flow control equipment to improve filter performance at Wylie Water Treatment Plants 2 and 3 and perform flow path changes and chemical addition modifications, preceding the Biologically Active Filtration conversions at these two Plants.

Director John Sweeden moved approval of this item. Director Jack May seconded the motion. Director Jody Sutherland was absent from the vote.

At Director May's request, Assistant General Manager George provided a brief explanation of this item and the benefits of BAF.

The Board of Directors voted unanimously to approve.

**C. Memorandum of Understanding Between the North Texas Municipal Water District and Tarrant Regional Water District for Water Conservation Strategic Services**

Authorize the Executive Director to execute a Memorandum of Understanding (MOU) between the North Texas Municipal Water District (NTMWD) and the Tarrant Regional Water District (TRWD) for funding in the combined not-to-exceed amount of \$800,000 (five-year term) and implementation of water conservation strategic services.

Director John Sweeden stated that the Water Committee reviewed this item yesterday and voted to recommend the Board authorize approval of this item.

This Memorandum of Understanding establishes a cooperative five-year agreement between the District and Tarrant Regional Water District for the development and funding of water conservation strategic services. These services will provide a new vision for regional conservation strategies, programs, and practices through a third-party consultant that will outline a plan to measurably reduce water use demands and water waste in the region.

Director Peasley commented on coordinating water conservation messages to the community.

Upon a motion by Director John Sweeden and a second by Director Geralyn Keever, the Board of Directors voted unanimously to approve. Director Jody Sutherland was absent from the vote.

**WASTEWATER AGENDA ITEMS****D. Buffalo Creek Parallel Force Main, Project No. 507-0640-24; Authorization to use Construction Manager At Risk (CMAR) Delivery Method, and South Mesquite Creek Regional Wastewater Treatment Plant Peak Flow Management and Expansion, Project No. 301-0525-18; Amendment No. 6, Partial GMP No. 5, Engineering Services During Construction, and Pre-Construction and Procurement Services for the Buffalo Creek Parallel Force Main**

Authorize the use of Construction Manager At-Risk (CMAR) project delivery method for the Buffalo Creek Parallel Force Main project; authorize funding to Archer Western Construction, LLC in the amount of \$21,145,610.27 for Amendment No. 6 to the CMAR Agreement; authorize funding to Carollo Engineers, Inc. in the amount of \$547,400 for Engineering Services During Construction for work related to partial Guaranteed Maximum Price (GMP) No. 5 for the South Mesquite Creek Regional Wastewater Treatment Plant (RWWTP) Peak Flow and Expansion project; and authorize funding to Archer Western Construction, LLC in the amount of \$225,000 for CMAR pre-construction and procurement services for the Buffalo Creek Parallel Force Main project to be performed as additional work under the CMAR agreement for the South Mesquite Creek RWWTP Peak Flow and Expansion project.

Director Keith Stephens said that the Wastewater Committee reviewed this item yesterday and voted to recommend the Board approve this item.

A CMAR project delivery method for the Buffalo Creek Parallel Force Main is being incorporated with the South Mesquite Creek Plant project to provide the best value to the District. This item also authorizes additional work at the South Mesquite Plant including engineering services, procurement of long-lead equipment and a new electrical building critical for the ongoing expansion project.

Upon a motion by Director Keith Stephens and a second by Director Don Paschal, the Board of Directors voted unanimously to approve. Director Jody Sutherland was absent from the vote.

**E. Wilson Creek Regional Wastewater Treatment Plant, Plant 1 Primary Clarifiers and Aeration Improvements; Project No. 301-0655-24; Engineering Services Agreement, Final Engineering**

Authorize funding for an engineering services agreement with Brown and Caldwell, Inc. in the amount of \$4,186,495 for final design of primary clarifiers, aeration basins, and blower improvements at Plant 1 of Wilson Creek Regional Wastewater Treatment Plant (RWWTP).

Director Keith Stephens stated that the Wastewater Committee reviewed this item yesterday and voted to recommend the Board authorize approval of this item.

The Wilson Creek Master Plan outlined condition and reliability improvement projects at Plant 1 including replacement of primary clarifier mechanisms and odor control covers, structural repairs to aeration basins, and new blowers and electrical building blower.

Upon a motion by Director Keith Stephens and a second by Director Don Paschal, the Board of Directors voted unanimously to approve. Director Jody Sutherland was absent from the vote.

### **REAL ESTATE AGENDA ITEMS**

**F. Texoma Raw Water Pipeline No. 2; Project No. 101-0633-23; Resolution No. 24-44; Right of Way Acquisition Program**

Adoption of Resolution No. 24-44 authorizing funding in the amount of \$9,000,000 to acquire permanent and temporary easements.

Director Terry Sam Anderson stated that this item was reviewed at the September 25<sup>th</sup> Real Estate Committee meeting. The Committee voted to recommend the Board of Directors adopt Resolution No. 24-44 authorizing funding in the amount of \$9,000,000 to acquire permanent and temporary easements. Approval of this item facilitates construction of a parallel pipeline to increase the District's capacity to transport additional Texoma Raw Water to the Wylie and Leonard Water Treatment Plants for treatment and use.

Director Terry Sam Anderson moved approval of this item. Director Joe Farmer seconded the motion. Director Jody Sutherland was absent from the vote.

Director Dyer inquired whether this pipeline will be able to handle future additional water from Texoma. Mr. George responded that additional capacity will be needed. Director Dyer also inquired about the Zebra mussel issue that remains in Lake Texoma. Mr. George responded that due to the impending boundary change between Texas and Oklahoma at the Texoma Pump Station, the District's Section 404 permit needs to be revisited. Director Rick Crowley inquired about reinstating a previous process of using a shorter pipeline rather than the transmission pipeline from Texoma. Again, Mr. George referred to the Section 404 permit that needs to be changed.

The Board of Directors voted unanimously to approve Resolution No. 24-44 as presented.

**G. Buffalo Creek Parallel Force Main; Project No. 507-0640-24; Resolution No. 24-45; Right of Way Acquisition Program**

Adoption of Resolution No. 24-45 authorizing funding in the amount of \$500,000 to acquire permanent and temporary easements.

Director Terry Sam Anderson stated that this item was reviewed at the September 25<sup>th</sup> Real Estate Committee meeting. The Committee voted to recommend the Board of Directors to adopt Resolution No. 24-25 authorizing funding in the amount of \$500,000 to acquire permanent and temporary easements. Approval of this item facilitates construction of a force main to convey wastewater flows from the growing cities of Forney, Rockwall and Heath for treatment at the South Mesquite Creek Wastewater Treatment Plant.

Upon a motion by Director Terry Sam Anderson and a second by Director Ray Stephens, the Board of Directors voted unanimously to approve Resolution No. 24-45 as presented. Director Jody Sutherland was absent from the vote.

**XIII. CLOSING ITEMS**

- A. Opportunity for Board members to provide feedback or request potential future agenda items.

Director May requested a cybersecurity update as a potential future agenda item.

Director Keever expressed appreciation to the Vice President for conducting the meeting in the absence of President Crump.

Director Peasley commented on the Legislative Committee’s recent discussion regarding the 2025 Legislative Session. He suggested the District might include the Marvin Nichols Reservoir and conservation as future discussion items. He also suggested that a possible goal for the District might be regionalization and partnerships for additional water due to growth in the region.

**XIV. ADJOURNMENT**

There being no further business, the meeting adjourned at approximately 4:26 p.m.

APPROVED:

\_\_\_\_\_  
GEORGE CRUMP, President

ATTEST:

\_\_\_\_\_  
DONALD IMRIE, Secretary



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11/21/2024

Consent Agenda Item No. 24C-43

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**Modification of Capital Projects Request**

**RECOMMENDATION**

Recommend the Board of Directors approve the November 2024, Modification of Capital Projects Request as presented.

Note: See the attached document for detailed information.

## MODIFICATION OF CAPITAL PROJECTS REQUEST

### **RECOMMENDATION**

The Executive Director and NTMWD staff recommend the Board of Directors authorize the Modification of Capital Projects Request in accordance with NTMWD’s Board Policies Manual for project changes greater than \$100,000 and less than \$500,000.

#### **I. CONSTRUCTION CHANGE ORDERS ONLY**

##### WATER SYSTEM

- a. None.

##### WASTEWATER SYSTEM

- a. Project No. 501-0495-18, Wilson Creek Transfer Force Mains, Change Order No. 3.

<b>Description</b>	<b>Amount</b>	<b>Days</b>
Original Contract Amount	\$40,893,145.00	620
Prior Change Order(s) Total	\$922,171.75	14
<b>Proposed Change Order No. 3</b>		
Additional flowable fill to support excavation under 72-inch water pipeline	\$240,500.00	0
<b>Proposed Change Order No. 3 Increase</b>	<b>\$240,500.00</b>	<b>0</b>
<b>Revised Contract Amounts</b>	<b>\$42,055,816.75</b>	<b>634</b>

Original Completion Dates: Substantial – April 14, 2025; Final – June 13, 2025  
Revised Completion Dates: Substantial – April 28, 2025; Final – June 27, 2025

Funding in the amount of \$240,500.00 for Change Order No. 3 to McKee Utility Contractors, LLC, is available in the Upper East Fork Interceptor System Construction Funds

##### SOLID WASTE SYSTEM

- a. None.

#### **II. AUTHORIZATION TO ISSUE CONSTRUCTION FINAL PAYMENT ONLY**

Work on the following projects is substantially complete with only minor deficiencies remaining. Final payment in the total amounts shown will be made on these projects when completion of all deficiency items is verified.

##### WATER SYSTEM

- a. None.

WASTEWATER SYSTEM

a. None.

SOLID WASTE SYSTEM

a. None.

**III. CONSTRUCTION CHANGE ORDER AND AUTHORIZATION TO ISSUE FINAL PAYMENT ONLY**

Work on the following projects is substantially complete with only minor deficiencies remaining. Final payment in the total amounts shown will be made on these projects when all work associated with the change order shown on the tabulation shall have been completed and accepted, and completion of all deficiency items is verified.

WATER SYSTEM

a. Project Nos. 101-0358-14, Bois d'Arc Lake Raw Water Pump Station (RWPS); 101-0384-15, Leonard Water Treatment Plant (WTP); 101-0428-16, Leonard Water Treatment Plant High Service Pump Station (HSPS); and 101-0436B-16, Bois d'Arc Lake Boat Ramps and Lake Facilities, Dam Maintenance Facility (DMF), Amendment No. 21

<b>Description</b>	<b>Amount</b>	<b>Days</b>
Current Contract Amount – Project No. 101-0358-14 (through Amendment No. 20)	\$92,271,742.79	1,906
Current Contract Amount – Project No. 101-0384-15 (through Amendment No. 20)	\$271,685,463.69	1,941
Current Contract Amount – Project No. 101-0428-16 (through Amendment No. 20)	\$61,726,205.72	1,657
Current Contract Amount – Project No. 101-0436B-16	\$10,308,736.92	1,290
<b>Proposed Amendment No. 21</b>		
Project No. 101-0358-14 Unused Allowances and Contingency (Additional time only)	\$0.00	57
Project No. 101-0384-15 Unused Allowances and Contingency (Additional time only)	\$0.00	57
Project No. 101-0428-16 Unused Allowances and Contingency (Additional time only)	\$0.00	57
Project No. 101-0436B-16 Unused Allowances and Contingency (Additional time only)	\$0.00	57
<b>Proposed Amendment No. 21 (Additional time only for final completion)</b>	<b>\$0.00</b>	<b>57</b>
<b>Final Contract Amounts (Additional time only for final completion, no cost increase)</b>		
Final Contract Amount – Project No. 101-0358-14	\$92,271,742.79	1,963
Final Contract Amount – Project No. 101-0384-15	\$271,685,463.69	1,998



Final Contract Amount – Project No. 101-0428-16	\$61,726,205.72	1,714
Final Contract Amount – Project No. 101-0436B-16	\$10,308,736.92	1,347
<b>Final Total Contract Amount</b>	<b>\$435,992,149.12</b>	

**This amendment for additional contract time applies to the Final Completion dates only.** Previous Completion Dates (through approved Amendment No. 20 per Consent Agenda Item No. TMP-23-32):

Project No. 101-0358-14, RWPS: Substantial – July 18, 2023; Final – February 28, 2024  
 Project No. 101-0384-15, Leonard WTP: Substantial – July 18, 2023; Final – February 28, 2024  
 Project No. 101-0428-16, HSPS: Substantial – July 18, 2023; Final – February 28, 2024  
 Project No. 101-0436B, DMF: Substantial – August 1, 2023; Final – February 28, 2024

Revised Completion Dates (through Proposed Amendment No. 21):

Project No. 101-0358-14, RWPS: Substantial – July 18, 2023; Final – April 25, 2024  
 Project No. 101-0384-15, Leonard WTP: Substantial – July 18, 2023; Final – April 25, 2024  
 Project No. 101-0428-16, HSPS: Substantial – July 18, 2023; Final – April 25, 2024  
 Project No. 101-0436B, DMF: Substantial – August 1, 2023; Final – April 25, 2024

No additional funding is requested for Amendment No. 21 for the additional contract time to be added to the Construction Manager At-Risk (CMAR) contract with Garney Companies, Inc.

WASTEWATER SYSTEM

- a. None.

SOLID WASTE SYSTEM

- a. None.

**IV. AMENDMENTS TO ENGINEERING, INSPECTION AND/OR LEGAL SERVICES ONLY:**

WATER SYSTEM

- a. None.

WASTEWATER SYSTEM

- a. Project No. 501-0495-18, Wilson Creek Transfer Force Mains

Description	Amount
Original ESA	\$624,911.00
Prior Additional Services	\$857,315.00
<b>Proposed Additional Services</b>	<b>\$215,567.00</b>

Redesign of approximately 16,000 linear feet (LF) of parallel 42-inch force mains on Encore Wire property per negotiated agreement	
<b>Revised ESA Amount</b>	<b>\$1,697,793.00</b>

The cumulative amount requested exceeds 25% of the original contract value. NTMWD staff recommends approval of the additional services on this report in lieu of an individual Administrative Memorandum. The project is currently under construction. The engineer has proceeded with expediting the re-design work at-risk in an effort to stay ahead of construction progress.

Funding in the amount of \$215,567.00 for Amendment No. 8 to Tetra Tech, Inc. (formerly Espey Consultants, Inc. dba RPS), is available in the Upper East Fork Interceptor System Construction Funds

b. Project No. 501-0491-18, 121 Force Main Improvements, Phase I

<b>Description</b>	<b>Amount</b>
Original Right-of-Way Acquisition Program Amount per Administrative Memorandum No. 23-5973.	\$3,500,000.00
<b>Proposed Additional Services</b>	<b>\$300,000.00</b>
Additional funding is needed to acquire the last remaining parcel for Right-of-Way (ROW) on this project. Acquisition costs slightly exceeded the initial acquisition budget.	
<b>Revised ROW Amount</b>	<b>\$3,800,000.00</b>

Funding in the amount of \$300,000.00 for the second additional Right-of-Way funding request is available in the Upper East Fork Interceptor System Construction Funds.

SOLID WASTE SYSTEM

a. None.



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11/21/2024

Consent Agenda Item No. 24C-44

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## **Regional Water System**

**Texoma Raw Water Pipeline No. 2 and Texoma Raw Water Pipeline to Leonard Water Treatment Plant (WTP) Pipeline - Request for Authorization to allow use of Alternate Project Delivery Method; Project No. 101-0633-23 and No. 101-0642-24; Resolution No. 24-48**

### **SUBJECT**

Authorize the use of Construction Manager at-Risk (CMAR) project delivery method for the Texoma Raw Water Pipeline No. 2 and the Texoma Raw Water Pipeline to Leonard Water Treatment Plant (WTP) Pipeline project.

### **PURPOSE**

The use of CMAR project delivery method will provide the best value to NTMWD and in this case the opportunity to combine these two similar capital projects to leverage the advantages of early procurement of certain long lead time materials and equipment. This allows the procurement process to progress concurrently with the detailed design, helping to compress project schedule.

### **RECOMMENDATION**

The Executive Director and NTMWD staff recommend the Board of Directors adopt Resolution No. 24-48, *A Resolution authorizing the use of this alternative delivery approach in accordance with Texas Government Code Chapter 2269, Contracting and Delivery Procedures for Construction Projects.*

Project: No. 101-0633-23, Texoma Raw Water Pipeline No. 2 and No. 101-0642-24, and Texoma Raw Water Pipeline to Leonard WTP Pipeline

Committee: This will be an item on the November 20, 2024, Water Committee meeting agenda

**DRIVER(S) FOR THIS PROJECT**

Strategic Objective:	1.1 High Quality Services 1.4 Reliable and Resilient System Capacity
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<input type="checkbox"/> Regulatory Compliance	<input type="checkbox"/> Asset Condition
<input checked="" type="checkbox"/> Capacity	<input checked="" type="checkbox"/> Redundancy/Resiliency
<input type="checkbox"/> Relocation or External Requests	<input type="checkbox"/> Operational Efficiency
<input type="checkbox"/> Safety	<input type="checkbox"/> Administrative
<input type="checkbox"/> Policy	<input type="checkbox"/> Other _____

**BACKGROUND**

The Texoma Raw Water Pipeline No. 2 increases the capacity of raw water transfer from Lake Texoma to the NTMWD treatment facilities. To meet projected future demand, a new parallel 84-inch transmission line from Lake Texoma to the Howe Balancing Reservoir is needed by 2029. With the existing 72-inch line, the proposed 84-inch parallel line, and a separate Texoma Pump Station Improvements project, the District will have the ability to deliver up to 120 million gallons per day (MGD) of raw water from Lake Texoma to the Wylie WTP’s and divert approximately 70 MGD of additional flow to the Leonard WTP.

To increase the utilization of raw water rights, water from Lake Texoma will be blended with raw water from Bois d’Arc Lake at the Leonard Water Treatment Plant Facility. This additional supply will fully utilize the planned future treatment plant capacity of 280 MGD. Texoma to Leonard Raw Water Pipeline will also be an 84-inch gravity line connecting to the existing Texoma Raw Water Pipeline south of Howe Reservoir to convey water to Leonard Terminal Storage Reservoirs.

**PROJECT PURPOSE**

- In December 2023, the Board approved Administrative Memorandum No. 23-5970 authorizing preliminary engineering design for the Texoma Raw Water Pipeline No. 2 project. Preliminary engineering analysis has identified a proposed 27-mile route within the existing pipeline corridor and within a rerouted section. The engineer’s opinion of the construction cost for the Texoma Raw Water Pipeline No. 2 is \$302 Million.
- In January 2024, the Board approved Administrative Memorandum No. 24-5978 authorizing preliminary engineering design for the Texoma Raw Water Pipeline to Leonard WTP Pipeline project to transport approximately 70 MGD of Texoma raw water through an 84-inch pipeline to the Leonard WTP Balancing Reservoir. The Texoma Raw Water Pipeline to Leonard WTP Pipeline has an engineer’s opinion of a construction cost of \$108 Million.
- These two pipelines will convey Raw water from Lake Texoma to different components of the District’s system. With the same diameter, pipeline materials, and proximity in the region; combining these two projects into a single construction contract was evaluated and recommended herein.

**PROJECT COMPONENTS**

- This action seeks the Board's authorization for the use of the alternative delivery approach for two pipeline projects with similar construction materials and components.
- Future actions dealing with selection of a CMAR and Authorization of CMAR Preconstruction and Procurement Services will be presented at a later time. Other subsequent recommendations dealing with construction Work Packages will also be brought at a later time.

**FUNDING**

None required at this time.

**NORTH TEXAS MUNICIPAL WATER DISTRICT**

**RESOLUTION NO. 24-48**

**A RESOLUTION AUTHORIZING USE OF CONSTRUCTION MANAGER AT-RISK DELIVERY METHOD UNDER TEXAS GOVERNMENT CODE CHAPTER 2269 FOR THE TEXOMA RAW WATER PIPELINE NO. 2 AND TEXOMA RAW WATER PIPELINE TO LEONARD WATER TREATMENT PLANT PIPELINE PROJECT**

**BE IT RESOLVED BY THE BOARD OF DIRECTORS OF NORTH TEXAS MUNICIPAL WATER DISTRICT:**

**SECTION 1**

That the North Texas Municipal Water District (NTMWD) authorizes the use of the Construction Manager at-Risk Delivery Method under Chapter 2269 of the Texas Government Code for the Texoma Raw Water Pipeline No. 2, Project No. 101-0633-23 and the Texoma Raw Water Pipeline to Leonard Water Treatment Plant Pipeline, Project No. 101-0642-24. The NTMWD, through this resolution, specifically elects to be governed by Chapter 2269 of the Texas Government Code solely for the procurement of the Texoma Raw Water Pipeline No. 2 and Texoma Raw Water Pipeline to Leonard Water Treatment Plant Pipeline referenced above, superseding any other applicable law, rule, or regulation governing competitive bidding by the NTMWD for this project. The construction manager at risk delivery method will provide the best value for the NTMWD.

**SECTION 2**

That this resolution shall take effect and be in full force and effect from and after the date of its adoption, and it is so resolved that all resolutions of the Board of Directors of the NTMWD in conflict herewith are hereby amended or repealed to the extent of such conflict.

**THIS RESOLUTION ADOPTED BY THE NTMWD BOARD OF DIRECTORS IN A REGULAR MEETING ON NOVEMBER 21, 2024, IN THE ADMINISTRATIVE OFFICES OF THE NTMWD, WYLIE, TEXAS.**

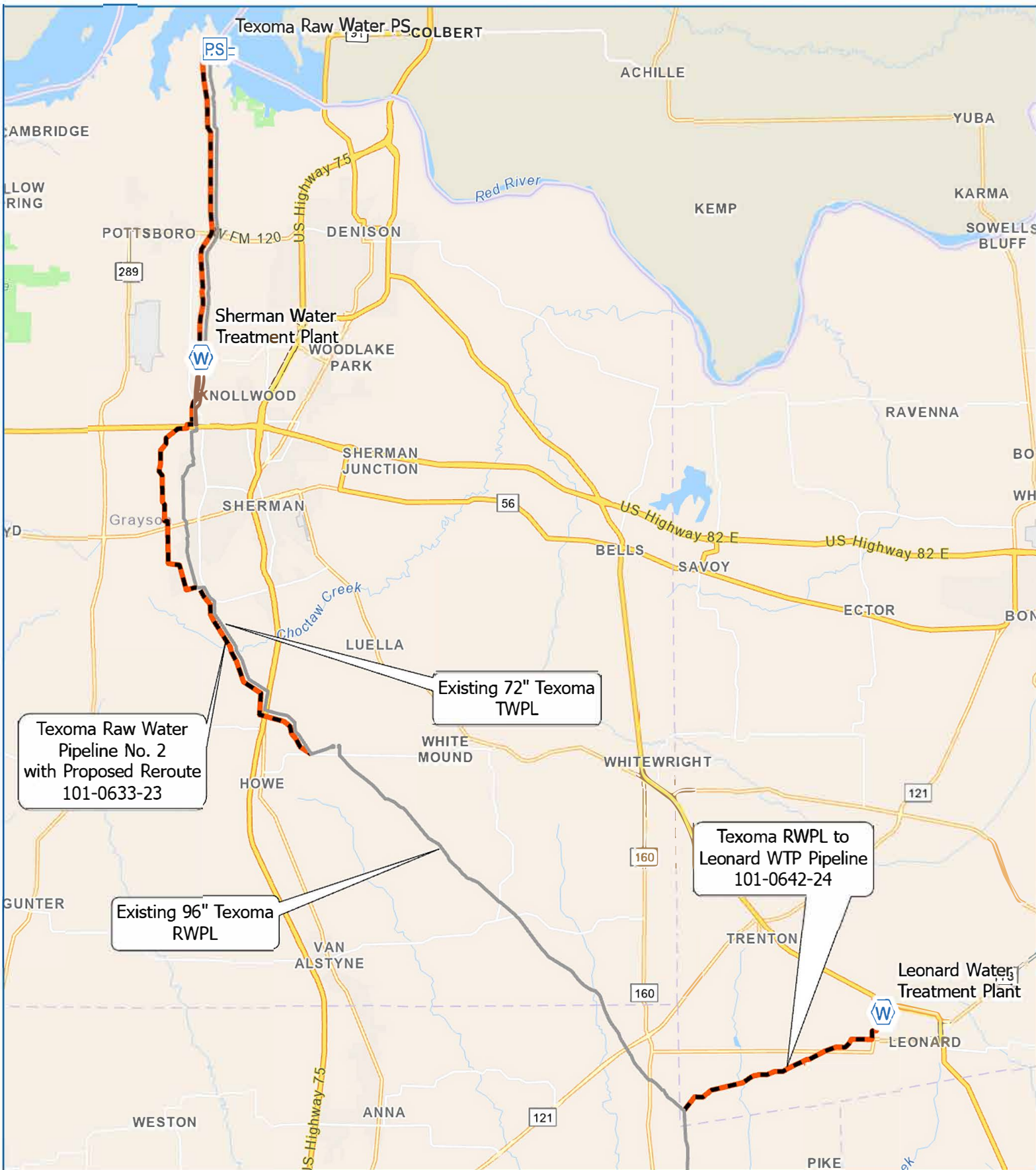
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**DONALD IMRIE, Secretary**

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**GEORGE CRUMP, President**

**(SEAL)**



**Texoma Raw Water Pipeline No. 2 and  
 Texoma Raw Water Pipeline to Leonard Water Treatment Plant  
 Project No. 101-0633-23  
 and Project No. 101-0642-24**





11/21/2024

Consent Agenda Item No. 24C-45

**Regional Water System**

**Wylie Water Treatment Plants I, II, III, and IV (I-IV) Filter Media Improvements - Request for Authorization to allow use of Alternate Project Delivery Method; Project No. 101-0615-22; Resolution No. 24-47**

**SUBJECT**

Authorize the use of Construction Manager At-Risk (CMAR) project delivery method for the Wylie Water Treatment Plants (WTPs) I-IV Filter Improvements project.

**PURPOSE**

CMAR project delivery provides a distinct advantage of early identification and procurement of major construction materials and equipment that have traditional long lead times for configuration approvals, fabrication, and delivery to the project site. Such items specific to this project includes filter underdrain blocks and replacement media for the filters. The CMAR delivery approach allows the procurement process to progress concurrently with the detailed design, which helps compress the project’s schedule. Use of CMAR minimizes impact on operational requirements by right sizing planned work to limit impact on production at different times of the year. The CMAR delivery method provides the best value to the NTMWD.

**RECOMMENDATION**

The Executive Director and NTMWD staff recommend the Board of Directors adopt Resolution No. 24-47, *A Resolution authorizing the use of this alternative delivery approach in accordance with Texas Government Code Chapter 2269, Contracting and Delivery Procedures for Construction Projects*. The Construction Manager at Risk delivery method will provide the best value to NTMWD.

- Consultant: N/A
- Scope: N/A
- Project: No. 101-0615-22, Wylie Water Treatment Plants (WTPs) I, II, III, and IV (I-IV) Filter Media Improvements
- Amount: N/A



Committee: This will be an item on the November 20, 2024, Water Committee meeting agenda

**DRIVER(S) FOR THIS PROJECT**

Strategic Objective: 1.1 High Quality Services

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> Regulatory Compliance | <input checked="" type="checkbox"/> Asset Condition        |
| <input type="checkbox"/> Capacity                         | <input type="checkbox"/> Redundancy/Resiliency             |
| <input type="checkbox"/> Relocation or External Requests  | <input checked="" type="checkbox"/> Operational Efficiency |
| <input type="checkbox"/> Safety                           | <input type="checkbox"/> Administrative                    |
| <input type="checkbox"/> Policy                           | <input type="checkbox"/> Other _____                       |

**BACKGROUND**

The existing anthracite/sand media in the filters has been maintained and periodically replaced in accordance with the grain size specifications . The media will naturally break down with use, resulting in an evolving particle size distribution that may not be optimal for the intended service.

A recent filter pilot study was conducted for over a year to measure and evaluate the potential performance characteristics of various target media profiles. The final results and recommendations of this study are expected to be completed in the near future.

During the construction phases of this project, the Contractors will install the optimally sized media where needed and will further evaluate various other improvements, which may include underdrain replacement, installation of media retention caps on new and existing underdrain blocks, filter wall coating, structural modifications due to existing deficiencies, installation of manways for underdrain access for inspection, and valve replacement.

**PROJECT PURPOSE**

- In December 2022, the Board approved Administrative Memorandum No. 5880 authorizing a preliminary engineering study for the Wylie WTPs I-IV Filter Media Improvements project. Preliminary engineering analysis is nearing completion, and the final design will begin afterward.

**PROJECT COMPONENTS**

- This action seeks the Board’s authorization for the use of the alternative delivery approach for this project.
- Future recommendations for final design services for this improvement project will be presented at a later date.
- Future actions dealing with selection of a CMAR and Authorization of CMAR Preconstruction and Procurement Services will be presented at a later time. Other subsequent recommendations dealing with construction Work Packages will also be brought to the Board for consideration at a later time.

**FUNDING**

None is required at this time.

**NORTH TEXAS MUNICIPAL WATER DISTRICT**

**RESOLUTION NO. 24-47**

**A RESOLUTION AUTHORIZING USE OF THE CONSTRUCTION MANAGER AT-RISK DELIVERY METHOD UNDER TEXAS GOVERNMENT CODE CHAPTER 2269 FOR THE WYLIE WATER TREATMENT PLANTS I, II, III and IV FILTER MEDIA IMPROVEMENTS**

**BE IT RESOLVED BY THE BOARD OF DIRECTORS OF NORTH TEXAS MUNICIPAL WATER DISTRICT:**

**SECTION 1**

That the North Texas Municipal Water District (NTMWD) authorizes the use of the Construction Manager At-Risk Delivery Method under Chapter 2269 of the Texas Government Code for the Wylie Water Treatment Plants (WTPs) I-IV Filter Media Improvements, Project No. 101-0615-22. T NTMWD, through this resolution, specifically elects to be governed by Chapter 2269 of the Texas Government Code solely for the delivery of the project referenced above, superseding Chapter 271 of the Texas Local Government Code and any other applicable law, rule or regulation governing competitive bidding by the NTMWD for these projects. The CMAR project delivery method will provide the best value to NTMWD.

**SECTION 2**

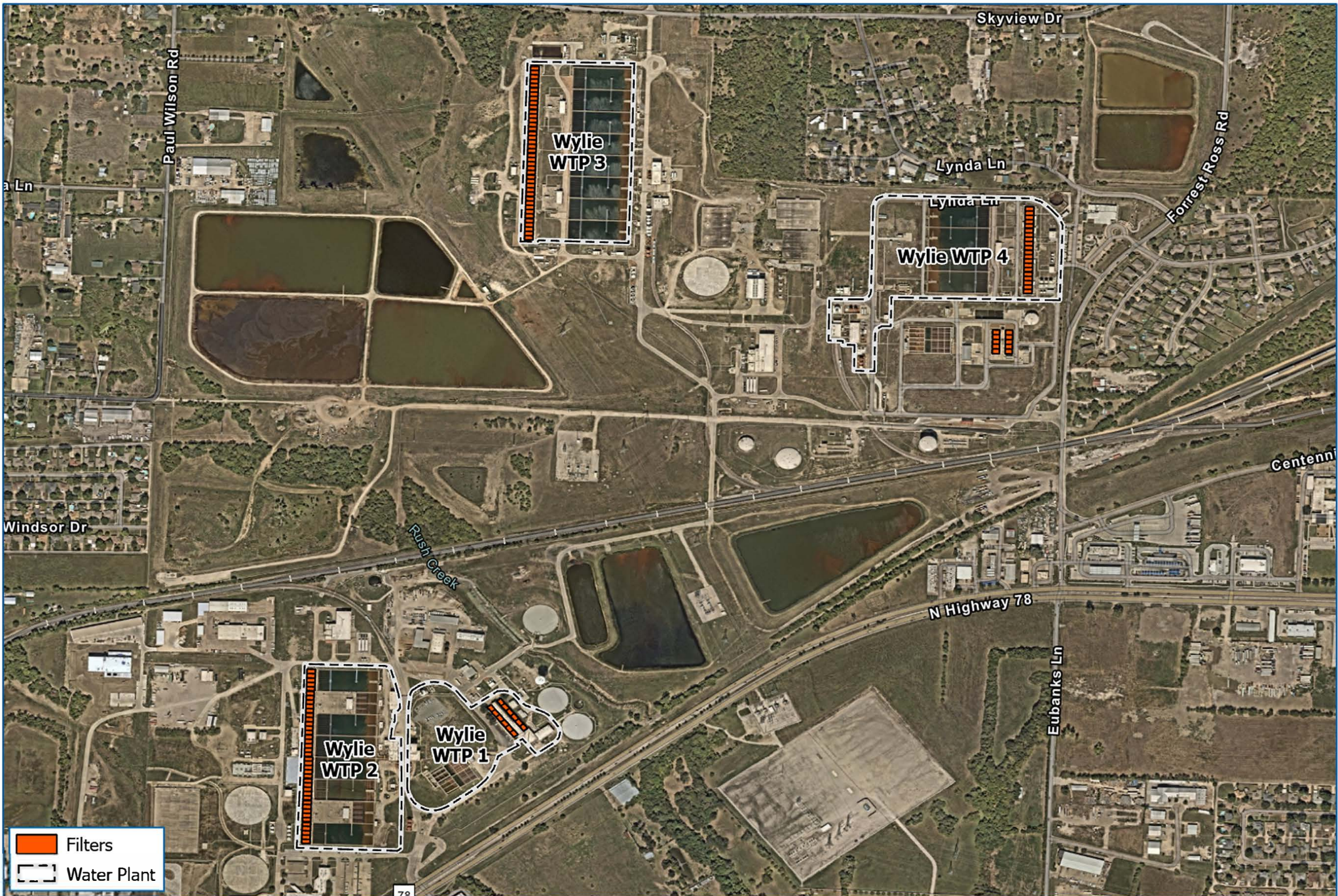
That this resolution shall take effect and be in full force and effect from and after the date of its adoption, and it is so resolved that all resolutions of the Board of Directors of the NTMWD in conflict herewith are hereby amended or repealed to the extent of such conflict.

**THIS RESOLUTION ADOPTED BY THE NTMWD BOARD OF DIRECTORS IN A REGULAR MEETING ON NOVEMBER 21, 2024, IN THE ADMINISTRATIVE OFFICES OF THE NTMWD, WYLIE, TEXAS.**

\_\_\_\_\_  
**DONALD IMRIE, Secretary**

\_\_\_\_\_  
**GEORGE CRUMP, President**

**(SEAL)**



**Wylie Water Treatment Plants I,II, III and IV  
Filter Media Improvements  
Project No. 101-615-22**





11/21/2024

Consent Agenda Item No. 24C-46

**Mustang Creek Interceptor System**

**Interlocal Cooperation Agreement between the North Texas Municipal Water District and the City of Mesquite regarding Mustang Creek Interceptor Improvements; Project Number 509-0656-24, Resolution No. 24-51**

**SUBJECT**

Authorize the execution of an Interlocal Agreement between the North Texas Municipal Water District (NTMWD) and the City of Mesquite (The City).

**PURPOSE**

The City of Mesquite plans to replace one manhole and approximately 500 linear feet of the 18-inch Mustang Creek Interceptor with a new larger manhole and 24-inch wastewater line to accommodate additional flows from a nearby single-family residential development called Talia.

**RECOMMENDATION**

The Executive Director, NTMWD staff and Saunders, Walsh & Beard, Attorneys and Counselors (SW&B) recommend the Board of Directors authorize the Executive Director to execute an Interlocal Cooperation Agreement as follows:

1. Authorize the Executive Director to execute an Interlocal Cooperation Agreement with the City of Mesquite.
2. Adopt Resolution No. 24-51, *“A Resolution Authorizing the Executive Director to execute an Interlocal Cooperation Agreement between the North Texas Municipal Water District and the City of Mesquite regarding Mustang Creek Interceptor Improvements in Mesquite, Texas”*

Contracting Party: City of Mesquite

Scope: Execution of an Interlocal Cooperation Agreement

Project: No. 509-0656-24 Interlocal Cooperation Agreement between the City of Mesquite and North Texas Municipal Water District for Construction of the Talia Offsite Sanitary Sewer and Necessary Upsizing of NTMWD’s 18-inch Mustang Creek Interceptor

Amount: \$0

Committee: This item was a Champion Update at the November 6, 2024, Executive Committee meeting.

**DRIVER(S) FOR THIS PROJECT**

Strategic Objective:	1.4 Reliable and Resilient Systems 3.3 Durable Strategic Partnerships
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<input type="checkbox"/> Regulatory Compliance	<input type="checkbox"/> Asset Condition
<input type="checkbox"/> Capacity	<input type="checkbox"/> Redundancy/Resiliency
<input checked="" type="checkbox"/> Relocation or External Requests	<input type="checkbox"/> Operational Efficiency
<input type="checkbox"/> Safety	<input type="checkbox"/> Administrative
<input type="checkbox"/> Policy	<input type="checkbox"/> Other _____

**BACKGROUND**

In August 2023, the City of Mesquite (“The City”) contacted NTMWD engineering and planning departments regarding the need to send additional flows into the Mustang Creek Interceptor system to accommodate a 600-acre planned single-family development called Talia. The City and NTMWD staff have coordinated the design of improvements to the Mustang Creek Interceptor with the City’s design engineer, Nehemiah Company, LLC, which includes:

- Replacement of approximately 500 linear feet of 18-inch pipeline with a 24-inch pipeline.
- Replacement of a wastewater manhole with a larger wastewater manhole.
- Repair of the internal liner for an existing manhole.

The City, Nehemiah Company, LLC, and NTMWD Engineering, Planning and Wastewater Operations staff completed a series of design review meetings between November 2023 and January 2024. NTMWD staff approved the final design plans on January 29, 2024.

**INTERLOCAL AGREEMENT:**

The Agreement is attached. The general notable terms are as follows:

- The City will replace approximately 500 linear feet of NTMWD’s 18-inch Mustang Creek Interceptor adjacent to Farm-to-Market Road (FM) 2757 between manhole no.’s “WWMH00705” and “WWMH00700” with a 24-inch wastewater pipeline, as depicted on Exhibit A of the ILA.
- The City will replace NTMWD’s Mustang Creek Interceptor manhole no. “WWMH00705” with a new larger manhole.
- The City will reline the interior of NTMWD’s manhole no. “WWMH00700” to NTMWD standards.

- The NTMWD will assume ownership and maintenance of the new manhole and 24-inch wastewater segment upon completion and approval of the City's project by NTMWD inspections.
- The City will reimburse the NTMWD a not-to-exceed amount of \$5,000 for legal and \$10,000 for inspection fees.
- The NTMWD will not be financially responsible for any costs associated with the City's project.

### **FUNDING**

None requested.

**NORTH TEXAS MUNICIPAL WATER DISTRICT**

**RESOLUTION NO. 24-51**

**A RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE AN INTERLOCAL COOPERATION AGREEMENT BETWEEN THE NORTH TEXAS MUNICIPAL WATER DISTRICT AND THE CITY OF MESQUITE REGARDING MUSTANG CREEK INTERCEPTOR IMPROVEMENTS**

**WHEREAS**, NTMWD currently owns and operates the Mustang Creek Wastewater Interceptor in Dallas and Kaufman Counties; and

**WHEREAS**, The City of Mesquite (the “City”) has requested authorization to send additional wastewater flows into the Mustang Creek Wastewater Interceptor to serve a planned 600-acre single family residential development; and

**WHEREAS**, in order accommodate the additional flows, a 500 linear feet section of the Mustang Creek Wastewater Interceptor must be increased in size from 18-inches to 24-inches, one manhole must be replaced with a larger manhole and the interior of one manhole must be relined (collectively the “City’s Improvements”); and

**WHEREAS**, The City shall be solely responsible for the procurement and construction of the City’s Improvements, including all costs and expenses; and

**WHEREAS**, The City shall reimburse the NTMWD for all legal and inspection fees associated with the City’s Improvements; and

**WHEREAS**, NTMWD will assume ownership and maintenance of the City’s Improvements upon completion and approval by an NTMWD Inspector.

**NOW, THEREFORE, THE BOARD OF DIRECTORS IN A REGULAR MEETING RESOLVES THAT:**

1. The Executive Director is authorized to execute an Interlocal Cooperation Agreement with the City of Mesquite for the above-named project.

**THIS RESOLUTION ADOPTED BY THE NTMWD BOARD OF DIRECTORS IN A REGULAR MEETING ON NOVEMBER 21, 2024, IN THE ADMINISTRATIVE OFFICES OF THE NTMWD, WYLIE, TEXAS.**

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**DONALD IMRIE, Secretary**

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**GEORGE CRUMP, President**

**(SEAL)**





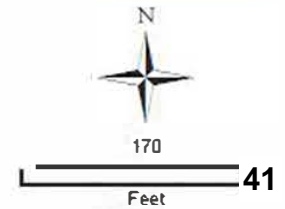
**Wastewater Manholes**

-  Loading
-  Non-Loading

**Wastewater Pipe**

-  Force Main
-  Gravity Main

**Interlocal Agreement between the North Texas Municipal Water District and the City of Mesquite regarding Mustang Creek Interceptor Improvements  
Project No. 509-0656-24**



**INTERLOCAL COOPERATION AGREEMENT BETWEEN  
THE CITY OF MESQUITE AND  
NORTH TEXAS MUNICIPAL WATER DISTRICT (NTMWD)  
FOR  
CONSTRUCTION OF THE TALIA OFFSITE SANITARY SEWER AND  
NECESSARY UPSIZING OF NTMWD'S 18-INCH MUSTANG CREEK  
INTERCEPTOR**

**WHEREAS**, Spradley Farms, LTD (the "Developer") is constructing the Talia Offsite Sanitary Sewer Project (the "Project") for the City of Mesquite (the "City"); and

**WHEREAS**, the Project includes replacing the existing NTMWD manhole "WWMH00705" and upsizing the existing 18-inch Mustang Creek Interceptor to 24-inch from "WWMH00705" to "WWMH00700" as depicted on **Exhibit A**, which is incorporated herein by reference; and

**WHEREAS**, NTMWD will assume ownership and maintenance of the new manhole and 24-inch segment described above upon completion and approval by a NTMWD Inspector; and

**WHEREAS**, the new manhole "WWMH00705" will be lined per current NTMWD standards and the lining of "WWMH00700" will be repaired per current NTMWD standards; and

**WHEREAS**, the new 24-inch segment of the Mustang Creek Interceptor will be SDR-26 PVC and installed per NTMWD current standards; and

**WHEREAS**, the existing 18-inch upstream connection to "WWMH705" will be maintained to the replacement manhole; and

**WHEREAS**, NTMWD will not be financially responsible for reimbursement to the City for this Project if NTMWD upgrades or abandons the Mustang Creek Interceptor; and

**WHEREAS**, NTMWD will retain all existing rights associated with its existing easement; and

**WHEREAS**, the Project requires NTMWD to employ a certified pipeline inspector to oversee construction activities within NTMWD's sanitary sewer easement; and

**WHEREAS**, the City will reimburse NTMWD for all legal and filing fees regarding this ILA, not to exceed a total of \$5,000; and

**WHEREAS**, the City will reimburse NTMWD for all inspection fees regarding the Project, not to exceed a total of \$10,000; and

**WHEREAS**, it is necessary to execute an Interlocal Cooperation Agreement with the City to protect NTMWD's infrastructure during construction of the Project and to ensure NTMWD standards of construction are met.

**NOW THEREFORE**, in consideration of the mutual covenants contained herein, City and NTMWD agree as follows:

## **ARTICLE ONE Reimbursement for Fees**

1.01 Reimbursement of NTMWD Fees. City agrees to reimburse NTMWD for the performance of the tasks necessary and related to NTMWD's coordination of the Project ("Reimbursement Payments") as provided herein. NTMWD will use the Reimbursement Payments by City for costs NTMWD incurs in providing the following services:

1. Legal Fees: City shall reimburse the NTMWD for all legal and filing fees associated with the Project, which are not expected to exceed a total of \$5,000.

1. Design Review and Inspection Fees: City shall reimburse NTMWD for any design review and for inspection staff that will make periodic visits to the construction site to inspect the work and meet with City staff and/or contractor to discuss the Project, which are not expected to exceed a total of \$10,000.

1.02 Coordination of Inspections. City and/or its contractor shall notify, in writing, NTMWD's inspection staff at least 48 hours in advance of any site inspection. NTMWD's inspection staff shall be notified of the scope of inspection(s) and date work will be ready to inspect.

1.03 Reimbursement Payment. NTMWD shall provide City with an itemized invoice of legal, design review and inspection fees pertaining to the Project on a monthly basis. City shall have 30 calendar days after the mailing of the invoice to submit payment to NTMWD. **The total estimated amount for the services is \$15,000.00 as itemized below:**

1. Legal Fees: Total estimated amount \$5,000
2. Design Review and Inspection Fees: Total estimated amount \$10,000.

These estimated amounts for legal fees, design review, and inspection fees are subject to change based on costs actually incurred by NTMWD. However, NTMWD shall provide

written notice to the City in the event the Reimbursement Payment is expected to exceed or exceeds \$15,000.

**ARTICLE TWO**  
**Term**

2.01 This Agreement shall be effective upon approval by the City and the NTMWD Board of Directors and subsequent execution by the City's authorized representative and NTMWD's Executive Director. The effective date will be the latter of the dates this Agreement is executed by the Parties' authorized representatives.

**ARTICLE THREE**  
**Hold Harmless**

3.01 In the event of joint or concurrent negligence of the Parties, responsibility, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas without, however, waiving any governmental immunity or defense available to any party individually under Texas law. City shall be responsible for its sole negligence. NTMWD shall be responsible for its sole negligence. The provisions of this paragraph are solely for the benefit of the Parties and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

**ARTICLE FOUR**  
**Immunity**

4.01 It is expressly understood and agreed that, in the execution of this agreement, neither Party waives, nor shall be deemed hereby to have waived any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the Parties do not create any obligations, expressed or implied, other than those set forth herein, and this Agreement shall not create any rights in parties not signatories hereto.

**ARTICLE FIVE**  
**Notices**

5.01 All notices required under the provisions of this Agreement must be in writing, hand-delivered or sent by registered or certified mail to the addresses below:

The City of Mesquite  
Attention: City Manager  
P O Box 850137  
Mesquite, TX 75185-0137

North Texas Municipal Water District  
Jennafer P. Covington  
Executive Director  
P.O. Box 2408  
Wylie, TX 75098

The name and address for notification may be changed by notice to the other parties.

## **ARTICLE SIX Insurance and Bonds**

1. Insurance Rating Requirements. All insurance required to be provided by the City or the City's contractor shall be obtained from insurance companies that are duly licensed or authorized in Texas to issue policies for the limits and coverages so required herein. Insurance companies providing the City's insurance shall have an A.M. Best Company Rating of A-VIII or better.

2. Certificates of Insurance. The City shall deliver to NTMWD certificates of insurance (and other evidence of insurance requested by NTMWD) which the City is required to purchase and maintain. Failure of NTMWD to demand such certificates or other evidence of the City's full compliance with these insurance requirements or failure of NTMWD to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of the City's obligation to maintain such insurance. NTMWD does not represent that insurance coverage and limits established in this Agreement necessarily will be adequate to protect the City. The insurance and insurance limits required herein shall not be deemed as a limitation on the City's liability under the indemnities granted to NTMWD in this Agreement.

6.03 The City and Its Contractor's Insurance. The City shall have its contractor purchase and maintain such insurance as is appropriate for the work being performed and as will provide protection from claims set forth below which may arise out of or result from the City's or the City's contractor's performance of the work and the City's other obligations under the Agreement, whether it is to be performed by the City, the City's contractor, any subcontractor or supplier, or by anyone directly or indirectly employed by any of them to perform any of the work, or by anyone for whose acts any of them may be liable:

- a. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
- b. claims for damages because of bodily injury, occupational sickness or disease, or death of the City's or the City's contractor's employees;

- c. claims for damages because of bodily injury, sickness or disease, or death of any person other than the City's or the City's contractor's employees;
- d. claims for damages insured by reasonably available personal injury liability coverage which are sustained:
  - 1. by any person as a result of an offense directly or indirectly related to the employment of such person by the City or the City's contractor, or
  - 2. by any other person for any other reason;
- e. claims for damages, other than to the work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
- f. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.
- g. The City's contractors will provide insurance satisfying the City's insurance requirements.

6.04 Insurance Policies. The policies of insurance required by this Article shall:

- a. be written on an occurrence basis, as applicable, include NTMWD as an additional insured, and include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of NTMWD, and the insurance afforded to NTMWD as an additional insureds shall provide primary coverage for all claims covered thereby;
- b. include at least the specific coverages and be written for not less than the limits of liability provided herein or required by laws or regulations, whichever is greater;
- c. include contractual liability insurance covering the City's indemnity obligations in this Agreement;
- d. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to NTMWD;
- e. remain in effect at least until the work is complete; and
- f. include completed operations coverage:

1. Such insurance shall remain in effect for two years after the work is complete.

2. The City shall furnish to NTMWD evidence satisfactory to NTMWD of continuation of such insurance for two years after the work is complete.

6.05 Coverage.

a. Worker's Compensation and Employer's Liability Insurance required herein is to provide coverage for not less than the following amounts or greater where required by laws and regulations.

Workers' Compensation, etc.,	
1) State:	Statutory
2) Applicable Federal (e.g., Longshore)	Statutory
Employers' Liability	
1) Bodily Injury by Accident	\$500,000
2) Bodily Injury by Disease - Each Employee	\$500,000
3) Bodily Injury by Disease - Policy Limit	\$500,000
Insurance shall include a waiver of subrogation in favor of the Additional Insured identified in Paragraph 5.04.B.1.	

b. The Liability Insurance required herein is to provide coverage for not less than the following amounts or greater where required by laws and regulations. The City can satisfy the requirements by a combination of the underlying coverage and umbrella/excess coverage; the underlying coverage amounts will be included in the overall umbrella/excess coverage amount:

Insurance for Claims of Damages	
1) General Aggregate (Except Products - Completed Operations)	\$ 2,000,000 / Occurrence \$ 4,000,000 / Aggregate
2) Products - Completed Operations Aggregate	
3) Personal and Advertising Injury (One Person/Organization)	\$1,000,000

4) Each Occurrence (Bodily Injury and Property Damage)	\$1,000,000
5) Limit Per Person – Medical Expense	\$25,000
6) Personal Injury Liability coverage will include claims arising out of Employment Practices Liability, limited to coverage provided under standard contract.	\$1,000,000
7) Property Damage Liability insurance will provide explosion, collapse and underground coverage where applicable	\$1,000,000

c. The City’s contractor’s liability insurance shall also include completed operations and product liability coverage, and eliminate the exclusion with respect to property under the care, custody and control of the City or the City’s contractor.

d. The City’s contractor’s automobile liability insurance required herein is to provide coverage for not less than the following amounts or greater where required by laws and regulations.

Bodily Injury:	
1) Each Person	\$1,000,000
2) Each Accident	\$1,000,000
Property Damage:	
1) Each Accident	\$1,000,000
Or	
2) Combined Single Limit (Bodily Injury and Property Damage)	\$1,000,000

e. Additional insured on all insurance policies in accordance with Section 6.05 (excluding workers’ compensation) include:  
North Texas Municipal Water District

f. The City’s contractor’s contractual liability insurance required herein is to provide coverage for not less than the following amounts or greater where required by laws and regulations.

The City’s Contractual Liability Insurance	
1) General Aggregate	\$ 2,000,000



2) Each Occurrence (Bodily Injury and Property Damage)	\$ 4,000,000
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6.06 Property Insurance. The City shall purchase and maintain property insurance or self-insurance equivalent upon the work at the City’s Project site in the amount of the full replacement cost thereof (subject to deductible amounts as may be required by laws and regulations). This insurance shall: include the interests of NTMWD and its officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee.; General Contractor shall purchase and maintain a Builder’s Risk “all-risk” policy that shall at least include insurance for physical loss or damage to the work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage (other than that caused by flood), and such other perils or causes of loss. The Builder’s Risk policy shall list NTMWD and the City as a loss payee; include expenses incurred in the repair or replacement of any insured property (including but not limited to reasonable fees and charges of engineers and architects) and cover materials and equipment stored at the Site or at another location and in transit for incorporation in the work from such storage locations that was agreed to in writing by NTMWD prior to being incorporated in the work. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this section will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to NTMWD.

6.07 NTMWD’s Insurance for Project. NTMWD shall not be responsible for purchasing and maintaining any insurance to the City’s Project in the interest of the City, the City’s contractor or others involved with the work. The stated limits of insurance required are minimum only. The City shall determine the limits that are adequate. These limits may be basic policy limits or any combination of basic limits and umbrella limits. In any event, the City is fully responsible for all losses arising out of, resulting from or connected with operations under this Agreement whether or not said losses are covered by insurance. The acceptance of certificates or other evidence of insurance by NTMWD that in any respect do not comply with the Agreement does not release the City from compliance herewith.

**ARTICLE SEVEN**  
**Severability**

7.01 The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause or phrase of this Agreement is for any reason held by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation

having the force and effect of the law, the remaining portions of the Agreement shall be enforced as if the invalid provision had never been included.

**ARTICLE EIGHT**  
**Successors and Assigns**

8.01 This Agreement shall be binding upon the Parties hereto, their successors and assigns. Neither Party will assign or transfer an interest in this Agreement without the written consent of the other Party.

**ARTICLE NINE**  
**Venue**

9.01 The laws of the State of Texas shall govern the interpretation, validity, performance and enforcement of this Agreement. The Parties agree that this Agreement is performable in Kaufman County, Texas, and that exclusive venue shall lie in a state court in Kaufman County, Texas.

**ARTICLE TEN**  
**Interpretation**

10.01 This is a negotiated document and should any part of this Agreement be in dispute, the Parties agree that the Agreement shall not be construed more favorably for either Party.

**ARTICLE ELEVEN**  
**Remedies, Non-Waiver**

11.01 No right or remedy granted herein or reserved to the Parties is exclusive of any right or remedy granted by law or equity, but each shall be cumulative of every right or remedy given hereunder. No covenant or condition of this Agreement may be waived without the express written consent of the Parties. It is further agreed that one or more instances of forbearance by either Party in the exercise of its respective rights under this Agreement shall in no way constitute a waiver thereof.

**ARTICLE TWELVE**  
**Entire Agreement**

12.01 This Agreement embodies the entire agreement between the Parties and may only be modified in writing executed by both Parties.

EACH PARTY HERETO ACKNOWLEDGES THAT THEY HAVE READ AND UNDERSTAND THE EFFECT OF THIS AGREEMENT, HAVE BEEN ADVISED BY COUNSEL AS TO THE EFFECT OF THIS AGREEMENT, AND EXECUTES THE AGREEMENT OF THEIR OWN FREE WILL AND ACCORD FOR THE PURPOSES AND CONSIDERATIONS SET FORTH.

IN WITNESS WHEREOF, North Texas Municipal Water District and the City of Mesquite have caused this Agreement to be executed either on their behalf by their duly authorized representatives or personally, as of the date first set above.

*(signature pages will follow)*

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

**City of Mesquite, Texas**

By: \_\_\_\_\_

Name: Cliff Keheley

Title: City Manager

STATE OF TEXAS

§

COUNTY OF DALLAS

§

§

This instrument was acknowledged before me on \_\_\_\_\_, 2024, by Cliff Keheley, City Manager, of the City of Mesquite.

\_\_\_\_\_  
Notary Public, in and for the State of Texas.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

**North Texas Municipal Water District**

By: \_\_\_\_\_

Name: Jennafer P. Covington

Title: Executive Director

STATE OF TEXAS

§

COUNTY OF COLLIN

§

§

This instrument was acknowledged before me on \_\_\_\_\_, 2024, by \_\_\_\_\_ of the NORTH TEXAS MUNICIPAL WATER DISTRICT, a governmental agency and body politic and corporate, on behalf of said agency and body politic and corporate.

\_\_\_\_\_  
Notary Public, in and for the State of Texas



11/21/2024

Administrative Memorandum No. 24-6075

**Regional Water System**

**Water System Variable Cost Rebates for Fiscal Year 2023-24**

**SUBJECT**

Authorize the rebate of funds in the amount of \$14,205,079.46 paid by applicable Member Cities and Customers per the District’s Water Variable Cost Rebate Policy, Section 6 of the Finance Policies Manual.

**PURPOSE**

If authorized by the Board of Directors, the rebate shall be allocated amongst all eligible member Cities and Customers based upon each Member City or Customer’s proportionate share of the total volume eligible for rebate. Staff reviewed the preliminary FY 2023-24 Water System Rebates with the Board of Directors on October 24, 2024, and recommended placing the rebates for consideration by the Board of Directors at the November 2024 Board meeting.

**RECOMMENDATION**

The Executive Director and NTMWD staff recommend the Board of Directors authorize Water System Rebates for Fiscal Year (FY) 2023-24 in the amount of \$14,205,079.46 per the attached schedule.

**DRIVER(S) FOR THIS PROJECT**

Strategic Objective:	2.3 Rigorous Financial Management
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- |  |  |
|--|--|
| <input type="checkbox"/> Regulatory Compliance           | <input type="checkbox"/> Asset Condition           |
| <input type="checkbox"/> Capacity                        | <input type="checkbox"/> Redundancy/Resiliency     |
| <input type="checkbox"/> Relocation or External Requests | <input type="checkbox"/> Operational Efficiency    |
| <input type="checkbox"/> Safety                          | <input checked="" type="checkbox"/> Administrative |
| <input type="checkbox"/> Policy                          | <input type="checkbox"/> Other _____               |

## **BACKGROUND**

- Section 6 of the Finance Policies Manual, Water Variable Cost Rebate Policy, requires NTMWD staff to annually provide the Board of Directors a schedule of Water System Variable Costs Rebates as a discussion item in October. After considering the financial condition of t NTMWD, the Board of Directors shall either instruct the Executive Director to place the rebates on the November agenda for consideration or accept the report as information only.
- The policy regarding Water System rebates was adopted in 1993. The policy was updated in August 2022, to state that the funds to be considered for rebate shall be calculated as the difference between the budgeted fiscal year variable costs and the corresponding fiscal year unaudited variable expenses in the Regional Water System.
- Rebates have been authorized each year except in 1996 and 1998.
- The Water Variable Cost Rebate Policy specifically states that Member Cities and Customers are not eligible for a rebate if they are establishing annual requirements by contract negotiations.
- The total rebate amount for FY 2023-24 is \$14,205,079.46, and the NTMWD is in a financial position to provide the rebates.
- A copy of the 2023-24 Water Variable Cost Rebate Schedule is attached.

## **FUNDING**

N/A

**REGIONAL WATER SYSTEM  
2023-24 WATER VARIABLE COST REBATES**

	<b>CONSUMPTION (1,000 Gallons)</b>			<b>% of Total Rebate Volume</b>	<b>REBATE (proportionate share)</b>
	<b>ANNUAL MINIMUM</b>	<b>ACTUAL USAGE</b>	<b>Rebate Volume (1,000 gal)</b>		
<b>MEMBERS</b>					
Garland	13,055,765	11,898,824	1,156,941	23.2%	\$ (3,290,921.78)
Mesquite	7,819,360	7,325,660	493,700	9.9%	(1,404,330.97)
Plano	25,457,479	22,940,474	2,517,005	50.4%	(7,159,627.48)
Richardson	10,565,349	10,331,142	234,207	4.7%	(666,202.44)
Total Members	<u>101,804,886</u>	<u>100,187,491</u>	<u>4,401,853</u>	88.1%	<u>\$ (12,521,082.67)</u>
<b>CUSTOMERS</b>					
BHP WSC	176,927	175,862	1,065	0.0%	\$ (3,029.40)
Cash SUD	360,572	351,994	8,578	0.2%	(24,400.14)
College Mound SUD	78,066	44,398	33,668	0.7%	(95,768.72)
Fairview	1,036,186	1,031,982	4,204	0.1%	(11,958.29)
Gastonia-Scurry SUD	110,490	96,652	13,838	0.3%	(39,362.23)
Kaufman	465,043	450,075	14,968	0.3%	(42,576.52)
Melissa	350,960	323,881	27,079	0.5%	(77,026.29)
Milligan WSC	149,894	143,964	5,930	0.1%	(16,867.90)
Mt. Zion WSC	156,750	117,832	38,918	0.8%	(110,702.36)
Murphy	1,661,494	1,571,910	89,584	1.8%	(254,821.93)
Rose Hill SUD	142,315	121,995	20,320	0.4%	(57,800.29)
Rowlett	3,192,039	2,939,478	252,561	5.1%	(718,410.43)
Sachse	1,332,153	1,316,134	16,019	0.3%	(45,566.09)
Wylie N.E. SUD	476,262	410,976	65,286	1.3%	(185,706.20)
Total Customers	<u>25,502,703</u>	<u>26,009,022</u>	<u>592,018</u>	11.9%	<u>\$ (1,683,996.79)</u>
Grand Total	<u><u>127,307,589</u></u>	<u><u>126,196,513</u></u>	<u><u>4,993,871</u></u>	100.0%	<u><u>\$ (14,205,079.46)</u></u>



11/21/2024

Administrative Memorandum No. 24-6076

Regional Water System

Resolution Establishing a New Customer Rate and Premium Methodology for the Regional Water System; Resolution 24-52

**SUBJECT**

Adopt Resolution 24-52 establishing a new customer rate and premium methodology for the Regional Water System

**PURPOSE**

Following the findings of the 2021 Independent Financial Report and subsequent rate study, the Board supported NTMWD staff to engage with Members and Customers to develop a new methodology to calculate the Customer Premium for the Regional Water System. After months of engagement, a consensus was achieved around a methodology as referenced in the accompanying resolution.

**RECOMMENDATION**

The Executive Director, NTMWD staff, Carollo Engineers, Inc. and Lloyd, Gosselink, Rochelle & Townsend, P. C., recommend the Board of Directors adopt Resolution 24-52 that includes the customer rate methodology.

**DRIVER(S) FOR THIS PROJECT**

Strategic Objective:	2.3 Rigorous Financial Management 3.2 Engaged Members, Customers and Stakeholders
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<input type="checkbox"/> Regulatory Compliance	<input type="checkbox"/> Asset Condition
<input type="checkbox"/> Capacity	<input type="checkbox"/> Redundancy/Resiliency
<input type="checkbox"/> Relocation or External Requests	<input type="checkbox"/> Operational Efficiency
<input type="checkbox"/> Safety	<input checked="" type="checkbox"/> Administrative
<input type="checkbox"/> Policy	<input type="checkbox"/> Other _____



## **BACKGROUND**

### **PURPOSE**

- NTMWD adopted a water rate in 1970, applicable to non-member customers of the Regional Water System (Customers) in the amount of 5 cents plus the Member City Rate per 1,000 gallons of water. The Customer Rate has not been revised or changed since its adoption and the value of the differential between the Customer Rate as a percentage of the Member City Rate has declined since 1970;
- NTMWD executed a 2020 Settlement Agreement to resolve a dispute and related litigation among the Member Cities over the Member City Contract that includes a requirement for NTMWD to engage a third party to perform a financial management review every three years, including an examination of the collection and application of system revenues including the Customer Rate (Independent Review). In November 2021, the Independent Review recommended NTMWD perform a detailed cost of service and rate study to refine and document the basis for a long-term Customer Rate.
- Following that recommendation, the District contracted with Carollo Engineers to conduct a study in accordance with accepted industry standards and utility rate-setting principles. Carollo's study indicated that the use of accepted industry standards and utility rate-setting principles led to unacceptable levels of rate volatility.
- The Board determined that an opportunity for negotiation of a Customer Rate methodology was in the best interest of NTMWD and the region, and representatives of Member Cities and Customers were willing to engage in such negotiations.
- Member Cities and Customers engaged in a working group of Member Cities' city managers and Customer city managers and expressed a desire to incentivize conservation through a negotiated Customer Rate methodology. The majority of the Work Group recommends the negotiated Customer Rate methodology be commensurate with the 2.8% historical average premium paid by the Customers. The Work Group also recommends a tiered approach to establishing a new Customer Rate methodology, allowing for a lower premium on existing volumes.

### **COMPONENTS OF THE CUSTOMER CONTRACT TEMPLATE**

- NTMWD shall make available to Customers until July 31, 2028 a new Customer contract template that phases in the new Customer Rate methodology by establishing a legacy annual minimum volume and applying a cap as follows:
  - Legacy Premium Component: For that portion of Customer's annual minimum equal to its Fiscal Year (FY) 2028 annual minimum plus 5% ("Legacy Volume") the Customer Rate applied shall be the Member City Rate plus 5 cents ("Legacy Charge");
  - Growth Premium Component: For that portion of the Customer's annual minimum greater than the Legacy Volume ("Growth Volume"), the Customer Rate applied shall be the Member City Rate plus 10% ("Growth Charge"); and

- Effective Premium Cap: For the purposes of this calculation, “Effective Rate” means the amount to be paid by the Customer per 1,000 gallons resulting from the calculation of the Legacy Premium Component and the Growth Premium Component. If the Customer’s calculated Effective Rate exceeds the Member City Rate plus 2.8%, the Customer Rate shall be adjusted to result in payment by the Customer that equals the Member City Rate plus 2.8% (“Effective Premium Rate”). After a Customer reaches the Effective Premium Cap, the Customer Rate cannot fall below the Effective Premium Rate.
- This phased approach will only be available to Customers executing the new Customer contract template prior to July 31, 2028.
- The new Customer Rate methodology and upcoming Customer contract template described are of benefit to Customers and the region in that it:
  - Provides certainty on the Customer Rate for years to come;
  - Incentivizes conservation; and
  - Allows a reasonable phase-in for Customers through recognition of the Legacy Premium Component and Effective Premium Cap.
- NTMWD will honor existing Customer Contract terms for those Customers that do not chose to move to the new Customer contract template, but NTMWD anticipates many Customers will find the new template to be of benefit.
- Current Customers entering into a new contract after July 31, 2028, will have their rate set at 2.8% above the member rate.

## **FUNDING**

N/A

# NORTH TEXAS MUNICIPAL WATER DISTRICT

## RESOLUTION NO. 24-52

A RESOLUTION ESTABLISHING A NEW CUSTOMER RATE AND PREMIUM METHODOLOGY FOR THE REGIONAL WATER SYSTEM OF THE NORTH TEXAS MUNICIPAL WATER DISTRICT.

**WHEREAS**, pursuant to that certain “North Texas Municipal Water District Regional Water Supply Facilities Amendatory Contract” as amended and executed by the North Texas Municipal Water District (NTMWD) and Member Cities (Member City Contract), each fiscal year NTMWD establishes a rate per 1,000 gallons of water volume to be paid by Member Cities to recover the Annual Requirement as defined by such contract (Member City Rate); and

**WHEREAS**, in 1970, NTMWD adopted a water rate applicable to non-member customers of the Regional Water System (Customers) in the amount of 5-cents plus the Member City Rate per 1,000 gallons of water volume (Customer Rate) and such Customer Rate has not been revised or changed since its adoption; and

**WHEREAS**, the value of the differential between the Customer Rate as a percentage of the Member City Rate has declined since 1970; and

**WHEREAS**, to resolve a dispute and related litigation among the Member Cities over the Member City Contract, the Member Cities and NTMWD executed a 2020 Settlement Agreement that includes a requirement for NTMWD to engage a third party to perform a financial management review every three years, including an examination of the collection and application of system revenues including the Customer Rate (Independent Review); and,

**WHEREAS**, the Independent Review report dated November 2021 recommended NTMWD perform a detailed cost of service and rate study to refine and document the basis for a long-term Customer Rate; and

**WHEREAS**, in October 2022 the District engaged Carollo Engineers, Inc. to conduct the recommended study in accordance with accepted industry standards and utility rate setting principles (Carollo Rate Study); and

**WHEREAS**, the Carollo Rate Study indicated that the use of accepted industry standards and utility rate setting principles led to unacceptable levels of rate volatility; and

**WHEREAS**, the NTMWD Board of Directors determined that an opportunity for negotiation of a Customer Rate methodology was in the best interest of NTMWD and the region, and representatives of Member Cities and Customers were willing to engage in such negotiation; and

**WHEREAS**, a working group of Member Cities' city managers and Customer city managers was assembled that has worked from October 2023 through August 2024 (Work Group); and

**WHEREAS**, the Work Group expressed a desire to incentivize conservation through a negotiated Customer Rate methodology; and

**WHEREAS**, a majority of the Work Group recommends the negotiated Customer Rate methodology be commensurate with the 2.8% historical average premium paid by Customers; and

**WHEREAS**, the majority of the Work Group recommends a tiered approach to establishing a new Customer Rate methodology, allowing for a lower premium on existing volumes; and

**WHEREAS**, the Work Group recommendations are supported by a majority of representatives of Member Cities and Customers who participated in the Work Group; and

**WHEREAS**, the Board gives due consideration to the work and recommendations of the Work Group and finds that such recommendations would be of benefit to the region if implemented;

**NOW, THEREFORE, THE BOARD OF DIRECTORS IN A REGULAR MEETING DETERMINES AND RESOLVES THAT:**

1. Defined terms appearing the Recitals to this resolution above are incorporated for all purposes.
2. Subject to applicable existing Customer contract provisions, NTMWD shall use the following methodology for establishing the Customer Rate as a part of its annual budget and rate setting process.
3. The Regional Water System Customer Rate is established at 5-cents per 1,000 gallons over the Member City Rate for the fiscal years 2024-25; 2025-26; 2026-27; 2027-28, ending on September 30, 2028.
4. The Regional Water System Customer Rate is established at the Member City Rate plus 2.8% for the fiscal year beginning October 1, 2028 and each fiscal year thereafter.
5. NTMWD shall make available to Customers until July 31, 2028 a new Customer contract template that phases in the new Customer Rate methodology by establishing a legacy annual minimum volume and applying a cap as follows:
  - a. Legacy Premium Component: For that portion of Customer's annual minimum equal to its FY 2028 annual minimum plus 5% ("Legacy Volume") the Customer Rate applied shall be the Member City Rate plus 5-cents ("Legacy Charge");

- b. Growth Premium Component: For that portion of the Customer’s annual minimum greater than the Legacy Volume (“Growth Volume”), the Customer Rate applied shall be the Member City Rate plus 10% (“Growth Charge”); and
  - c. Effective Premium Cap: For the purposes of this calculation, “Effective Rate” means the amount to be paid by Customer per 1,000 gallons resulting from calculation of the Legacy Premium Component and the Growth Premium Component. If the Customer’s calculated Effective Rate exceeds the Member City Rate plus 2.8%; the Customer Rate shall be adjusted to result in payment by Customer that equals the Member City Rate plus 2.8% (“Effective Premium Rate”). After a Customer reaches the Effective Premium Rate, the Customer Rate cannot fall below the Effective Premium Rate.
  - d. This phase in will only be available to Customers executing the new Customer contract template prior to July 31, 2028.
6. The new Customer Rate methodology described herein is of benefit to Customers and the region in that it:
- a. Provides certainty on the Customer Rate for years to come;
  - b. Incentivizes conservation; and
  - c. Allows a reasonable phase in for Customers through recognition of the Legacy Premium Component and Effective Premium Cap.
7. NTMWD will honor existing Customer Contract terms for those Customers that do not chose to move to the new Customer contract template; but NTMWD anticipates many Customers will find the new template to be of benefit for the reasons described herein.

NTMWD acknowledges and appreciates the efforts of the Member and Customer Work Group and other local leaders that have led to a regionally developed recommendation on the Customer Rate as adopted in this resolution.

**THIS RESOLUTION ADOPTED BY THE NTMWD BOARD OF DIRECTORS IN A REGULAR MEETING ON NOVEMBER 21, 2024, IN THE ADMINISTRATIVE OFFICES OF THE NTMWD, WYLIE, TEXAS.**

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DONALD IMRIE, Secretary

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GEORGE CRUMP, President

(SEAL)



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11/21/2024

Administrative Memorandum No. 24-6077

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**Authorization of Wholesale Water Agreement between Royse City and Hunt County Municipal Utility District (MUD) No 4.**

**SUBJECT**

Authorize a wholesale water sales contract between the City of Royse City (City) and the Hunt County MUD No.4 which a portion is located outside the current City Limits and Extraterritorial Jurisdiction (ETJ).

**PURPOSE**

This consideration for approval of a wholesale water sales contract is required under Section 3 (a) of the August 1, 1988, Regional Water Supply Facilities Amendatory Contract between the NTMWD and the City of Royse City.

**RECOMMENDATION**

The Executive Director and NTMWD staff recommend the Board of Directors approve the wholesale water sales contract between the City of Royse City and the Hunt County Municipal Utility District No. 4

Contracting Party: City of Royse City

Purpose: Wholesale Water Contract

Contract Term: 20 Years

Committee: This will be an item on the November 20, 2024, Water Committee agenda

**DRIVER(S) FOR THIS PROJECT**

Strategic Objective:	3.2 Engaged Members, Customers and Stakeholders
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<input type="checkbox"/> Regulatory Compliance	<input type="checkbox"/> Asset Condition
<input type="checkbox"/> Capacity	<input type="checkbox"/> Redundancy/Resiliency
<input type="checkbox"/> Relocation or External Requests	<input type="checkbox"/> Operational Efficiency
<input type="checkbox"/> Safety	<input checked="" type="checkbox"/> Administrative
<input type="checkbox"/> Policy	<input type="checkbox"/> Other _____

**BACKGROUND**

- Royse City is requesting authorization to sell potable water to the Hunt County MUD No 4, which a small portion includes an area outside Royse City limits

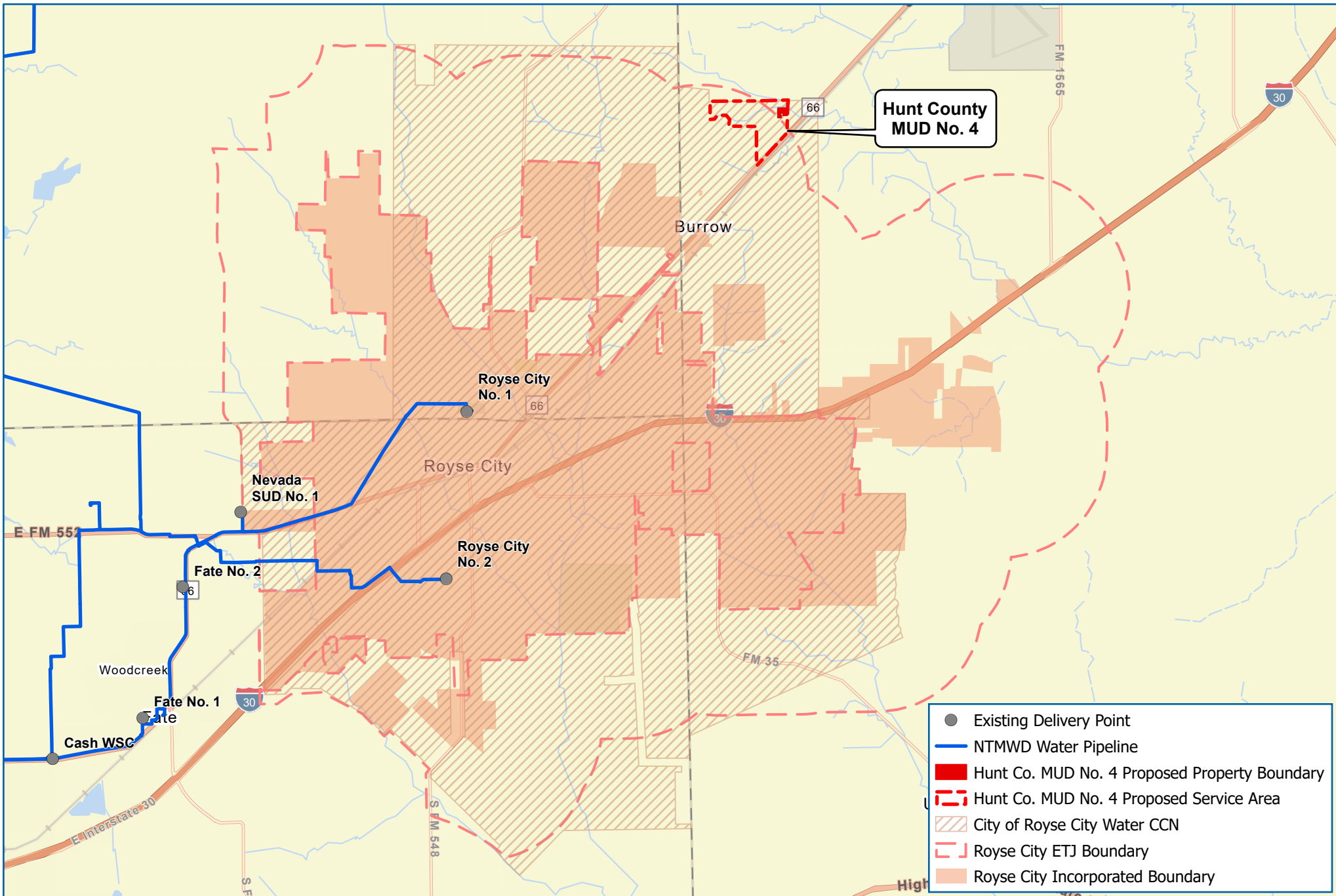
**PURPOSE**

- Hunt County MUD No. 4 development covers approximately 144 acres.
- The City has available potable water quantities and will provide up to 920,000 gallons per day of potable water
- The City will provide water to Hunt County MUD No. 4 through its own water supply system
- Water will only be provided to customers within the defined boundary of the property described in the Development Agreement
- Hunt County MUD No. 4 must adopt conservation measures consistent with Royse City
- Hunt County MUD No. 4 shall not use water for filling purposes or maintaining surface water impoundments without express written consent of the City
- The attached location map provides more detail of the area

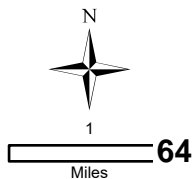
City of Royse City Council will approve this contract amendment at its December 10, 2024, meeting. A copy of the Agreement contract is attached.

**FUNDING**

Not Applicable



## Wholesale Water Agreement between Royse City and Hunt County Municipal Utility District No. 4





**WHOLESALE WATER CONTRACT**

**STATE OF TEXAS**

§

**COUNTY OF HUNT**

§

§

This Wholesale Water Contract (“*Contract*”) is made and entered into by and between the City of Royse City, Texas, a municipal corporation in Hunt County, Texas, acting under the laws of the State of Texas (hereinafter called “*City*”), and Hunt County Municipal Utility District No. 4, a municipal utility district operating pursuant to the provisions of Article XVI, Section 59, and Article III, Section 52, of the Texas Constitution and Chapters 49 and 54 of the Texas Water Code (hereinafter called “*Customer*”).

RECITALS

The following recitals (1) are true and correct; (2) incorporated as part of this Contract for all purposes; (3) evidence the intent of the Parties in entering into this Contract; and (4) are to be used in interpreting this Contract:

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

**WHEREAS**, Customer is desirous of obtaining up to 920,000 gallons per day (“*GPD*”) of an adequate and dependable wholesale water supply; and

**WHEREAS**, Customer was created to provide, among other services, water supply service to certain property in Hunt County, Texas located within its jurisdictional boundaries(the “*Development*”), which Development covers the approximately 144 acres of land described in Exhibit “A” attached hereto and made a part hereof (the “*Property*”); and

**WHEREAS**, the Property is located either inside of the boundaries of the City’s extraterritorial jurisdiction or will be located inside the boundaries of the City’s extraterritorial jurisdiction at the time of delivery of water; and

**WHEREAS**, the Parties intend for the City to be the wholesale water provider and Customer to be the retail water provider to the customers located within the Property; and

**WHEREAS**, the City’s existing water distribution system has available potable water quantities and capacities hereinafter contracted to be sold by it to Customer, subject to the terms and provisions of this Contract, as evidenced by the Memorandum prepared by Birkhoff, Hendricks & Carter, L.L.P. regarding their analysis of the City’s water system dated July 2, 2024 (the “*Water Study*”) attached hereto as Exhibit “D” and made a part hereof; and

**WHEREAS**, the Parties desire to establish provisions for the sale and distribution of treated water by the City to Customer and to establish the rate, duration, metering, and related responsibilities of the Parties.

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

AGREEMENT

**Article 1. General**

1.01 Definitions. The following terms and expressions used in this Contract, unless the context indicates otherwise, shall mean:

“*Business Day*” means any Day other than Saturdays, Sundays and City’s published holidays.

“*CCN*” means a Certificate of Convenience and Necessity issued by the Public Utility Commission of Texas (“*PUC*”) or its predecessor/successor agency as prescribed by the Texas Water Code, as amended.

“*City System*” means the Water supply system owned by the City located on its side of the Delivery Point.

“*Contract*” means this “Wholesale Water Contract” and any subsequent amendments agreed to in writing by the Parties.

“*Customer’s System*” means that system by which Customer delivers Treated Water to its retail customers, all of whom must be located within the physical boundaries of the Property as described in Exhibit “A”.

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

“*Delivery Point(s)*” means the point(s) at which City agrees to deliver Treated Water under this Contract to Customer. The Delivery Point(s) are located as shown on Exhibit “B”. The Parties may mutually agree upon additional Delivery Points.

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

“*Meter(s)*” means the metering facility or device to be installed at each Metering Point(s) to measure the amount of Treated Water delivered to Customer by City, as provided in this Contract. A Meter will not be required to be installed at the Delivery Point, which is intended to be closed during normal operations and only opened in the case of an Emergency.

“*Metering Point(s)*” means the location(s) at which a Meter shall be installed, as reflected on Exhibit “B”.

“*NTMWD*” means the North Texas Municipal Water District.

“*Party*” means either the City or the Customer, and “*Parties*” means City and Customer, collectively.

“*Rate*” means the dollar amount per 1,000 gallons applied to Customer’s metered usage of Treated Water in order to calculate the Volume Charge, as more specifically described in Article 3.C., herein.

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

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

“*Treated Water*” or “*Water*” means water treated by the North Texas Municipal Water District and distributed by the City so that it is potable water meeting the minimum water quality requirements for human consumption as prescribed by the TCEQ or other appropriate regulatory agency with jurisdiction.

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

“*Water Study*” means that certain Memorandum prepared by Birkhoff, Hendricks & Carter, L.L.P. regarding their analysis of the City’s water system dated July 2, 2024 attached hereto as Exhibit “D” and made a part hereof.

1.02 Effective Date. The Effective Date shall be the later of the dates this Contract is approved by City and signed by the authorized representatives of each Party.

1.03 Term. This Contract shall continue in force and effect for a period of twenty (20) years from the Effective Date hereof and shall be subsequently extended automatically for additional ten (10)-year terms until terminated by either Party in accordance with the terms hereof. A Party which does not desire renewal of this Contract must give the other Party no less than three (3) years advance written notice of its intent to terminate at the end of the current term.

## **Article 2 Party Responsibilities; Dual CCN**

2.01 City. City is responsible for (i) timely providing up to 920,000 gpd of Water (the “*Maximum Daily Quantity*”) to serve the Development, (ii) operating a Water supply system to the extent permitted by available Water supply, (iii) developing cost of service information to support rate changes, and (iv) informing Customer of changes in financial data.

2.02 Customer. Customer is responsible for (i) keeping the City informed concerning its projected Water supply needs and operating requirements, (ii) planning and managing the Customer’s System to promote Water Conservation and efficient system operation, including, but not limited to, adopting and implementing a water conservation and drought contingency plan that is at least as strict as the then-current plan adopted by the City and (iii) paying Rates imposed by City pursuant hereto. Customer is also responsible for maintaining pumping and pressure requirements and storage capacity within Customer’s System in accordance with rules and regulations set forth by the TCEQ, or its successor agency. Customer has advised the City that upon full development of the Property, Customer may be providing Water up to 920,000 gpd to its retail customers. Within six (6) months of the Effective Date, Customer shall provide the City with a report as to its existing and projected needs for the ensuing five (5) year period. Customer shall continue to provide City a report of Customer’s existing and projected needs for the ensuing five-year period every third (3<sup>rd</sup>) year after the Effective Date of this Contract.

2.03 Certificate of Convenience and Necessity. The City and Customer hereby acknowledge and agree that the Property is located wholly within the City’s CCN No. 12827, requiring the City to provide retail water service within the certificated area pursuant to its service policies. Under the terms of this Contract, the City shall be the wholesale water service provider to Customer, and Customer shall be the retail water service provider to the customers located within the Property. In order to allow for Customer to be the retail water service provider to the customers located within the Property, the City and Customer intend for Customer to obtain a dual water CCN over the Property by filing appropriate documentation with the PUC, including this Contract and other appropriate documentation as evidence of the City’s consent to such dual water CCN. The City hereby agrees to support Customer’s application to the PUC to obtain a dual water CCN over the Property and shall execute any and all documentation reasonably necessary to evidence the City’s support of and consent to such dual water CCN. Upon Customer obtaining such dual water CCN, the City and Customer agree that Customer shall be the exclusive retail water service provider to the Property and to the customers located within the Property, unless otherwise provided herein. In no event shall the City provide retail water service to any customers located within the Property unless and until Customer is dissolved and ceases to exist as a political subdivision of the State of Texas, or until an agreement between City and Customer provide otherwise.

## **Article 3 Water Quantity; Quality; Price and Terms**

### **A. Unit of Measurement**

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

## **B. Water Quality**

3.02 Delivery Rates. Rates of delivery of Water at the Point(s) of Delivery shall be regulated by a rate of flow controller installed by the Customer at Customer's sole cost. Upon installation, ownership of the rate of flow controller and associated facility shall be transferred to the City, at no cost to the City, and the City shall operate, maintain, and have sole right of access to said facility.

3.03 Limitation of Usage. The City shall have authority to limit Customer's usage in the event City does not have the availability to provide the usage permitted on the same basis as it is limiting usage to other similarly situated customers inside the corporate limits of the City. The City will use its best efforts to remain in a position to furnish Water as herein contracted to be sold to Customer, but the City's obligations shall be limited in accordance with other conditions herein contained.

3.04 Insufficient Supply. In the event the total Water supply available to the City shall be insufficient to meet all of the needs of the residents of the City and customers of Customer, the City may prorate the Water available among all customers of the City and Customer. In the event of shortage, Customer shall be furnished Water in a quantity which bears the same proportion to the total Water available to City for use by individual connections as the number of individual connections served by the City.

3.05 Outdoor Watering Restrictions. Customer may prescribe a schedule of hours covering use of Water for the watering of lawns and gardens by its customers, and require adherence hereto, or prohibit the use of Water for the watering of lawns and gardens, provided that if at any time the total Water supply available to Customer shall be insufficient to meet all the needs of its customers, Water must first be furnished to all customers of Customer sufficient to satisfy their needs for domestic purposes before supplying any Water for the watering of lawns and gardens. Should the City impose water restrictions suggested by NTMWD on City residents, Customer shall impose outdoor watering restrictions at least as strict as those of the City on its own customers.

3.06 Local Water Use. The Parties acknowledge and agree that, notwithstanding any provisions of this Contract to the contrary, any Water supply made available by the City to Customer hereunder shall be used solely in the Property and shall not be authorized for use outside of the Property.

3.07 Water Conservation. Customer shall prepare, formally adopt, and implement a water conservation and drought contingency plan(s) that is consistent with TCEQ requirements and that is at least as strict as the then-current water conservation and drought contingency plan adopted by the City. Customer may utilize any water conservation measure, policy, or practice in order to achieve said Water conservation goals demanded by City. Should the City impose water restrictions suggested by NTMWD on City residents, Customer shall impose Water conservation requirements at least as strict as those of the City on its own customers.

3.08 Emergency Measures. If an Emergency dictates temporary conservation or rationing requirements for either the City or Customer, either Party may implement any measures considered appropriate by it to alleviate the Emergency. If Customer implements measures to alleviate an

Emergency, Customer shall notify the City in writing within five (5) Days of implementing such measures.

3.09 Surface Water Impoundments; Restrictions. Customer or its customers shall not use Treated Water for the purposes of filling or maintaining the level of surface water impoundments without the express written consent of the City.

3.10 Title to Water. Title to all Water supply to Customer shall be to the City up to the Delivery Point(s), at which point title shall pass to Customer. The City and Customer shall save and hold each other harmless from all claims, demands, and causes of action, which may be asserted by anyone on account of the transportation and delivery of said Water, while title remains in such Party. Notwithstanding anything contained herein to the contrary, the Parties hereto do not waive and hereby expressly retain any and all immunities and defenses, sovereign, legislative, official and otherwise, that each may now or hereafter possess. Nothing contained in this Contract shall be interpreted as conferring any rights to any person not a Party to this Contract.

3.11 Changes in Customer Demand. Customer shall provide reasonable notice to the City of any anticipated changes in demand requirements in excess of the projections previously supplied to the City. Such notice shall be utilized by the City in determining whether construction of additional facilities or utilization of existing system capacity will be required. In the event of a change in demand requirements above the Maximum Daily Quantity, Customer shall be responsible for the cost of any additional facilities, or the utilization of existing excess system capacity (even if such utilization of existing capacity does not require additional construction). Payments by Customer contemplated by this section for additional facilities are required prior to the awarding of any construction contracts. Payment by Customer for utilization of existing excess capacity of more than the Maximum Daily Quantity must be paid prior to the capacity being provided.

3.12 Limitation on Supply. Customer understands and agrees that the City's ability and capacity to provide increases in demand or volume is subject to available supply and ability to deliver Treated Water as may be determined by the City through its sole source of such Water, NTMWD. City may deny Customer requests for increase demand requirements based on a limited ability to supply and deliver Water.

3.13 Other Contracts. The City reserves the right to enter into Water sale contracts with other entities under the same or similar provisions as contained in this Contract. Customer has no rights to additional Water in excess of the Maximum Daily Quantity.

## **B. Quality**

3.14 Potable Water. The City shall furnish Customer treated Water suitable for human consumption in accordance with all applicable laws, rules, and regulations of this state.

3.15 Limit. The City guarantees the quality of Water provided to Customer only up to the Delivery Point. Customer specifically acknowledges that the quality of Water after passage through the Delivery Point is Customer's sole responsibility.

### C. Price and Terms

3.16 Payment. For the purposes of this Contract, Customer shall pay the City each month for the Water supply provided under this Contract. The Customer shall be treated as one wholesale customer.

3.17 Rate. The Rate per 1,000 gallons to be paid by the Customer will be based on the City's budgeted cost and subject to annual adjustment by the City in accordance with the terms hereof. The Rate shall initially be \$ [REDACTED] per 1,000 gallons, as detailed in Exhibit "C". Said Rate includes, but may not necessarily be limited to, the Customer's proportionate share of cost including, but not limited to:

- a. The cost of water purchased from NTMWD;
- b. The cost of supplemental treatment of Water by the City from NTMWD needed to maintain the quality of Water to the Delivery Point;
- c. The cost of transmitting water from the City's point of delivery from NTMWD to Customer's Delivery Point(s);
- d. Applicable design, construction, operations, maintenance, repair, replacement, general, and administrative costs incurred by the City; and,
- e. Customer's proportional share of infrastructure improvements incurred by the City, including any additional water towers needed in order to provide the necessary supply of Water to the Development.

Once each year, beginning in the year the Customer's System is connected to the City's System at the Delivery Point, the City may review the Rate and adjust it to reflect the City's additional costs as reflected in the City's then current "cost of service" analysis utilized to set the City's generally applicable water rates. The City's current "cost of service" analysis is attached hereto as Exhibit "C".

3.18 Payment. Payment for Water service charges as calculated above shall be made each year by Customer to the City in monthly installments, each of which shall be based upon the prior month's usage. Each payment shall be due and payable on or before the last Business Day of the month following Customer's receipt of invoicing by the City.

3.19 Commencement of Liability. Customer's liability and responsibility for making such payments, as herein set forth, shall commence on the Effective Date of this Contract.

3.20 Failure to Pay; Consequences. In the event Customer shall fail to make any such monthly payment within the time required, interest on such amount shall accrue at the rate of ten percent (10%) per annum from the date such payment becomes due until paid in full with interest, as herein

specified. In the event said payment is not made within sixty (60) days from the date such payment becomes due, the City may, at its option, avail itself of the following remedies:

a. Upon the occurrence of Customer's first failure to pay any amount billed for service under this Contract, which amount remains unpaid for more than sixty (60) days after its due date, Customer agrees to establish a security fund to be held in trust by the City in the amount of three (3) month's average billings, from which the City may withdraw funds to secure payment of the billing. Customer shall thereafter immediately replenish and restore the account to the required amount and maintain the full balance required in the fund for the remainder of the term of the Contract, notwithstanding the City's withdrawals to satisfy billings remaining unpaid for more than sixty (60) days after the due date.

b. In the event that the security fund is not established, at the expiration of sixty (60) days after such amounts are due, Customer shall be in default under this Contract, and the City may invoke the remedies specified in Article 7.

c. The security fund shall be deposited with the City Manager of the City in cash, in the form of an unconditional, irrevocable standby letter of credit, a performance/surety bond, or other instrument or security in a form reasonably acceptable to the City Attorney for the City. The letter of credit, bond, or other instrument shall in no event require the consent of Customer prior to the collection by the City of any amounts covered by the letter of credit, bond, or other instrument.

d. In the event that the security fund described herein above is not established, at the expiration of ninety (90) days after such amounts are due, Customer agrees to the appointment of a receiver, chosen solely by City and whose fees shall be paid by Customer, for the purpose of allocating Customer's ongoing revenue so as to create and fully fund the above-described security fund and bring Customer's account with the City current. Once Customer's account is current and the above-described security fund is fully funded and the receiver paid for his services, the City shall dismiss the receiver.

e. In the event a receiver is appointed and the City is not being timely paid, the City shall have the right to invoke this Contract's termination provisions.

3.21 No Equity. Customer acknowledges that it will accrue no equity or any other interest in the City System, the City's water supplies, or any other assets of the City as a result of payment or other performance pursuant to this Contract.

3.22 Initial Rates; Rate Changes. Customer agrees that the Rate initially charged by the City and the policies defined in this Contract is just and reasonable and does not adversely affect the public interest. The Rate charged by the City is subject to modification as provided herein. Customer agrees that any such change in the Rate by the City in accordance with the provisions hereof is just and reasonable and does not adversely affect the public interest. Notwithstanding any provision to the contrary, Customer does not waive the right to file and pursue an appeal of any increase in rate proposed or adopted by the City that is not in conformance with the terms of this Contract.



3.23 Rate Modification. The Rate established by this Contract may be modified by the City Council of the City annually, or more frequently if the rate charged to the City by NTMWD is changed. Customer will be notified of any rate modification at least sixty (60) days prior to the effective date of the new rate.

3.24 Customer's Retail Rates. Customer will determine and charge its retail water customers such rates as are determined by Customer. Customer represents and has determined that the wholesale water service to be obtained from the City hereunder is absolutely necessary and essential to the present and future operation of Customer's System, and, accordingly, all payments required by this Contract to be made by Customer shall constitute reasonable and necessary operating expenses of Customer's System, with the effect that the obligation to make such payments from revenues of such water system shall have priority over any obligation to make payments from such revenues, whether of principal, interest, or otherwise, with respect to all bonds heretofore or hereafter issued by Customer, and all indebtedness undertaken by Customer unless this obligation is inconsistent with Customer's obligations under existing debt instruments as of the Effective Date, if any. Customer agrees throughout the term of this Contract 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 all of its payments under this Contract.

3.25 Resale; Connection Outside Customer's Service Area Prohibited. Customer agrees that it will not, during the term of this Contract, resell any of the Treated Water it purchases from the City hereunder to any wholesale or other customer other than retail customers located within its boundaries, without prior written consent by the City Council of the City, based on a formal action of the City Council of the City. Customer shall not contract with any individual or entity located outside Customer's boundaries to connect to Customer's System without the City's prior written approval.

#### **Article 4 Point(s) of Delivery; Measuring Equipment**

##### **A. Delivery Point(s)**

4.01 General. The Delivery Point(s) of water to Customer from the City System shall be the locations identified in Exhibit "B", unless otherwise agreed by City and Customer.

4.02 Meter. Customer shall install a flow meter and a rate of flow controller to be set according to the contracted amount of Water contained herein at each Delivery Point. All flow meters installed after the date of this Contract shall be equipped with transmission devices compatible with the City's existing system infrastructure. Upon installation and City approval of each flow Meter and rate of flow controller, Customer shall transfer ownership of said equipment and facilities to City at no cost, free of liens or encumbrances.

4.03 Air Gap. Customer must provide an air gap prior to any connections of service between the City's System and the Customer's System. The City shall approve the air gap system. City reserves the right to inspect the air gap system.

4.04 Delivery of Water. City agrees to deliver at the Delivery Point(s) the quantities of Water herein contracted for, said Water to be delivered at the prevailing pressure which is maintained in the City System, it being specifically understood that the City is under no obligation to furnish pressurized treated Water to any connection between the Delivery Point and Customer's facilities for sustaining and/or increasing pressure, nor is the City responsible for the pressurization of Water after it passes through the Delivery Point. The City is under no obligation to provide the Customer with a sufficient amount of treated Water for the Customer to meet its retail customers' instantaneous demand, or to meet any minimum production, storage, service and pump requirements, or any other requirements imposed on the City by any Regulatory Requirements.

4.05 TCEQ Compliance. Customer agrees that it shall take all reasonable measures to ensure all lines and equipment installed or owned by its customers comply with the requirements of the TCEQ, as the same now exist or as they may be modified hereafter.

4.06 Connection Facilities. Cost of all connection facilities from the Delivery Point to the Customer's facilities shall be borne by Customer. Customer shall be responsible for the design, contracting, construction, and financing of all connection facilities and acquisition of any right-of-way for delivery of the Water from the applicable Delivery Point to Customer's facilities. Notwithstanding the preceding, the City shall allow the Customer to utilize any water easements or rights-of-way dedicated to the City in order for Customer to extend Customer's System to the Delivery Point(s). All plans for connecting Customer's System to the City System at the Delivery Point(s) shall be submitted to the City for written approval with all designs, materials and specifications conforming to the City's requirements prior to construction. The City shall have the right to make periodic inspections during construction and shall have final approval of the Delivery Point(s). On the Effective Date, or, if the connection facilities have not been constructed as of the Effective Date, on such later date as the construction and installation of the connection facilities are complete, Customer shall transfer ownership of all connection facilities on the City's side of the Meter(s), including each Meter and the vault in which the Meter is located, to City at no cost, with no liens or encumbrances.

4.07 Facility Improvements. Should the quantities desired by the Customer exceed the Maximum Daily Quantity and require improvements to the City System, or require the utilization of existing excess system capacity (even if such utilization of existing capacity does not require additional construction), Customer shall be responsible for its proportionate share of the cost of those improvements or any above described excess capacity utilization. Payments by Customer contemplated by this section for additional facilities are required prior to the awarding of any construction contracts and for the utilization of existing excess capacity payments must be made prior to such excess capacity being provided. Customer shall have no ownership interest in any such facility improvements.

4.08 Relocation of Delivery Points. Requests to relocate a Delivery Point shall be submitted in writing by the requesting Party. If the Parties mutually agree to relocate a Delivery Point, the Party

requesting relocation will be responsible for funding all costs related to constructing the improvements, unless the Parties agree on a division of costs based on mutual benefit.

a. For any costs attributable to Customer for improvements constructed by the City, Customer shall be responsible for reimbursing the City, as agreed upon in writing, for the cost of such improvements including, but not limited to, the acquisition of any easements and/or rights-of-way. Prior to beginning construction, the Parties will enter into a written agreement to (i) approve the amount of anticipated construction costs, and (ii) specify the manner and timeframe for such reimbursement to the City and the timeline for construction.

b. If Customer is to construct the necessary improvements for a relocated Delivery Point, Customer will submit plans for the construction of the improvements to the City for approval prior to commencing construction; provided, however, such approval shall not be unreasonably conditioned, withheld or delayed. If the City approves the plans submitted, the City will give Customer notice of said approval in writing within a commercially reasonable time. During the construction of such improvements, City may, but is not obligated to, inspect improvements under construction, at its sole cost. All costs for the construction of the improvements, including the costs for any easements and/or rights-of-way, shall be borne as agreed upon in writing. City may, but is not obligated to, make a final inspection and approval, at its sole cost, after construction of the improvements is completed and before the improvements are approved by the City for use; provided, however, such approval shall not be unreasonably conditioned, withheld or delayed. Customer shall transfer ownership of all facilities constructed for the relocated Delivery Point to City upon completion of construction.

4.09 Additional Delivery Points. It is anticipated that Customer may request an additional Delivery Point(s) and/ or delivery line(s). Such request(s) shall be made in writing by Customer and City shall provide a written response within a commercially reasonable amount of time after receipt of such request. If additional Delivery Point(s) and/or delivery line(s) are mutually agreed upon, the Parties shall, prior to and as a condition of any binding agreement regarding such matters, agree in writing as to the responsibility, whether shared or assigned to one Party, for the costs associated therewith.

a. For any costs attributable to Customer for improvements constructed by the City, Customer shall be responsible for reimbursing the City, as agreed upon in writing, for the cost of such improvements including, but not limited to, the acquisition of any easements and/or rights-of-way. Prior to beginning construction, the Parties will enter into a written agreement to (i) approve the amount of anticipated construction costs, and (ii) specify the manner and timeframe for such reimbursement to the City and the timeline for construction.

b. If Customer is to construct the necessary improvements for an additional Delivery Point(s) and/or delivery line(s), Customer will submit plans for the construction of the improvements to the City for approval prior to commencing construction; provided, however, such approval shall not be unreasonably conditioned, withheld or delayed. If

the City approves the plans submitted, the City will give Customer notice of said approval in writing within a commercially reasonable time. During the construction of such improvements, City may, but is not obligated to, inspect improvements under construction, at its sole cost. All costs for the construction of the improvements, including the costs for any easements and/or rights-of-way, shall be borne as agreed upon in writing. City may, but is not obligated to, make a final inspection and approval, at its sole cost, after construction of the improvements is completed and before the improvements are approved by the City for use; provided, however, such approval shall not be unreasonably conditioned, withheld or delayed. Customer shall transfer ownership of all facilities constructed for the additional Delivery Point(s) and/or delivery line(s) to City upon completion of construction.

4.10 Delivery Point Improvements. If the Customer requests that improvements be made to a Delivery Point(s), the Customer shall submit the request in writing to the City. If the City approves the request, the Parties will then decide whether the City or the Customer will be responsible for constructing the improvements and shall follow the procedures set forth in Section 4.09: provided, however, such approval shall not be unreasonably conditioned, withheld or delayed. Customer shall transfer ownership of any such improvements to the City upon completion and acceptance by the City.

4.11 Water Release Valves. All valves releasing Water from the City System to Customer shall be solely owned, operated and maintained by the City. Customer shall not obstruct or block access to those valves.

4.12 Easements; Rights-of-Way; Ownership of Improvements. Any acquired easements and/or rights-of-way shall name the City as a grantee for the portion of the easement or right-of-way on the City's side of the Delivery Point. Upon the completion of construction and final approval by the City of any new, relocated or improved Delivery Point(s) and/or Metering Point(s), Customer shall transfer ownership of the constructed improvements and metering device and appurtenances on the City's side of the Delivery Point to the City.

4.13 Interruption of Service for Maintenance. Notwithstanding anything in this Contract or in the requirements of any regulatory agency to the contrary, City shall be entitled at any and all times to install, repair, maintain, and replace such equipment or devices or to take any other action under an Emergency (including reduction or cessation of water service to Customer) as necessary or appropriate to allow City at all times to maintain a minimum pressure as required by applicable law or regulation at all retail service locations directly served by City. The City shall use commercially reasonable efforts to work with Customer to install, repair, maintain, and replace such equipment and devices at a time to minimize the impact on Customer's System. The City shall make every reasonable effort to expedite the restoration of service in a timely manner.

## **B. Transmission lines**

4.14 Customer Transmission Lines. Customer shall be responsible for the construction and associated costs of any additional water transmission lines on Customer's side of the Meter(s).

Customer shall maintain ownership of said water transmission lines for the term of this Contract and shall be responsible for the maintenance and repair of said water transmission line.

4.15 City Transmission Lines. Customer, at its sole cost, shall be responsible for the design, engineering, permitting, construction, and other associated costs of any additional water transmission lines on the City's side of the Meter(s) that are needed for the City to deliver the Maximum Daily Quantity of Water to the Delivery Point(s), as reflected on the attached Exhibit "B" (the "*New City Lines*"). Upon completion of construction and acceptance by the City of the New City Lines, the City shall maintain ownership of the New City Lines. The City shall be obligated to bear and pay all costs, fees, and expenses, including but not limited to engineering and design costs, permitting costs, construction costs, bonds, or other fees/expenses for any change, required by the City, pertaining to the increased size of any portion of the New City Lines to a size greater than is necessary to connect to the City's existing water system and serve the Property.

4.16 Temporary Water Service. At such time as the developer of the Development initiates the construction of infrastructure to serve the Property, the City shall authorize such developer and its contractors to obtain temporary water service from the City in the same manner and under the same conditions as such temporary water service is made available to contractors working within the City.

### **C. Measuring Equipment**

4.17 Installation. Customer shall furnish and install, at its own expense at the Delivery Point(s), the Meter(s), as approved by the City, for measuring properly the quantity of Water delivered under this Contract. Such facilities shall be conveyed to the City upon completion, with no liens or encumbrances, at no cost to the City.

4.18 Maintenance; Calibration. City shall operate and maintain the Meter(s) and shall read each Meter monthly. City will also cause the Meter(s) to be tested and calibrated at intervals of not more than every twelve (12) months. The cost of testing will be borne solely by City, provided however, that if any special test is made at the request of the Customer and shall disclose that the meter is recording accurately, then Customer shall bear the cost for such test. Customer will be notified in writing of the planned Meter testing and calibration and will be invoiced for said testing and calibration on the invoice following the performance of the service. Once notified, Customer's representative may request to be present when such testing and calibration is performed.

4.19 Meter Accuracy; Corrections. Meters registering not more than one and one-half percent (1.5%) above or below normal shall be deemed accurate. Any Meter readings which testing has found to be inaccurate shall be corrected in accordance with the percentage of inaccuracy found. Should any Meter fail to register for any period, the amount payable shall be based upon the Water delivered in the corresponding period immediately prior the failure, unless the City and Customer shall agree to the amount of Water furnished during such period.

4.20 Meter Readings. The Meter(s) used under this Contract shall be read on the last day of each calendar month by the City's operator and shall be available for checking and verification by a representative of Customer during normal business hours of the City.

**D. Access**

4.21 Delivery Point(s). Customer shall not impede City access to any of the City-owned equipment, facilities, or Delivery Point(s). Customer shall obtain all necessary easements for access prior to transferring ownership to City. City shall have the sole right to secure and control access to the City-owned equipment, facilities, and Delivery Point(s). Customer may request access to inspect the City-owned equipment, facilities, and Delivery Point(s) contemplated by this Contract by presenting such request, in writing, to the City during normal business hours. City shall provide access within 72 hours of receiving the request for access from Customer. City shall have the right to oversee these inspections.

**Article 5 Force Majeure**

No Party hereto shall be considered to be in default in the performance of any of the obligations hereunder (other than obligations of either Party to pay costs and expenses) if such failure of performance shall be due to circumstances beyond the reasonable control of the Parties, including but not limited to, the failure of facilities, flood, earthquake, tornado, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, labor dispute and action or non-action by a failure to obtain the necessary authorizations and approvals from any governmental agency or authority or the electorate, labor or material shortage, sabotage, or restraint by a court order or public authority, which by the exercise of due diligence and foresight the Party could not have reasonably been expected to avoid and which by exercise of due diligence it shall be unable to overcome. Either Party rendered unable to fulfill any obligation by reason of an uncontrollable force shall exercise due diligence to enable fulfillment of its obligations under this Contract.

**Article 6 Dispute resolution**

6.01 Disputes Other Than Rate or Fee Disputes; Abatement. In accordance with the provisions of Subchapter I, Chapter 271, Tex. Local Gov't. Code, the Parties agree that, prior to instituting any lawsuit or other proceeding arising from a dispute under this Contract, the Parties will first attempt to resolve the dispute by taking the following steps:

- a. The dissatisfied Party shall deliver a written notice substantially describing the nature of the dispute to the other Party, requesting the other Party to deliver a written response within five days after receipt of the notice of dispute;
- b. If the response does not, in the opinion of the dissatisfied Party, reasonably resolve the dispute, the dissatisfied Party shall notify the other Party in writing. Each Party shall then appoint a person having authority over the activities of the respective Parties who shall promptly meet, in person, in an effort to resolve the dispute; and

- c. If those persons cannot or do not resolve the dispute, then the Parties shall each appoint a person from the highest tier of managerial responsibility within each respective Party, who shall then promptly meet, in person, in an effort to resolve the dispute.

Any suit filed prior to performing these steps shall be abated pending completion of this step process. This Section shall not apply to any disputes regarding rates or fees City charges Customer.

6.02 Rate or Fee Disputes. Customer agrees that, as a condition precedent to instituting any lawsuit or other proceeding arising from a rate or fee dispute (including any surcharges City may assess) under this Contract, Customer shall first attempt to resolve the dispute by taking the following steps:

- a. Customer shall deliver a written notice substantially describing the nature of and reasons for the dispute to City;
- b. City shall respond to the dispute notification in writing within ten (10) business days after receipt of the notice of dispute;
- c. If Customer does not believe City's response reasonably resolves the dispute, Customer may, within ten (10) business days after receipt of City's response, request, in writing, that the City Council consider the rate or fee dispute; and
- d. City shall, after receipt of Customer's written request that the City Council consider the dispute, place the matter on the City Council agenda within the 5 weeks of the written request.

6.03 Presentation of Rate Dispute. Customer shall appear before and have one (1) hour to present any evidence and arguments it has regarding any rate or fee dispute to the City Council. The City Council shall issue a written final decision regarding the rate or fee dispute within ten (10) business days after Customer's appearance.

6.04 Condition Precedent. The provisions of this Article 6 are a condition precedent to the filing of any other action or complaint with any regulatory authority, governing body, or state or federal court.

6.05 Expenses. Customer shall have the right to challenge any change in the Rate in violation of this Contract before the PUC. If Customer initiates or participates in any proceeding regarding the Water rate and City's policies under this Contract and advocates a position that is adverse to City, and City prevails, Customer shall reimburse City for its reasonable expenses, including attorneys' fees in the proceeding, within thirty days after City's demand for payment. If the Customer participates in more than two (2) proceedings regarding the Rate before the PUC and the City prevails, the City may accelerate non-renewal rights under section 1.03 of this Agreement.

## **Article 7      Default and Remedies**

7.01 Default and Remedies. If a Party is in default under this Contract, then the non-defaulting Party shall be entitled to all remedies available at law or in equity, including, but not limited to, specific performance, injunctive relief, mandamus relief, damages; provided, however, neither Party shall be entitled to termination of this Contract.

7.02 Waiver of Immunity. Each Party hereto acknowledges that this Contract is for the providing of goods and services and, pursuant to Section 271.151, Texas Local Government Code, each has waived its immunity from suit solely for the purpose of the other Party enforcing the express terms, conditions, and obligations of this Contract.

## **Article 8      Hold Harmless**

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

## **Article 9      Miscellaneous**

9.01 Waiver. No covenant or condition of this Contract may be waived without the express written consent of the waiving Party. No failure by any Party to insist upon the strict or timely performance of any covenant, duty, agreement, term or condition of this Contract shall constitute a waiver of any such covenant, duty, agreement, term or condition. It is further agreed that one (1) or more instances of forbearance by any Party in the exercise of its respective rights under this Contract shall in no way impair such right or constitute a waiver of such right or a waiver of any breach theretofore or thereafter occurring.

9.02 Enforcement; Venue. In addition to any other remedy as may be provided by law, this Contract shall be specifically enforceable by the Parties hereto. Venue for any action shall be in Hunt County, Texas.

9.03 Severability. It is agreed that, in the event any term or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of such term or provision shall in no way affect any other term or provision contained herein; further, this Contract shall then continue as if such invalid term or provision had not been contained herein.

9.04 Assignment. Neither this Contract nor any of the rights or obligations hereunder may be assigned by Customer to any other party without the express written consent of the City Council of the City of Royse City, Texas.



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

9.06 Legislative Changes. Customer agrees to abide by any changes in this Contract made necessary by any amendment or revision to state or federal regulations.

9.07 Statutory Interpretation. In each instance herein where reference is made to a federal or state regulation or statute or to the City's Code of Ordinances, it is the intention of the Parties that, at any given time, the then current federal or state regulation or statute or City ordinance shall apply. If a publication or reference work referred to herein is discontinued or ceases to be the generally accepted work in its field, or if conditions change, or new methods or processes are implemented by the City, new standards shall be adopted that are in compliance with state and federal laws and any valid rules and regulations pursuant thereto.

9.08 Federal Grants and Assistance. City shall comply with all federal, state and local government requirements necessary to obtain grants and assistance for system design, system construction and studies. Customer agrees to assist City in compliance by setting adequate rates, establishing proper user charges and complying with governmental requirements.

9.09 Headings Not Binding. Section or article headings in this Contract are for convenience only and do not purport to accurately or completely describe the contents of any section or article. Such headings are not to be construed as a part of this Contract or any way defining, limiting or amplifying the provisions hereof.

9.10 Sole Agreement. This Contract represents the entire and integrated Wholesale Water Contract between City and Customer, and supersedes all prior negotiations, representations or agreements, either written or oral, with regard to the subject matter hereof. This Contract may be amended and modified only by written instrument signed by all Parties. There are no oral agreements between the Parties.

9.11 Third-Party Beneficiaries. This Contract shall inure only to the benefit of the Parties hereto and third persons not privy hereto shall not, in any form or manner, be considered a third-party beneficiary of this Contract. Each Party hereto shall be solely responsible for the fulfillment of its customer's contracts or commitments, and City shall not be construed to be responsible for Customer's contracts or commitments by virtue of this Contract or any provision contained herein.

9.12 Inspection and Audit of Records. Complete records and accounts shall be maintained by each Party for a minimum period of five (5) years or such longer period of time as may be required by applicable law. Each Party shall at all times, upon notice, have the right at reasonable times to examine and inspect records and accounts relating to this Contract during normal business hours; and further, if required by any law, rule or regulation, make the records and accounts available to federal and state auditors.

9.13 Adopting Resolution; Copies. Each Party shall provide the other Party with a copy of the minute action, order, ordinance or resolution authorizing the execution of this Contract.

9.14 Strict Interpretation. This is a negotiated document. Should any part of this Contract be in dispute, the Parties agree that the terms and provisions of this Contract shall not be construed more favorably for or strictly against any Party.

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

Carl Alsabrook, City Manager  
City of Royse City, Texas  
100 West Main Street  
Royse City, Texas 75189

Hunt County Municipal Utility District No. 4  
c/o Coats|Rose P.C.  
Attn: Mindy Koehne  
16000 North Dallas Parkway, Suite 350  
Dallas, Texas 75248

Either Party may change its address by providing written notice to the other Party.

## **Article 10 Exhibits**

10.01 The following Exhibits are attached to and made a part of this Contract, and are incorporated by reference for any and all purposes wherever reference is made to same:

Exhibit “A” – The legal description of the Property.

Exhibit “B” – The Basin Map, including the location of the initial approved Delivery Point(s) at the time this Contract is executed and required New City Lines.

Exhibit “C” – The calculation of initial rate approved by the Royse City City Council and methodology for future rate increases.

Exhibit “D” – The Supplemental Analysis – Air Gap Water Study performed by Birkhoff, Hendricks & Carter, L.L.P.

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

Executed on this \_\_\_\_ day of \_\_\_\_\_, 2024.

CITY OF ROYSE CITY

\_\_\_\_\_

City Manager

Executed on this \_\_\_\_ day of \_\_\_\_\_, 2024.

HUNT COUNTY MUNICIPAL UTILITY DISTRICT NO. 4

\_\_\_\_\_

President, Board of Directors

DRAFT

EXHIBIT A

THE PROPERTY

LEGAL DESCRIPTION

Being a parcel of land located in Hunt County, Texas, being a part of the James Chapman Survey, Abstract 185, and also being all of that called 144.46 acre tract of land described in deed to Diecieseis, LLC as recorded in Document Number 2018-13059, Official Public Record of Hunt County, Texas, and begin further described as follows:

BEGINNING at a one-half inch iron rod found at the northwest corner of said 144.46 acre tract, said point also being the southwest corner of that called 118.80 acre tract of land described in deed to Platinum Ocean Corp. (Texas) as recorded in Volume 1735, Page 219, Official Public Record of Hunt County, Texas, said point also being at the approximate centerline intersection of County Road 2656 and County Road 2664;

THENCE along the north line of said 144.46 acre tract and along the approximate centerline of County Road 2664 as follows:

North 89 degrees 37 minutes 43 seconds East, 2309.88 feet to a one-half inch iron rod found for corner;

North 88 degrees 45 minutes 28 seconds East, 1553.97 feet to a one-half inch iron rod found at the northeast corner of said 144.46 acre tract;

THENCE South 00 degrees 30 minutes 27 seconds East, 1630.52 feet to a three-eighths inch iron rod found at the southeast corner of said 144.46 acre tract, said point also being in the north right-of-way line of State Highway No. 66;

THENCE South 42 degrees 52 minutes 25 seconds West, 2270.58 feet along the north right-of-way line of State Highway No. 66 to a three-eighths inch iron rod found at the most southerly southwest corner of said 144.46 acre tract;

THENCE along the west line of said 144.46 acre tract as follows:

North 00 degrees 11 minutes 55 seconds West, 904.39 feet to a three-eighths inch iron rod found for corner, said point being the southeast corner of that called 20.12 acre tract of land described in deed to Pat Egboh and Bibian Chike-Egboh as recorded in Volume 1600, Page 279, Official Public Record of Hunt County, Texas;

North 00 degrees 23 minutes 29 seconds West, 1067.08 feet to a three-eighths inch iron rod found at an ell corner of said 144.46 acre tract, said point being the northeast corner of

that called 16.416 acre tract of land described in deed to Brad and Kathleen Watson as recorded in Volume 1351, Page 407, Official Public Record of Hunt County, Texas;

THENCE North 89 degrees 34 minutes 00 seconds West, 1376.61 feet along the north line of said 16.416 acre tract to a one-half inch iron rod with yellow cap stamped "R.S.C.I. RPLS 5034" found for corner in the south line of said 144.46 acre tract, said point also being the southeast corner of that called 10.33 acre tract of land described in deed to Brad and Kathleen Watson as recorded in Volume 1317, Page 103, Official Public Record of Hunt County, Texas;

THENCE along the common line of said 144.46 acre tract and said 10.33 acre tract as follows:

North 07 degrees 18 minutes 26 seconds East, 350.77 feet to a one-half inch iron rod with yellow cap stamped "R.S.C.I. RPLS 5034" found for corner;

North 41 degrees 00 minutes 32 seconds West, 273.27 feet to a one-half inch iron rod with yellow cap stamped "R.S.C.I. RPLS 5034" found for corner;

South 88 degrees 00 minutes 36 seconds West, 438.95 feet to a one-half inch iron rod with yellow cap stamped "R.S.C.I. RPLS 5034" found for corner;

South 37 degrees 45 minutes 55 seconds West, 236.14 feet to a one-half inch iron rod with yellow cap stamped "R.S.C.I. RPLS 5034" found for corner;

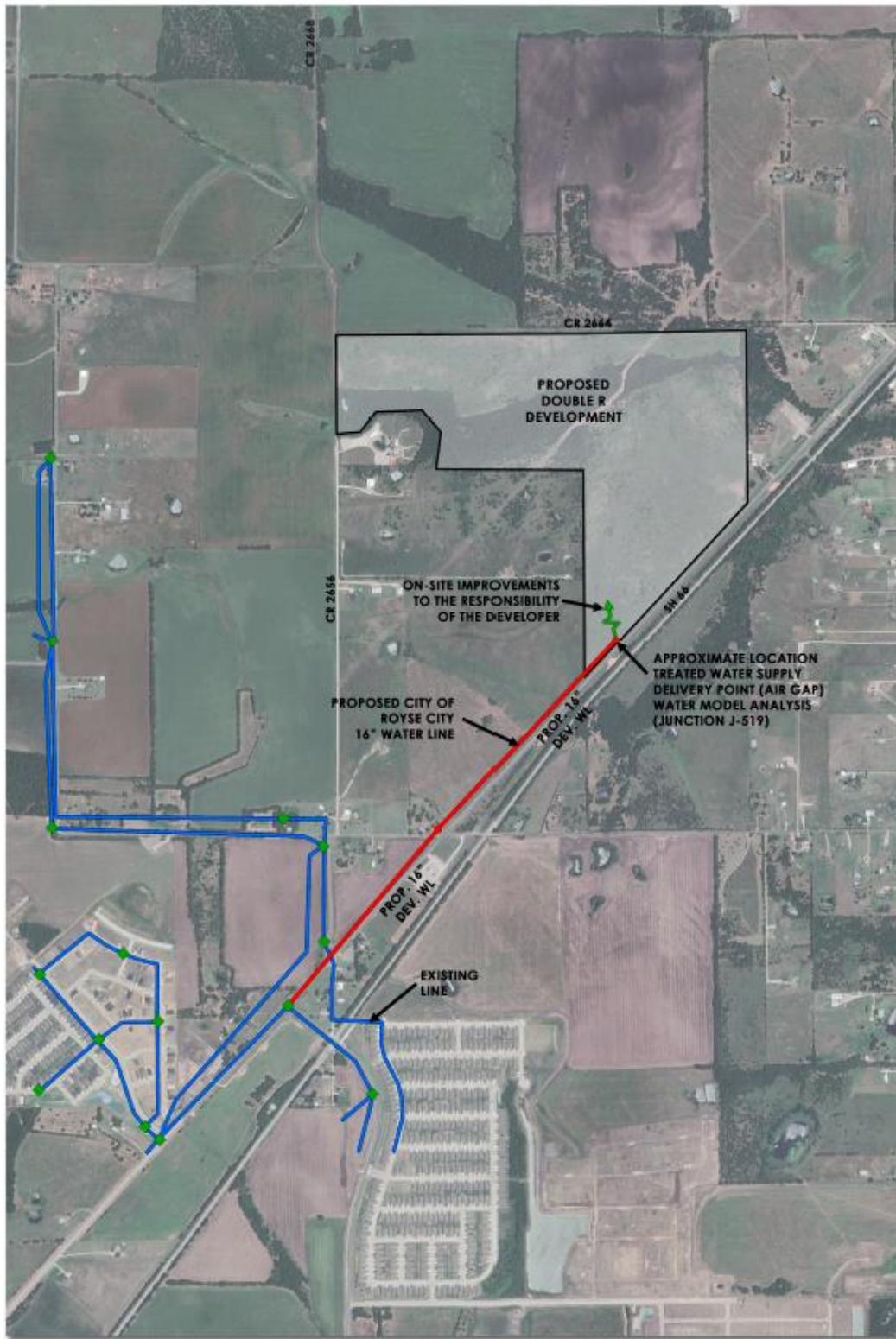
South 84 degrees 57 minutes 54 seconds West, at 204.42 feet passing a one-half inch iron rod found in the south line of said 144.46 acre tract in all a total distance of 224.83 feet to a point for corner, said point being the most westerly southwest corner of said 144.46 acre tract, said point also being in the approximate centerline of County Road No. 2656;

THENCE North 00 degrees 14 minutes 57 seconds West, 931.48 feet along the west line of said 144.46 acre tract and along the approximate centerline of County Road No. 2656 to the POINT OF BEGINNING and containing 6,292,167 square feet or 144.448 acres of land.

Basis of Bearing: The basis of bearing is based on the coordinate system (North Central Zone 4202 State Plane Coordinates, NAD83).

"This document was prepared under 22 TAC 663.23, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared."

EXHIBIT B  
DELIVERY POINT(S) AND REQUIRED NEW CITY LINES



HUNT COUNTY  
MUD NO. 4

WATER / SEWER PLAN  
ROYSE CITY ETJ, TEXAS  
**JB**  
PARTNERS

NOT TO SCALE

↑ JULY 24, 2024  
081011M

|

EXHIBIT C

CALCULATION OF CURRENT CITY RATE AND  
METHODOLOGY FOR CALCULATING COST OF SERVICE

DRAFT

EXHIBIT D  
WATER STUDY

**BIRKHOFF, HENDRICKS & CARTER, L.L.P.**  
**PROFESSIONAL ENGINEERS**

Texas Firm F526  
11910 Greenville Ave., Suite 600

RPLS Firm No. 100318-00  
Dallas, Texas 75243

Fax (214) 461-8390

Phone (214) 361-7900

**MEMORANDUM**

**To:** Mrs. Lacey Rodgers, P.E.  
City Engineer, City of Roysse City

**From:** Derek B. Chaney, P.E., R.P.L.S.

**Date:** July 2, 2024

**Subject:** Proposed Double R Development  
Supplemental Analysis – Air Gap Water Supply

*D.B.C.*  
*07/02/2024*



As requested, we have completed our supplemental analysis of the City of Roysse City's existing water distribution system to provide treated water supply to the proposed Double R development via an air gap delivery point. The developer would be required to provide all on-site water system infrastructure as necessary to meet domestic and fire flow demands for the development. Additionally, it will be the developer's responsibility to design and construct a proposed meter station as will be required for the City to accurately measure water sold to the developer. Design of the meter station shall be approved by the City prior to construction. This supplemental analysis follows our previous analysis and letter report for the Double R development dated February 20, 2024. The proposed development is located within the Roysse City Water Certificate of Convenience and Necessity (CCN) area. A concept site plan for the proposed development was provided by the City for this analysis and is attached as Exhibit A. The proposed development contains approximately 143 acres and is located along State Highway 66 and County Road 2664. The development will consist of 584 single-family units and 600 multi-family units.

**WATER DISTRIBUTION SYSTEM ANALYSIS**

On behalf of the City of Roysse City, Birkhoff, Hendricks, & Carter, LLP (BHC) maintains a hydraulic model of the City's existing water distribution system. Figure 1 shows the general location of the development overlaid onto the City's water system model and the water model points of analysis. With this supplemental analysis, the City proposed to provide treated water supply to the proposed development via an air gap delivery point (junction node J-519). With on-site infrastructure being the developer's responsibility, this supplemental analysis does not assess max day or fire flow demands within the development. As directed by the City, this supplemental analysis provides a single-feed, un-looped water line to the proposed delivery point. Therefore, it will be the developer's responsibility to ensure adequate pumping capacities and storage volumes are available in the event of a service disruption and for providing fire suppression. The existing system demands and water model forming the basis for this analysis is the "RUN 2" model analysis completed for the City on July 27, 2022, plus a global demand multiplier applied to account for future growth in demands elsewhere within the City's service area.



The total maximum daily demand for the fully developed Double R Development was calculated as 0.92 million gallons per day (MGD) and was applied model junction nodes J-519 as shown on Figure 1 along with the required offsite water system improvements (shown in red) which will be the developers responsibility.

For this analysis, the following water system hydraulic model assumptions have been applied:

1. Model Analysis Type: 72-hour extended period simulation (EPS)
2. Minimum Pressure (Normal Conditions): 35 psi
3. As requested by the City, we have developed the following scenarios for the purpose of assessing Max Day Development Demands for the Double R Development as follows:

Scenario 1: June 2026 - 400 single-family lots, 300 multi-family units:

[400 single-family units \* 3.1 people/lot \* 300 gpcd] = 0.37 MGD  
[300 multi-family units \* 2.1 people/lot \* 300 gpcd] = 0.19 MGD  
**Total Scenario 1 Demand = 0.37 + 0.19 MGD = 0.56 MGD**

Includes a global demand multiplier of 1.06.

Scenario 2: January 2028 – 584 single-family lots, 600 multi-family units:

[584 single-family units \* 3.1 people/lot \* 300 gpcd] = 0.54 MGD  
[600 multi-family units \* 2.1 people/lot \* 300 gpcd] = 0.38 MGD  
**Total Scenario 2 Demand = 0.54 + 0.38 MGD = 0.92 MGD**

Includes a global demand multiplier of 1.10.



The scenarios evaluated for the development are based on operating conditions as provided by the City at each time stamp, based on current and planned Capital Improvement Plan (CIP) projects. The model scenarios to be considered are listed in Table 1 below and correlate directly with the demands for the development as listed on page 2. To accommodate for future development growth elsewhere in the City, a global demand multiplier of 1.06 and 1.10 was applied to the hydraulic model for Scenario 1 and Scenario 2, respectively.

Model Scenario	Summary of Water System Improvements Assumed to be in Service	Operation Year
1-2	IH-30 16-inch South Frontage Road WL Pump Station #2 Expansion & Offsite 24-inch and 16-inch Transmission Mains	2024
1-2	FM 2642 EST, FM 2642 16" WL's	2026

*Table 1: Royse City Project Timeline and Water System Conditions*

As indicated by Table 1, the IH-30 South Frontage Road 16-inch water line (by others), Pump Station #2 Expansion and Transmission Main, and FM 2642 Elevated Storage Tank and offsite 16-inch water line must be in service prior to Scenario 1 conditions.

**SCENARIO 1 – INITIAL DEVELOPMENT PHASE**

**System Pressures – Max Day Demands**

Figure 2 shows a graph of the modeled future system pressures at junction node J-519 after including the demand of 0.56 MGD for the proposed Double R Development under Scenario 1 conditions. As shown, the minimum system pressure is 71 psi, above the minimum pressure requirement.

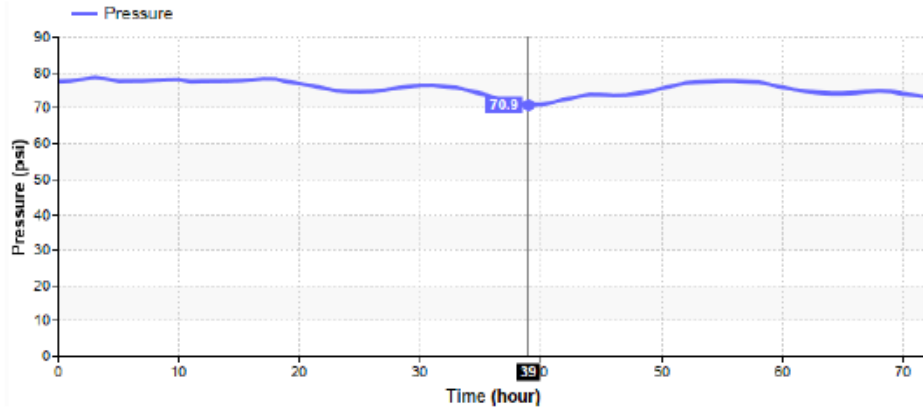


Figure 2: Scenario 1 Pressures - Max Day Demand

**Elevated Tank Levels – May Day Demands**

Figure 3 shows a graph of the tank levels at the existing Verandah Elevated Storage Tank (EST) and future FM 2642 EST with the proposed Double R Development for Scenario 1. The minimum tank level occurs at the Verandah EST, reaching a level of 12.4 feet at hour 38.

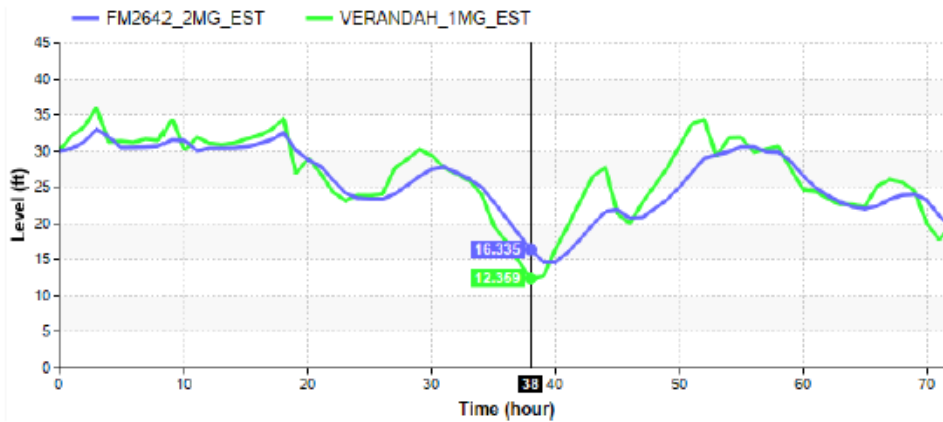


Figure 3: Scenario 1 – Verandah & FM 2642 EST Levels

**SCENARIO 2 – FULL DEVELOPMENT**

**System Pressures – Max Day Demands**

Figure 4 shows a graph of the modeled existing system pressures at junction node J-519 after including the demand of 0.92 MGD for the proposed fully developed Double R Development under Scenario 2 conditions. As shown, the minimum system pressure is 69 psi, above the minimum pressure requirement.

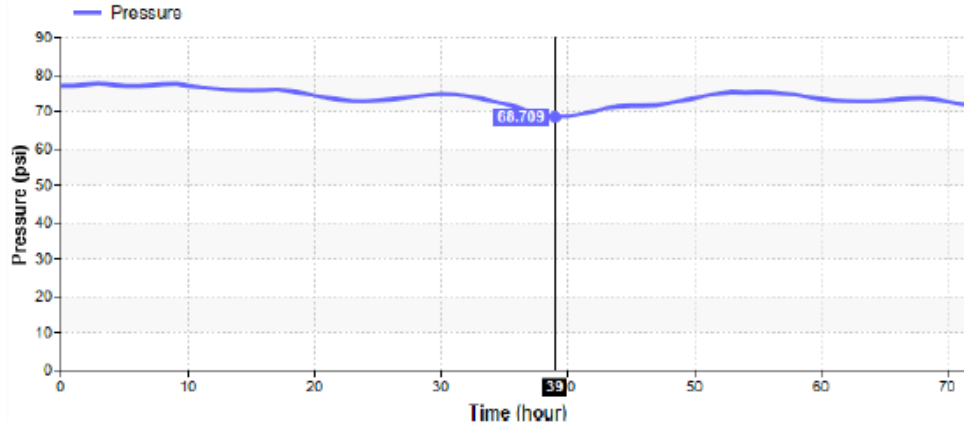


Figure 4: Scenario 2 Pressures - Max Day Demand

**Elevated Tank Levels – Max Day Demands**

Figure 5 shows a graph of the tank levels at the existing Verandah EST and future FM 2642 EST with the proposed Double R Development for Scenario 2. The minimum tank level occurs at the Verandah EST, reaching a level of 8.2 feet at hour 38.

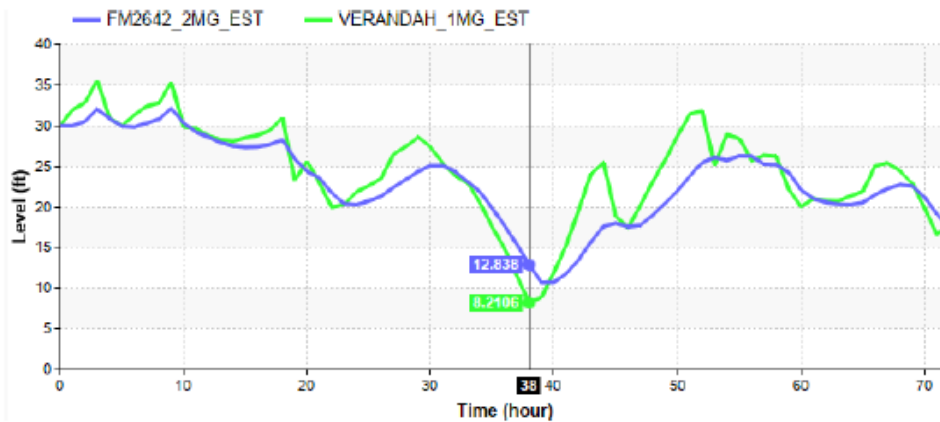


Figure 5: Scenario 2 - Verandah EST Levels

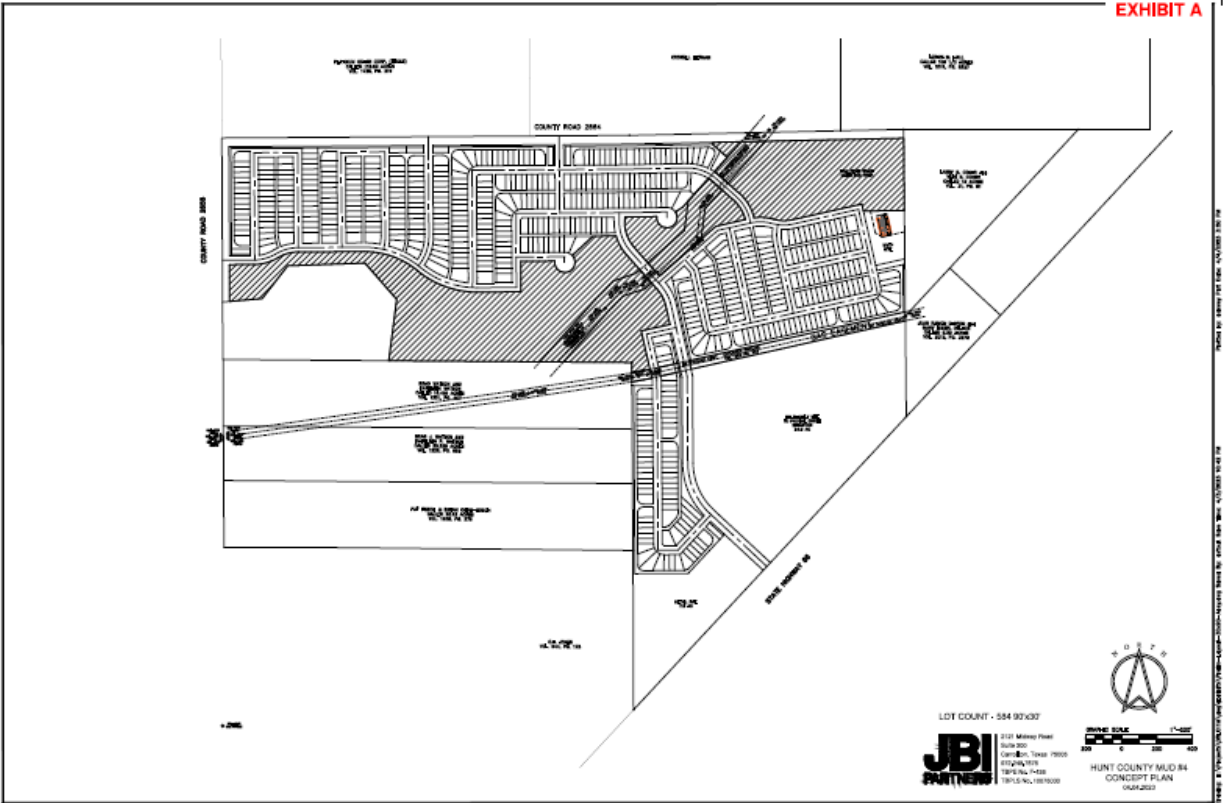
Mrs. Lacey Rodgers, P.E., City of Royse City  
Proposed Double R Development, Supplemental Analysis – Air Gap Water Supply  
July 2, 2024  
Page 7 of 7

#### **Conclusion and Recommendations**

Our analysis of the City's existing water distribution system after accounting for demands from the Double R development indicates the water system will have adequate capacity to supply treated water to the development via an air gap delivery point. The proposed FM 2642 Elevated Tank and associated offsite water lines must be placed in service prior to delivery of treated water to the proposed development. The FM 2642 Elevated Storage Tank is currently in the design phase and the associated FM 2642 16-inch offsite water line is in the planning phase. Both projects are expected to be constructed and placed in service by Summer 2026. The proposed water supply delivery point is conceptually shown on Figure 1, along with the required offsite 16-inch water line improvements as shown in red. Evaluation of the system downstream of the air gap delivery point was excluded from this analysis, and will be the developers' responsibility. Additional improvements at the delivery point will include, but are not limited to, isolation valves on each side of the delivery point on the City's proposed 16-inch water line, meter station, and flush valve or fire hydrant to provide the City with flushing capabilities as needed. These improvements are the responsibility of the developer, and will require approval of the associated design plans by the City prior to construction.

Attachment: Exhibit A (Double R Concept Plan)

Cc: Yosab Habtemariam, P.E.



DRAFT



11/21/2024

Administrative Memorandum No. 24-6078

**Regional Water System**

**Leonard Treated Water Pipeline to Farmersville  
Delivery Point; Project No. 101-0632-23;  
Engineering Services Agreement Final Engineering**

**SUBJECT**

Authorize an engineering services agreement (ESA) to HDR Engineering, Inc. in the amount of \$5,199,428 for final engineering design for the Leonard Treated Water Pipeline to Farmersville Delivery Point project.

**PURPOSE**

The projected growth in NTMWD’s East Water Transmission System will surpass the available capacity to that system from the Wylie Water Treatment Plant (WTP) within a few years. This project will supplement the needs of the East System from the new Leonard WTP through the year 2050.

**RECOMMENDATION**

The Executive Director and NTMWD staff recommend the Board of Directors authorize the Executive Director to execute additional engineering as follows:

- Consultant: HDR Engineering, Inc.
- Scope: Final Engineering Design, Real Estate Services
- Project: No. 101-0632-23, Leonard Treated Water Pipeline to Farmersville Delivery Point
- Amount: \$5,199,428
- Committee: This will be an item on the November 20, 2024, Water Committee Agenda.

**DRIVER(S) FOR THIS PROJECT**

Strategic Objective:	Objective 1.1 - High Quality Services Objective 1.4 - Reliable and Resilient Systems
----------------------	--



<input type="checkbox"/> Regulatory Compliance	<input type="checkbox"/> Asset Condition
<input checked="" type="checkbox"/> Capacity	<input checked="" type="checkbox"/> Redundancy/Resiliency
<input type="checkbox"/> Relocation or External Requests	<input type="checkbox"/> Operational Efficiency
<input type="checkbox"/> Safety	<input type="checkbox"/> Administrative
<input type="checkbox"/> Policy	<input type="checkbox"/> Other _____

**BACKGROUND**

This project is to provide a 48-inch diameter treated water pipeline to convey water from the existing Leonard treated water pipeline in the vicinity of Farm-to-Market Road 981 south to the existing Farmersville delivery point. The alignment selected during the initial phase of design is approximately 11.5 miles long. This scope is a continuation of the project design stage, advancing from 30% Preliminary design to the completion of bid documents and procurement of the project.

**PROJECT PURPOSE**

- The proposed 48-inch pipeline will provide additional capacity to the East System to meet projected demands through the year 2050.
- This project was identified in Project No. 101-0588-21, the Water Transmission System CIP Update.
- The Opinion of Probable Construction Cost is \$65,000,000.

**PROJECT COMPONENTS**

- This project includes the design of approximately 61,000 linear feet of 48-inch pipeline from a new branch connection on the existing 84-inch Leonard pipeline to a tie-in location near Farmersville Delivery Point No. 1.
- The proposed project alignment crosses numerous streets, highways, and creeks. Most of the proposed alignment would be performed by open cut, with multiple short sections of jack and bore.
- Consultant services include Right-of-Way (ROW) services for right of entry to all parcels and final land acquisition of all parcels.

**ADDITIONAL SERVICES**

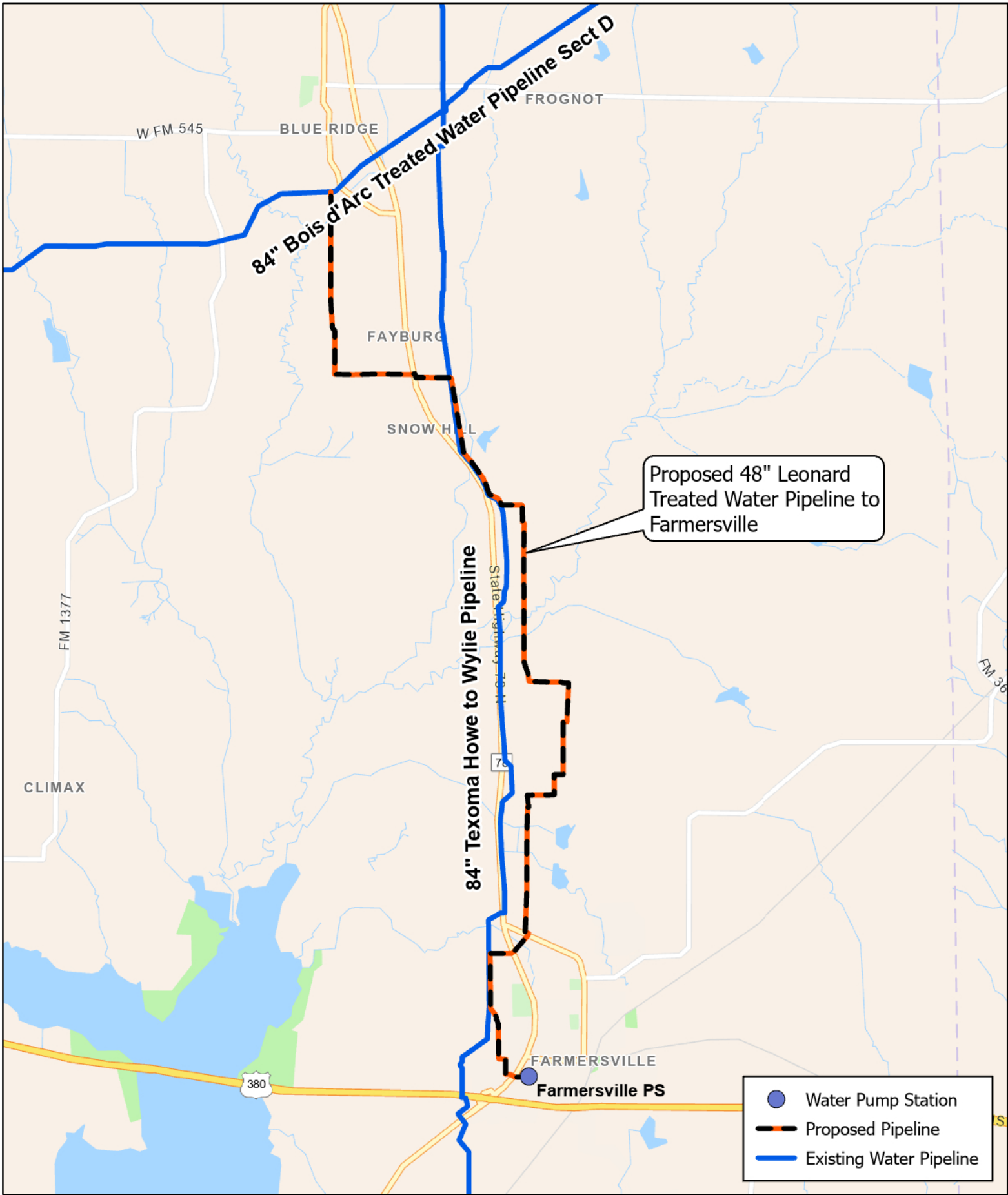
- Final Engineering Design to develop the 100% design set and provide Bid Phase support.
- Special Services as needed to support the design development, including:
  - Real Estate Consultant Services
  - Environmental / Cultural Resources / Archeological Services
  - Geotechnical Services
  - Survey Services
  - Corrosion Services
  - Subsurface utility investigation at potential critical conflict locations

**ENGINEERING SERVICES FEE**

<b>Description</b>	<b>Amount</b>
<b>Final Engineering ESA</b>	<b>\$5,199,428</b>
Basic Services	\$2,380,761
Special Services	\$2,818,667
• Special Services Engineering	\$1,830,178
• ROW Services	\$988,489
<b>Requested Amount</b>	<b>\$5,199,428</b>

**FUNDING**

Funding to HDR Engineering, Inc. in the amount of \$5,199,428 is to be made available in the Regional Water System Capital Improvement Fund.



**Leonard Treated Water Pipeline to Farmersville  
Project No. 101-0632-23**





11/21/2024

Administrative Memorandum No. 24-6079

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**Regional Water System**

**North Garland Ground Storage Tank; 101-0572-20; Tabulation of Bids and Award of Contract, Additional Engineering Services, and Authorize Inspection Services**

**SUBJECT**

Authorize award of a construction contract to Felix Construction Company in the amount of \$25,269,786, additional engineering services to JQ Infrastructure, LLC in the amount of \$226,222, and Internal Inspection Services in the amount of \$577,200.

**PURPOSE**

Construct a ground storage tank to improve system hydraulics and provide minimum system pressure on potable water transmission pipelines in accordance with the Texas Commission on Environmental Quality (TCEQ) design guidance.

**RECOMMENDATION**

The Executive Director and NTMWD staff recommend the Board of Directors authorize the award of contracts as follows:

Contractor: Felix Construction Company JQ Infrastructure, LLC.  
Consultant:

Scope: Construction Contract, Additional Engineering Services During Construction, and Internal Inspection Services

Project: No. 101-0572-20, North Garland Ground Storage Tank

Amount: Construction Contract: \$25,269,786 Internal Inspection Services: \$577,200 Additional Engineering Services: \$226,222

Committee: This will be an item on the November 20, 2024, Water Committee meeting agenda

**DRIVER(S) FOR THIS PROJECT**

Strategic Objective:	1.1 High Quality Services 1.2 Successfully Deliver Capital Program
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<input checked="" type="checkbox"/> Regulatory Compliance (pre-emptive)	<input type="checkbox"/> Asset Condition
<input type="checkbox"/> Capacity	<input checked="" type="checkbox"/> Redundancy/Resiliency
<input type="checkbox"/> Relocation or External Requests	<input checked="" type="checkbox"/> Operational Efficiency
<input type="checkbox"/> Safety	<input type="checkbox"/> Administrative
<input type="checkbox"/> Policy	<input type="checkbox"/> Other _____

**BACKGROUND**

- The Texas Commission on Environmental Quality (TCEQ) Guidance Criteria requires that water transmission systems maintain a minimum pressure of 5 pounds per square inch (psi) on potable water transmission pipelines under all operating conditions.
- This project is one component of a program that will achieve this through the installation of ground storage tanks (GSTs) in the Water Transmission System in a phased manner.
- Administrative Memorandum No. 5631 in September 2020 authorized property acquisition in advance of preliminary design.
- Consent Agenda Item No. 20-12-06 in December 2020 authorized preliminary engineering design by JQ Infrastructure, LLC.

**PROJECT PURPOSE**

- Provide ground storage capacity that will maintain a minimum operating pressure level above the highest elevation in the North Garland System through installation.
- Locate the GST adjacent to the Shiloh Pump Station/Richardson No. 3 delivery point in the City of Garland near the intersection of Lookout Drive and the northbound service road of the President George Bush Turnpike.
- Provide a master-planned site to ensure layout space and provisions for the construction of initial and future facilities, including GSTs, piping, access and ancillary facilities, and delineation of potential surplus property for later resale.

**PROJECT COMPONENTS**

- One 9 MG GST with a space allocated for a future 9 MG GST
- Siting of meter and check valve vaults
- Yard piping and connection layout, including tie-ins to the existing 60-inch and 72-inch diameter North Garland Water Lines.
- Electrical/instrumentation building and components
- Supervisory Control and Data Acquisition (SCADA)
- Onsite grading and drainage
- Fencing/Screening wall
- Access drives
- Compliance with City of Garland ordinances and development standards

## TABULATION OF BIDS

Sealed bids for construction were received at 2:00 P.M. on Wednesday, October 16, 2024, as tabulated below:

<b>Bidder</b>	<b>Total Bid</b>	<b>Recommendation</b>
Felix Construction Company	\$25,269,786.00	Lowest responsible bid recommended for Award
Western Municipal Construction of Texas, LLC	\$26,672,647.63	
Archer Western Construction, LLC	\$26,762,520.00	
Drake General Contractors, LLC	\$27,691,511.00	
Crescent Constructors, Inc.	\$19,613,000.00	Crescent Constructors has formally withdrawn their bid due to a stated error
ENGINEER'S OPINION OF PROBABLE COST	\$26,665,517.00	

## LOWEST RESPONSIBLE BIDDER HISTORY

Felix Construction Company is currently the contractor for the following projects for NTMWD:

- Project No. 101-0338-13 - Meter Vault Standardization, Set Point Control, Phase IV, Work Package D2, Richardson No. 2 Delivery Point via an Inter-Local Agreement with the City of Richardson and through their CMAR effort on a wider City project.
- Project No. 101-0338-13 - Meter Vault Standardization, Set Point Control Phase III, Work Package C
- Project No. 309-0609-22 - Stewart Creek West Wastewater Treatment Plant Primary Clarifier and Blower Improvements

Felix Construction Company has successfully completed these similar projects for NTMWD:

- Project No. 101-0571-20, South System Mobile Chlorite Injector (completed July 2024)
- Project No. 101-0422-16, Wylie Water Treatment Plant IV Filter Complex Wall Repairs - Felix Construction Company was the CMAR (completed June 2024)

Based on their standing as the lowest responsible bidder, the information provided, and reports by the supplied references, the NTMWD staff and JQ Infrastructure, LLC recommend the award of the contract to Felix Construction Company.

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## ENGINEERING SERVICES AGREEMENT

Engineering services during construction for the North Garland Ground Storage Tank project are based on a planned 23-month construction duration in the amount of \$436,493.13, for which \$210,271.13 are already approved and available. The amount of additional engineering services recommended by this action is \$226,222.00 to be used for the construction phase. . These services include the typical engineer of record services required for construction, such as the following:

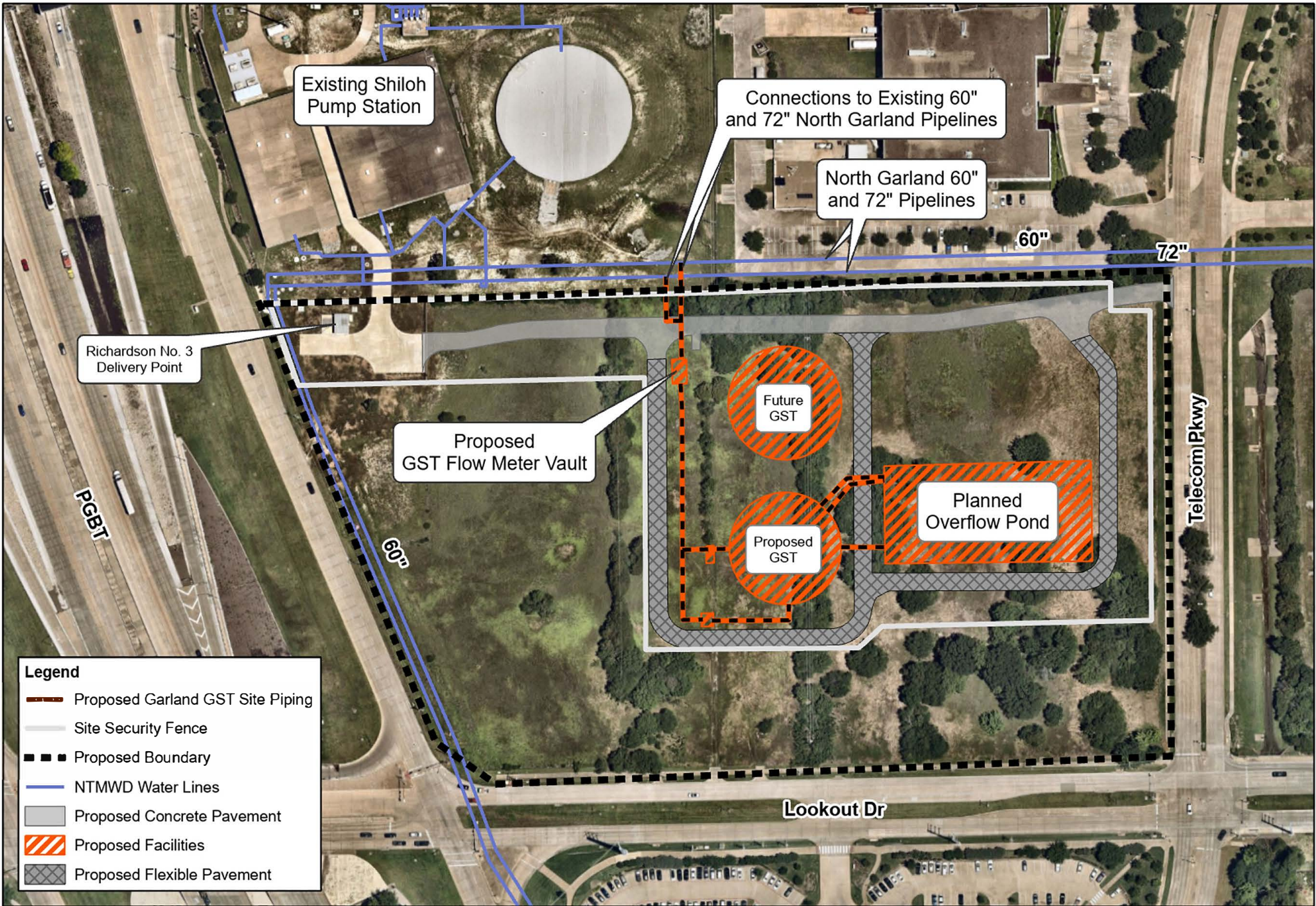
- Act as Engineer pursuant to the construction contract documents
- Monthly project management and coordination
- Review of shop drawing submittals, request for information, proposed change orders, and operation and maintenance (O&M) manuals
- Review of contractor's monthly progress payment requests and schedule updates
- Site visits and construction meetings
- Startup assistance and Substantial Completion and Final Completion observations
- Development of Record Drawings and final Equipment List
- Prepare detailed Operations and Maintenance manual in coordination with NTMWD stakeholders

## INTERNAL INSPECTION SERVICES

NTMWD will provide inspection staff for all construction specialty areas. The cost to the NTMWD related to this internal inspection coverage is estimated at \$577,200.

## **FUNDING**

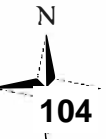
Funding in the amount of \$25,269,786 to Felix Construction Company, \$226,222 to JQ Infrastructure, LLC and \$577,200 for NTMWD Internal Inspection Services are to be made available utilizing the Regional Water System Extendable Commercial Paper (ECP) Program as the appropriation source; issuance of ECP notes will occur as cash needs arise.



- Legend**
-  Proposed Garland GST Site Piping
  -  Site Security Fence
  -  Proposed Boundary
  -  NTMWD Water Lines
  -  Proposed Concrete Pavement
  -  Proposed Facilities
  -  Proposed Flexible Pavement



**North Garland System Ground Storage Tank  
Project No. 101-0572-20**







11/21/2024

Administrative Memorandum No. 24-6080

**Small Wastewater Treatment Plants (Sewer System)**

**Post-Transition Wastewater Operations Support Agreement Between the North Texas Municipal Water District and City of Farmersville**

**SUBJECT**

Authorize the Executive Director to execute a Post-Transition Wastewater Operation Support Agreement between the North Texas Municipal Water District (NTMWD) and the City of Farmersville (the City) allowing the City to request support as needed in operating its Wastewater Treatment Plants No. 1 and No. 2 (WWTPs) during the City’s transition in operating the plants.

**PURPOSE**

This Agreement formalizes the ways in which NTMWD agrees to provide support to the City in operating its WWTPs, such as providing records, assisting and advising on operations and maintenance matters, and providing equipment when the City is unable to procure it. The agreement specifies how the City will compensate NTMWD for the support. The agreement terminates on March 31, 2025.

**RECOMMENDATION**

The Executive Director and NTMWD staff recommend the Board of Directors authorize the execution of an Agreement between NTMWD and the City allowing the City to request support as needed in operating its Wastewater Treatment Plants No. 1 and No. 2 until March 31, 2025.

Contracting Party: City of Farmersville

Scope: Temporary Wastewater Treatment Plant Operations Support

Project: Farmersville Wastewater Treatment Plants No. 1 and No. 2 Operations

Amount: Support provided at cost, paid by City of Farmersville

Committee: This was discussed at the October 23, 2024, Wastewater Committee meeting

**DRIVER(S) FOR THIS PROJECT**

Strategic Objective:	3.2 Engaged Members, Customers and Stakeholders 1.4 Reliable and Resilient Systems
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<input type="checkbox"/> Regulatory Compliance	<input type="checkbox"/> Asset Condition
<input type="checkbox"/> Capacity	<input type="checkbox"/> Redundancy/Resiliency
<input type="checkbox"/> Relocation or External Requests	<input checked="" type="checkbox"/> Operational Efficiency
<input type="checkbox"/> Safety	<input type="checkbox"/> Administrative
<input type="checkbox"/> Policy	<input checked="" type="checkbox"/> Other <u>Regional Partnership</u>

**BACKGROUND**

- The City of Farmersville and NTMWD engaged in a transition process over calendar year 2024 to enable the City to successfully take on responsibility for operating its Wastewater Treatment Plants No. 1 and No. 2.
- NTMWD and the City cooperated to share relevant staff knowledge and documentation, ensure critical contracted services were uninterrupted, and transfer tools and equipment owned by the plants to the City.
- As part of the transition process, the City requested a post-transition support contract temporarily so that District staff could work with the City’s staff as needed to maintain the plants’ effective performance. Transition meetings continued through October 1, 2024, and the City has taken full responsibility for operation and maintenance of the plant since that day.
- The Farmersville City Council voted to terminate the existing Wastewater Treatment Operations Agreement on September 16, 2024, and voted to approve this Agreement on October 7, 2024.

**FUNDING**

The Agreement details how the City will compensate NTMWD for provided labor, equipment time, and parts as shown in Exhibit B of the attached contract.

**NORTH TEXAS MUNICIPAL WATER DISTRICT**  
**POST-TRANSITION WASTEWATER OPERATIONS SUPPORT AGREEMENT**

This POST-TRANSITION WASTEWATER OPERATIONS SUPPORT AGREEMENT (the “Agreement”) is dated and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2024, by and between the North Texas Municipal Water District, a conservation and reclamation district created and operating pursuant to Article XVI, § 59 of the Texas Constitution (the “District”), and the City of Farmersville, Texas, a home-rule municipality operating pursuant to the Constitution and laws of the State of Texas (the “City”). The District and the City are sometimes individually referred to herein as a “Party” and collectively as the “Parties.”

**RECITALS**

WHEREAS, the City owns Farmersville No. 1 Wastewater Treatment Plant (“WWTP”) (TPDES Permit No. WQ0010442001) and Farmersville No. 2 WWTP (TPDES Permit No. WQ0010442002);

WHEREAS, the City contracted with the District to operate Farmersville No. 1 and No. 2 WWTPs (the “Facilities”) pursuant to that certain Wastewater Treatment Agreement dated December 1, 1993, attached hereto as **Exhibit A** and made a part hereof for all purposes (the “1993 Agreement”);

WHEREAS, the District is currently the operator of the Facilities pursuant to the 1993 Agreement;

WHEREAS, the City is constructing Farmersville No. 3 WWTP (TPDES Permit No. WQ0014778001), which shall be solely operated by the City upon commissioning of the WWTP;

WHEREAS, the City now seeks to become the sole operator of the Facilities;

WHEREAS, the City and the District have engaged in a process to enable smooth transition of the role of operator from the District to the City for the operation, maintenance, and administration of the Facilities;

WHEREAS, the Parties agree that execution of this Agreement shall serve as termination of the 1993 Agreement pursuant to Section 6 of that agreement if that agreement has not been terminated; and

WHEREAS, the City desires to contract for District support in operation of the Facilities if a need arises following the termination of the 1993 Agreement for a limited period of time and the District desires to provide such contractual support.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the sufficiency of which are hereby conclusively acknowledged, and subject to the terms and conditions hereinafter set forth, the District and the City mutually undertake, promise, and agree as follows:

## **ARTICLE I TERMINATION**

Section 1.1 Termination. The 1993 Agreement is hereby terminated as of the Effective Date of this Agreement.

Section 1.2 Mutual Release. As of the Effective Date, both Parties shall be released from all obligations, liabilities, and claims under the 1993 Agreement, except for obligations that expressly survive termination or those that have accrued prior to the termination date.

Section 1.3 Final Settlement. The District shall provide a final invoice covering all outstanding fees, costs, or expenses incurred up to the Effective Date, which shall be payable within thirty (30) days of the Effective Date.

## **ARTICLE II DISTRICT OBLIGATIONS**

Section 2.1 Operations, Maintenance, and Administration Support. The District agrees to provide operations, maintenance, and administrative support for the Facilities following the transition of the role of operator of the Facilities from the District to the City. Such support services by the District may include, but may not be limited to:

- A. Providing correspondence, conferences, or meetings for District staff to share relevant expertise regarding operation and maintenance of the Facilities;
- B. Providing District staff presence at the Facilities for the purpose of assisting with or providing advice related to the operation and maintenance of the Facilities;
- C. The use of District parts, tools, and equipment if the City is not able to procure reasonably comparable ones; and
- D. Locating and providing any records necessary for operation of the Facilities to the City that have not been previously provided.

Section 2.2 Limitations of Support. The District shall have no responsibility for the continuous operation and management of the Facilities as of the Effective Date. The District shall not provide support services under this Agreement in the following circumstances:

- A. The District shall not provide support in areas which it does not possess relevant experience or expertise.
- B. The District shall not provide any support services for City land and associated facilities, such as mowing, tree trimming, fence repair, road maintenance, or ground maintenance.
- C. The District shall not provide any support for operation or maintenance of the City collection system and all activities and influent prior to the point of delivery to the Facilities.
- D. The District shall not provide the use of District parts, tools, and/or equipment if the use of such parts, tools, and/or equipment extends beyond the termination date of this Agreement.
- E. The District shall not provide support if providing support would place an undue burden on District resources that may impact District operation of its facilities or provision of services.
- F. The District shall not provide support if District resources are otherwise tasked with urgent or emergency responsibilities.

Section 2.3 Support at District’s Sole Discretion. Any support services provided under this Agreement shall be entirely at the discretion of the District. The District reserves the right to determine the nature, extent, and timing of any support services offered and has sole discretion to decline to provide any support services requested by the City for any reason.

Section 2.4 Facility Operations. All work performed by the District under this Agreement will meet the standard expected of a prudent operator of a wastewater system in Texas and any standard or requirement specified in this Agreement. Wastewater treatment plant design may vary. The District will utilize District staff that possess and maintain the appropriate levels of certification required by TCEQ and the State of Texas while performing work under this Agreement.

### **ARTICLE III CITY OBLIGATIONS**

Section 3.1 Access. The City will make all land, buildings, improvements and equipment associated with the Facilities available to the District for the purpose of providing the requested support services and hereby grants the District a license to access such land and Facilities.

Section 3.2 Regulatory Compliance. The City will assist and cooperate with the District in good faith at all times to ensure compliance with applicable federal, state and local regulations and permit requirements, including the TPDES Permit Nos. WQ0010442001 and WQ0010442002 (the “TPDES Permits”). Compliance with the TPDES Permits includes all effluent quality monitoring,

testing and reporting requirements. The City shall respond directly to any requests from TCEQ or EPA or other regulatory agency for any additional information, records or Facilities' data.

#### **ARTICLE IV FEES AND PAYMENT**

Section 4.1 Cost of Support Services. The total cost for support services provided under this Agreement shall be calculated based on the actual hours worked, tracked, and recorded by the District, at the rates in the rate sheet attached as **Exhibit B**. The City will be solely responsible for the costs for the acquisition and delivery of any materials used in the provision of support services under this Agreement.

Section 4.2 Invoices and Payment. The District shall provide a detailed invoice, including breakdown of hours worked, materials used, and any additional expenses to the City within seven (7) days of the provision of support services under this Agreement. The City shall pay the District within thirty (30) days of the invoice date.

#### **ARTICLE V GENERAL PROVISIONS**

Section 5.1 Term. This Agreement shall commence as of the Effective Date as set forth below and shall continue until March 31, 2025, after which it will terminate and shall no longer be of any force and effect. This Agreement shall not be extended or renewed. Upon termination, all obligations and rights under this Agreement shall cease, except for those expressly stated to survive termination.

Section 5.2 Termination. This Agreement may be terminated as follows:

- A. In the event that a Party breaches any material covenant, obligation, representation or warranty of such Party under this Agreement, which breach remains uncured for a period of thirty (30) days after the non-breaching Party provides notice to the breaching Party, the non-breaching Party shall have the right (but not the obligation) to terminate this Agreement.
- B. Either Party may terminate this Agreement for convenience and without assigning any reason, provided that the terminating Party provides the non-terminating Party with written notice of such termination at least ten (10) days in advance of the proposed termination date.

Section 5.3 Indemnification and Third-Party Claims.

- A. Indemnification by City. In addition to the other remedies afforded to the District in this Agreement, and only to the extent permitted by law, the City shall release, indemnify, defend, and hold harmless the District, its officers, directors, employees, contractors and agents (the "Indemnified Parties") for, from and against any and all loss, cost, expense,

claim, action, proceeding before any governmental authority or arbitral tribunal, demand, damage, fine, liability, obligation or penalty, lien, cause of action, suit and expense (including, without limitation, court costs, reasonable attorneys' fees and costs of investigation, removal and remediation, and governmental oversight costs), environmental or otherwise of any nature, kind or description of any person or entity directly or indirectly arising out of, resulting from, or related to, in whole or in part, 1) the City's performance or omission of its obligations pursuant to this Agreement, and 2) the District's performance of its obligations pursuant to this Agreement.

- B. Defense of Third-Party Claims. In the event any action or proceeding shall be brought against an Indemnified Party by reason of any matter for which an Indemnified Party is legally indemnified hereunder, the City shall, upon notice from the District or its authorized agents or representatives, at the City's sole cost and expense, resist and defend the same with legal counsel selected by the City and approved by the District; provided, however, that the City shall neither admit liability in any such matter on behalf of the Indemnified Party nor enter into any compromise or settlement of, any claim for which an Indemnified Party is indemnified hereunder, without the prior written consent of the Indemnified Party. The City's obligation to defend shall apply regardless of whether the District is solely or concurrently negligent. Nothing herein shall be deemed to prevent the District at its election and at its own expense from cooperating with the City and participating in the defense of any litigation by its own counsel. In a matter for which an Indemnified Party is legally indemnified, if the City fails to select defense counsel and notify the District of the selection within seven (7) days after receipt of the District's written notice that an Indemnified Party is invoking its right to indemnification under this Agreement, the Indemnified Party shall have the right to retain defense counsel on their own behalf, and the City shall be liable for all defense costs reasonably and necessarily incurred by the Indemnified Party.

Section 5.4 Limitation on Liability. The District shall not be held liable for any and all TPDES Permit violations incurred by the City and related to the Facilities after the Effective Date of this Agreement. The City accepts full responsibility for such violations and agrees to indemnify and hold harmless the District for such violations.

Section 5.5 Amendment and Modification. This Agreement shall not be amended except in writing by both Parties hereto. No change, amendment, or modification of this Agreement shall be made or be effective which will adversely affect the prompt payment when due of all money required to be paid by the City under the terms of this Agreement.

Section 5.6 Independent Contractor. The District is not an employee of the City, but serves the City as an independent contractor. This Agreement in no way constitutes a joint venture between the City and the District.

Section 5.7 Addresses and Notice. Unless otherwise provided herein, any notice, communication, request, reply, or advice (herein severally and collectively, for convenience, called "Notice") herein provided or permitted to be given, made, or accepted by any Party to the other Party must be in writing and may be given or be served by depositing the same in the United States mail postage prepaid and registered or certified and addressed to the Party to be notified,

with return receipt requested, or by personally delivering the same to an officer of such Party. Notice deposited in the mail in the manner hereinabove described shall be conclusively deemed to be effective, unless otherwise stated herein, from and after the expiration of three (3) days after it is so deposited. Notice given in any other manner shall be effective only if and when received by the Party to be notified. For the purposes of notice, the addresses of the Parties shall, until changed as hereinafter provided, be as follows:

If to the District:

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

If to the City:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

Section 5.8 Severability. The Parties hereto specifically agree that in case any one or more of the sections, subsections, provisions, clauses, or words of this Agreement or the application of such sections, subsections, provisions, clauses, or words to any situation or circumstance should be, or should be held to be, for any reason, invalid or unconstitutional, under the laws or constitutions of the State or the United States of America, or in contravention of any such laws or constitutions, such invalidity, unconstitutionality, or contravention shall not affect any other sections, subsections, provisions, clauses, or words of this Agreement or the application of such sections, subsections, provisions, clauses, or words to any other situation or circumstance, and it is intended that this Agreement shall be severable and shall be construed and applied as if any such invalid or unconstitutional section, subsection, provision, clause, or word had not been included herein, and the rights and obligations of the Parties hereto shall be construed and remain in force accordingly.

Section 5.9 Force Majeure. Notwithstanding anything herein to the contrary, the Parties hereto shall not be under any liability or be deemed to be in default with respect to their obligations under this Agreement for any failure to perform or for delay in performing such obligations hereunder (except for the obligation to pay money) where such failure or delay is due to force majeure, while and to the extent that such performance is prevented by such cause. The term force majeure means acts of God, fire, storm, flood, war, terrorist activity, riots, sabotage, strikes or other differences with labor (whether or not within the power of the Parties to settle same), decrees or orders of the courts or other governmental authority, or other similar or dissimilar causes not within the reasonable control of such Party and not due to negligence of such Party. The Parties shall use



due diligence to resume performance of any obligation suspended by force majeure at the earliest practicable time.

Section 5.10 Governing Law. This Agreement shall be governed by the Constitution and laws of the State of Texas, except as to matters exclusively controlled by the Constitution and statutes of the United States of America.

Section 5.11 Venue. 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 due in Collin County, Texas, which is the County in which the principal administrative offices of the District are located and the County where this Agreement is performable. In the event that any legal proceeding is brought to enforce this Agreement or any provision hereof, the same shall be brought in state district court in Collin County, Texas.

Section 5.12 Succession and Assignment. This Agreement is binding upon and shall inure to the benefit of the Parties, their heirs, successors and assigns. This Agreement may not be assigned by any Party hereto without prior written notice to, and approval by, the other Party, which consent may be withheld without cause.

Section 5.13 Incorporation of Preamble Recitals and Exhibits. All of the recitals in the preamble and all of the exhibits of this Agreement are true and correct and are hereby incorporated into the body of this Agreement as though fully set forth in their entirety herein.

Section 5.14 Entire Agreement. This Agreement constitutes the entire agreement between and among the Parties with respect to the matters described herein.

Section 5.15 Counterparts. This Agreement may be executed in counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument.

Section 5.16 Authority. Each person signing on behalf of the Parties hereby confirms that they have the authority to execute this Agreement on behalf of the Party indicated by their signature.

IN WITNESS WHEREOF, this instrument is executed on the dates set forth below the Parties' signatures to be effective the date the last Party so signs (the "Effective Date").

*(Signature pages to follow.)*

**THE CITY OF FARMERSVILLE, TEXAS**

By: \_\_\_\_\_  
Craig Overstreet, Mayor

\_\_\_\_\_ Date

STATE OF TEXAS            §  
  §  
COUNTY OF COLLIN       §

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by Craig Overstreet, the Mayor of the City of Farmersville, Texas, on behalf of the City of Farmersville, Texas, a home-rule municipality operating pursuant to the Constitution and laws of the State of Texas.

\_\_\_\_\_  
Notary Public, State of Texas  
Printed Name of Notary:

\_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**NORTH TEXAS MUNICIPAL WATER DISTRICT**

By: \_\_\_\_\_  
Jennafer P. Covington, Executive Director                      Date \_\_\_\_\_

STATE OF TEXAS                      §  
   §  
COUNTY OF COLLIN                      §

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by Jennafer P. Covington, Executive Director of North Texas Municipal Water District, a conservation and reclamation district and political subdivision of the State of Texas, on behalf of said conservation and reclamation district.

\_\_\_\_\_  
Notary Public, State of Texas  
Printed Name of Notary:

\_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

# EXHIBIT A

## WASTEWATER TREATMENT AGREEMENT

STATE OF TEXAS       §

COUNTY OF COLLIN     §

AN AGREEMENT BETWEEN THE CITY OF FARMERSVILLE, TEXAS, AND  
THE NORTH TEXAS MUNICIPAL WATER DISTRICT FOR WASTEWATER  
TREATMENT PLANT OPERATION.

This contract, made and entered into as of the 1st day  
of DECEMBER, 1993, by and between the North  
Texas Municipal Water District, hereinafter called "NTMWD", and  
the City of Farmersville, Texas, a municipal corporation in Collin  
County, Texas, hereinafter called "City".

### W I T N E S S E T H :

WHEREAS, City owns two wastewater treatment plants which  
discharge into a tributary of Lavon Reservoir downstream of Highway  
380, and

WHEREAS, City has been issued permits from the Texas Natural  
Resource Conservation Commission, permit numbers 10442-001 and 10442-  
002, to discharge flow from its wastewater plants.

WHEREAS, NTMWD has been designated by the Texas Water  
Quality Board to function as a regional agency in connection with  
the design, construction and operation of systems in the area  
tributary to the East Fork of the Trinity River in the Counties  
of Dallas, Collin, Rockwall and Kaufman, and

WHEREAS, both City and NTMWD recognize the imminent  
necessity of treating waste to the degree necessary to allow its  
safe reuse for water supply and other purposes, and

WHEREAS, NTMWD, because of its water supply responsibilities  
and the capability to contract with others in the region, appears  
to be in the best position to fully develop the potential for advanced  
treatment and reuse in the East Fork area;

NOW THEREFORE, in consideration of the mutual covenants  
and agreements herein contained, NTMWD agrees to operate the existing  
plant and the City agrees to pay for such service upon the terms  
and conditions hereinafter set forth, to-wit:

1. Operating Responsibility. It is the intent of this  
agreement that the operation of the plant shall be the responsibility  
of the NTMWD and that the plant shall be operated in a manner that  
will provide a water quality conforming to the waste control order  
issued by the Texas Natural Resource Conservation Commission, or  
any subsequent order issued relating to this plant.

2. Financing. The plant is presently owned by the City, and it shall be City's responsibility to provide such facilities, operating funds, and capital expenditures as are necessary to accomplish the quality of discharge stipulated in the waste control order issued by the Texas Natural Resource Conservation Commission, Environmental Protection Agency, or any subsequent orders of either.

3. Operating Budget. The NTMWD shall prepare an annual operating budget reflecting all anticipated costs in connection with the operation of the plant in sufficient detail to justify expenditures for salaries, materials, supplies and contractual services. The amount of the proposed operating budget shall be submitted to City on or before August 1 of each year. If a protest or request for a hearing on the Budget is not presented prior to September 1, the proposed Budget, on adoption by the NTMWD, shall be considered the "Annual Budget" for the ensuing fiscal year.

In the event City and NTMWD are not able to agree on the operating budget prior to October 1, the budget for the previous year shall apply for the first 60 days of the new fiscal year, with adjustments only to those items that are agreed to by City. If, at the end of this 60 day period, no agreement has been reached on the operating budget this contract shall be terminated in accordance with the termination provisions herein provided.

In the first year a budget will be prepared for a full twelve (12) months with payments based thereon and pro-rated for the actual months service is provided, but on the next October a new Budget will be implemented and the fiscal year shall thereafter be October 1 to September 30 of each year.

4. Annual Charges. Monthly payments shall be made by City equal to the total operating budget divided by 12, and these payments shall be made in advance, on or before the 10th day of each month. The first monthly payment due October 10 of each year shall be twice the calculated monthly payment with no payment due in September of each year except for any adjustments previously approved by City. At the end of each fiscal year any surplus balance would be carried forward to reduce the over-all cost during the next budgetary period.

Emergency expenditures not budgeted may be incurred with the concurrence of the NTMWD's Executive Director and the City's City Manager, subject to limitations placed on each by respective governing bodies, with appropriate adjustments in monthly payments. Routine requests for adjustments in monthly payments must receive prior approval by the City.

In the event the City shall fail to make any monthly payment by the 20th day of the month in which due, after notice to City, the NTMWD may terminate service as of the first day of the following month.

5. Additional Connections. NTMWD may provide service to other municipalities subject to approval of City, and the charge which is levied for such service shall include adequate compensation to the City for its capital investment as well as operating expenditures.

6. Termination. Either City or NTMWD may require that this operational agreement be terminated. The party desiring to terminate this agreement shall submit notice in writing to the other party, after which a period of 30 days shall be allowed before termination becomes final. Once this agreement is terminated the NTMWD shall continue its operating responsibility for a period of 45 days at the request of City with payments for service in accordance with the agreement.

7. Industrial Waste. City agrees to enforce its industrial waste ordinance and to take such action as is necessary to control the strength of raw sewage reaching the plant in order that the quality of discharge required in the waste control order may be maintained.

8. Title to Effluent. Title to effluent shall remain with City.

9. Indemnity. City agrees to indemnify and hold harmless the NTMWD from any and all causes for loss, liability, or damages arising out of the operation of the plant by the District except for acts of negligence by NTMWD personnel. The City further agrees to maintain adequate fire and extended coverage insurance on said plant.

10. NTMWD's Financial Obligation. Nothing in this agreement shall be construed as requiring the NTMWD to expend funds from any source other than the revenues received hereunder. All cost required by valid rules, regulations, laws or orders passed or promulgated by the United States of America, the State of Texas, and regulatory or judicial branches thereof having lawful jurisdiction shall be the responsibility of the City.

THIS AGREEMENT APPROVED BY THE RESPECTIVE GOVERNING BODIES WITH THE UNDERSIGNED PROPERLY AUTHORIZED TO EXECUTE IN THEIR BEHALF ON THIS THE 23RD DAY OF NOVEMBER, 1993.

NORTH TEXAS MUNICIPAL  
WATER DISTRICT

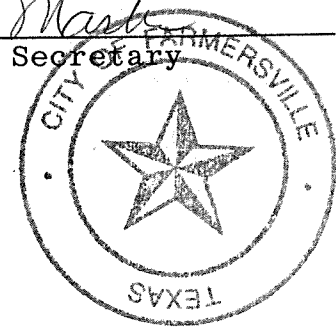
By Darwin L. Whiteside  
President

ATTEST:  
Harry Tibbals  
Secretary  
(SEAL)

CITY OF FARMERSVILLE

[Signature]  
Mayor

[Signature]  
City Secretary



## EXHIBIT B

### Support Service Rates

#### Labor

<b>Title</b>	<b>Support Service Rate</b>
Administrative Technician	\$37.03
Crane Operator	\$42.86
Electrical Superintendent	\$63.33
Electrical Technician	\$49.62
Industrial Electrician II	\$47.26
Industrial Mechanic	\$42.86
Instrumentation Superintendent	\$63.33
Instrumentation Technician	\$47.26
Instrumentation Technician II	\$49.62
Lead Maintenance Tech	\$45.01
Lead Technical Services Mechanic	\$45.01
Lead Welder	\$45.01
Maintenance Worker	\$33.58
Wastewater Technician I	\$42.86
Welder	\$42.86
Heavy Equipment Operator	\$40.82
ISA	\$37.03
Lead Operator	\$49.62
Maintenance Superintendent - Pipeline	\$66.49
Mechanic's Assistant	\$33.58
Operator II / Transport Driver	\$38.88
Operator III	\$45.01
Pipeline Crew leader	\$47.26

Plant Supervisor I	\$54.71
Plant Supervisor II	\$63.33
Professional Engineer	\$76.98
Wastewater Coordinator	\$60.31
Wastewater Project Coordinator	\$69.82
Wastewater Mechanic	\$42.86

- *Labor provided by other job titles to be charged at midpoint for the title + 40%*
- *Labor provided outside of 7:00am - 3:00pm Monday-Friday or on District holidays to be charged at 150% of listed rate*

### **Equipment**

<b>Description</b>	<b>Cost</b>	<b>Unit</b>
Cat 336F Excavator	\$272.66	hour
Link Belt 130X3 LX Excavator	\$137.11	hour
Peterbilt Jet Vacuum Truck	\$77.79	hour
Komatsu Mini Excavator	\$57.67	hour
Freightliner Crane Boom Truck	\$56.57	hour
Generac Power Systems Trailer Mounted-Generator	\$7.62	hour
Maxey Gooseneck Trailer	\$3.62	mile
Peterbilt 337 Dump Truck	\$2.75	mile
International Service Truck	\$1.91	mile
Ford F-550 4X4 Service Body Pickup w/Crane	\$1.51	mile
Ford 1 Ton 4X4 Weld Pickup	\$1.29	mile
Ford 3/4 Ton 4X4 Crew Cab Pickup	\$1.12	mile
Ford 1/2 Ton 4x4 Supercab Pickup	\$0.75	mile
Lamar Utility Trailer	\$0.40	mile

- *Equipment not comparable and not listed and parts provided at cost*





11/21/2024

Administrative Memorandum No. 24-6081

**Regional Water System**

**Texoma Raw Water Pipeline to Leonard WTP Pipeline  
Project No. 101-0642-24; Resolution No. 24-49; Right of Way Acquisition Program**

**SUBJECT**

Authorize funding in the amount of \$8,400,000 and adoption of Resolution No. 24-49 to acquire permanent and temporary easements for the Texoma Raw Water Pipeline to Leonard WTP Pipeline project.

**PURPOSE**

Acquire easements to allow construction of a pipeline to divert 70 million gallons per day (MGD) of raw water from Lake Texoma to the Leonard WTP to increase available raw water for treatment for the Phase III expansion of Leonard WTP to 210 MGD by 2030.

**RECOMMENDATION**

The Executive Director and NTMWD staff recommend the Board of Directors:

- 1) Authorize the Executive Director to execute a right-of-way acquisition program for the Texoma Raw Water Pipeline to Leonard WTP Pipeline, Project No. 101-0642-24, with a budget of \$8,400,000; and,
- 2) Adopt Resolution No. 24-49, *“A Resolution Authorizing the Use of Eminent Domain to Acquire Right-of-Way for the Texoma Raw Water Pipeline to Leonard WTP Pipeline, Project No. 101-0642-24, and Delegating Authority to Initiate Condemnation Proceedings to the NTMWD Executive Director.”*

Consultant: N/A

Scope: Right-of-way acquisition and the necessary support services to facilitate the purchase of easements for the project.

Project: No. 101-0642-24, Texoma Raw Water Pipeline to Leonard WTP Pipeline

Amount: \$8,400,000

Committee: This will be an item on the November 20, 2024, Real Estate Committee meeting agenda

**DRIVER(S) FOR THIS PROJECT**

Strategic Objective:	1.2 Successfully Deliver Capital Program
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- |  |   |
|--|---|
| <input type="checkbox"/> Regulatory Compliance           | <input type="checkbox"/> Asset Condition        |
| <input checked="" type="checkbox"/> Capacity             | <input type="checkbox"/> Redundancy/Resiliency  |
| <input type="checkbox"/> Relocation or External Requests | <input type="checkbox"/> Operational Efficiency |
| <input type="checkbox"/> Safety                          | <input type="checkbox"/> Administrative         |
| <input type="checkbox"/> Policy                          | <input type="checkbox"/> Other _____            |

**BACKGROUND**

**PROJECT PURPOSE**

- To meet projected demand growth, the Leonard Water Treatment Plant (WTP) will require a treatment capacity of 210 MGD before 2030 .
- Available raw water supply from Bois d’Arc Lake is insufficient to meet future demand at ultimate plant capacity of 280 MGD.
- Additional 70 MGD of raw water can be supplied from Lake Texoma by constructing an 84-inch pipeline from the Texoma raw water pipeline to the Leonard WTP.
- The operational flexibility of Texoma Raw Water System will be improved by allowing raw water to be conveyed to both the Wylie WTP and the Leonard WTP.
- The Leonard WTP’s reliability will also be improved with this second raw water source.
- Construction is projected to begin early 2026 and completed in 2029.
- Permanent and Temporary easements are required; and will be located along the general route shown on the accompanying map.

**SUPPORT SERVICES**

- The firm of Saunders, Walsh & Beard, Attorneys & Counselors will serve as counsel on the acquisition of the properties.
- An appraiser will provide appropriate reports.
- Professional services related to certain property ownership issues will be provided by a title company.

- Survey services will perform title survey for purchase & acquisition and verify property lines and potential easement locations, when necessary.
- Based on ongoing projects and the goal of commencing construction on this project by February 2026, contracted land agents or acquisition company(s) will be employed to assist in easement acquisition.

## **FUNDING**

Funding in the amount of \$8,400,000 for Right-Of-Way Acquisition Services is to be made available in the Regional Water System Capital Improvement.

# NORTH TEXAS MUNICIPAL WATER DISTRICT

## RESOLUTION NO. 24-49

### **A RESOLUTION AUTHORIZING THE USE OF EMINENT DOMAIN TO ACQUIRE RIGHT-OF-WAY FOR THE TEXOMA RAW WATER PIPELINE TO LEONARD WTP PIPELINE, PROJECT NO. 101-0642-24, AND DELEGATING AUTHORITY TO INITIATE CONDEMNATION PROCEEDINGS TO THE NTMWD EXECUTIVE DIRECTOR**

**WHEREAS**, the NTMWD Board of Directors has authorized the engineering service agreement for the Texoma Raw Water Pipeline to Leonard WTP Pipeline, Project No. 101-0642-24 (Project); and,

**WHEREAS**, it is necessary to proceed with the acquisition of permanent and temporary easements required for the construction, operation, and maintenance of Project improvements; and,

**WHEREAS**, it may be necessary to acquire easements required for the Project through the use of eminent domain in the event negotiations are unsuccessful; and,

**WHEREAS**, it will be necessary to hire contracted land agents or acquisition company, appraisers and attorneys, in order to negotiate easements required for the Project; and,

**WHEREAS**, adequate funds are provided from the Regional Water System Capital Improvement Fund for the acquisition of properties needed for the Project.

### **NOW, THEREFORE, THE BOARD OF DIRECTORS IN A REGULAR MEETING DETERMINES AND RESOLVES THAT:**

1. There is a public need for and that the public welfare and convenience are to be served by the construction of the pipeline and appurtenances associated with the Texoma Raw Water Pipeline to Leonard WTP Pipeline, Project No. 101-0642-24, to serve the water needs of the Districts member and customer cities.
2. It is in the best interest and is necessary to acquire those permanent, temporary, and access easements necessary for the construction of the pipeline and appurtenances for the Project across the general route as generally described in Exhibit "A" attached hereto, and incorporated by reference herein, to provide the area required for prosecution of the work, and operation, maintenance, repair, and other such purposes as may be required to provide for the continual and uninterrupted operation of the pipeline facilities.
3. The power to initiate eminent domain proceedings is hereby delegated to the Executive Director and she is hereby authorized to take all steps necessary to acquire the property and easements for the Project, including the hiring of negotiators, appraisers, surveyors, Title Company, and attorneys.
4. The Executive Director is authorized to employ the firm of Saunders, Walsh & Beard, Attorneys and Counselors, to represent the NTMWD in these land transactions; including filing of Petitions for Condemnation on properties when the Executive Director determines

the property cannot be secured through negotiations and after issuance of a final offer letter in accordance therewith.

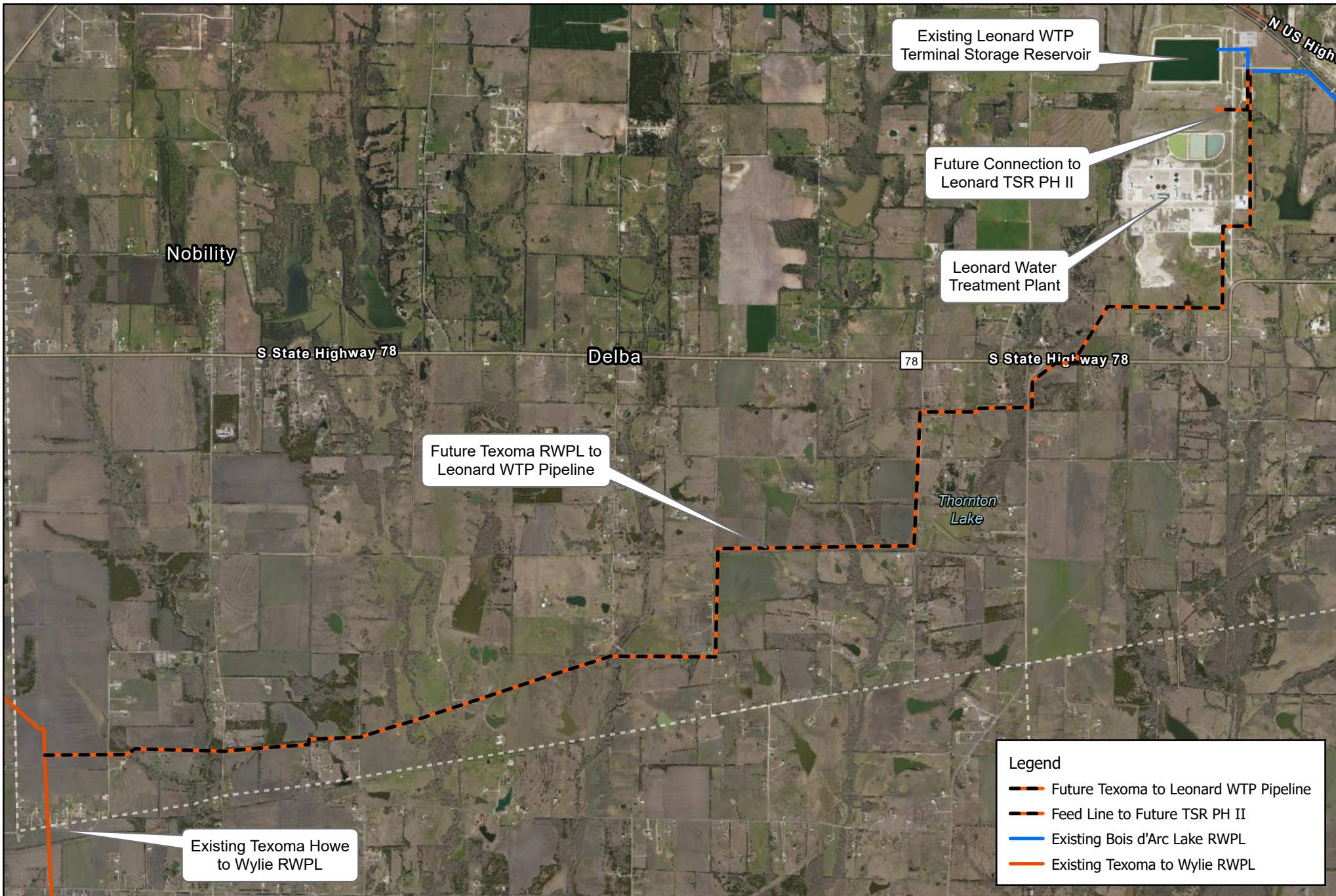
5. A budget of \$8,400,000 is authorized for this right-of-way acquisition program.

**THIS RESOLUTION ADOPTED BY THE NTMWD BOARD OF DIRECTORS IN A REGULAR MEETING ON NOVEMBER 21, 2024, IN THE ADMINISTRATIVE OFFICES OF THE NTMWD, WYLIE, TEXAS.**

\_\_\_\_\_  
**DONALD IMRIE, Secretary**

\_\_\_\_\_  
**GEORGE CRUMP, President**

**(SEAL)**



**Texoma Raw Water Pipeline to Leonard Water Treatment Plant Pipeline  
Project No. 101-0642-24**





11/21/2024

Administrative Memorandum No. 24-6082

**Regional Solid Waste System**

**121 Regional Disposal Facility; Resolution No. 24-50; Second Amendment of General Warranty Deed on 65.425 Acres near the 121 Regional Disposal Facility**

**SUBJECT**

Adoption of Resolution No. 24-50 extending the period for Melissa Independent School District’s requirement to use 65.425 acres (Property) for school purposes by five (5) additional years for a total of twenty-five (25) years or the title shall immediately revert to the North Texas Municipal Water District (NTMWD).

**PURPOSE**

Melissa Independent School District (MISD) requested an additional five years to extend the time period requirement to use the Property for school purposes or the Property reverts to NTMWD per the General Warranty Deed.

**RECOMMENDATION**

The Executive Director and NTMWD staff recommend the Board of Directors:

- 1) Adopt Resolution No. 24-50, *“A Resolution Authorizing the Executive Director to Execute a Second Amendment of General Warranty Deed on approximately 65.425 Acres of Property in Melissa, Texas”*.

Contracting Parties:	NTMWD and Melissa Independent School District
Scope:	Second Amendment of General Warranty Deed
Original Agreement:	General Warranty Deed with a reversionary interest in the property, dated December 9, 2004, as amended by Amendment of General Warranty Deed dated April 29, 2013
Amount:	N/A
Committee:	This was an item on the September 25, 2024, Real Estate Committee meeting agenda

**DRIVER(S) FOR THIS PROJECT**

Strategic Objective:	3.3 - Durable Strategic Partnerships
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<input type="checkbox"/> Regulatory Compliance	<input type="checkbox"/> Asset Condition
<input type="checkbox"/> Capacity	<input type="checkbox"/> Redundancy/Resiliency
<input checked="" type="checkbox"/> Relocation or External Requests	<input type="checkbox"/> Operational Efficiency
<input type="checkbox"/> Safety	<input type="checkbox"/> Administrative
<input type="checkbox"/> Policy	<input type="checkbox"/> Other _____

**BACKGROUND**

**PROJECT PURPOSE**

- NTMWD conveyed approximately 65.425 acres (the Property) to MISD on December 9, 2004, to be used for school purposes.
- If MISD failed to use the Property for school purposes within ten (10) years, or by December 9, 2014, ownership of the Property would revert to NTMWD.
- Prior to December 9, 2014, MISD requested that the term for its use of the Property for school purposes be extended for an additional ten (10) years.
- An Amendment of General Warranty Deed was executed and filed extending that period to December 9, 2024.
- MISD has requested that the period for it to use the Property for school purposes be extended for an additional five (5) years to December 9, 2029.
- This time extension will be accomplished by the execution and filing of a Second Amendment of General Warranty Deed, with NTMWD retaining a reversionary interest in the Property.

**SUPPORT SERVICES**

- Employ the firm of Saunders, Walsh & Beard, Attorneys & Counselors, to act as counsel on the amendment of the Deed.

**FUNDING**

N/A



# NORTH TEXAS MUNICIPAL WATER DISTRICT

## RESOLUTION NO. 24-50

### A RESOLUTION AUTHORIZING THE NTMWD EXECUTIVE DIRECTOR TO EXECUTE A SECOND AMENDMENT OF GENERAL WARRANTY DEED ON APPROXIMATELY 65.425 ACRES OF PROPERTY IN MELISSA, TEXAS

**WHEREAS**, in May 2004, NTMWD Board of Directors authorized the conveyance of approximately 65.425 acres (the Property) located near the District's 121 Regional Disposal Facility to Melissa Independent School District (MISD) to be used for school purposes; and,

**WHEREAS**, NTMWD retained a reversionary interest in the property requiring MISD to use the Property for school purposes within ten (10) years, or by December 9, 2014; and,

**WHEREAS**, in April 2013, the NTMWD Board of Directors authorized an Amendment of General Warranty Deed, extending the term for MISD's requirement to use the Property for school purposes an additional ten (10) years, to December 9, 2024; and,

**WHEREAS**, MISD requested to extend the time period requirement to use the Property for school purposes by an additional five (5) years, to December 9, 2029; and,

**WHEREAS**, NTMWD has no cause to retake possession of the Property at this time.

### **NOW, THEREFORE, THE BOARD OF DIRECTORS IN A REGULAR MEETING DETERMINES AND RESOLVES THAT:**

1. The Second Amendment of General Warranty Deed will extend the time for Melissa Independent School District to use the approximately 65.425 acres for school purposes by an additional five (5) years, or until December 9, 2029.
2. The Executive Director is hereby authorized to execute a Second Amendment of General Warranty Deed to provide Melissa Independent School District an additional five (5) years to use the approximately 65.425 acres for school purposes, or to December 9, 2029.

**THIS RESOLUTION ADOPTED BY THE NTMWD BOARD OF DIRECTORS IN A REGULAR  
MEETING ON NOVEMBER 21, 2024, IN THE ADMINISTRATIVE OFFICES OF THE NTMWD,  
WYLIE, TEXAS.**

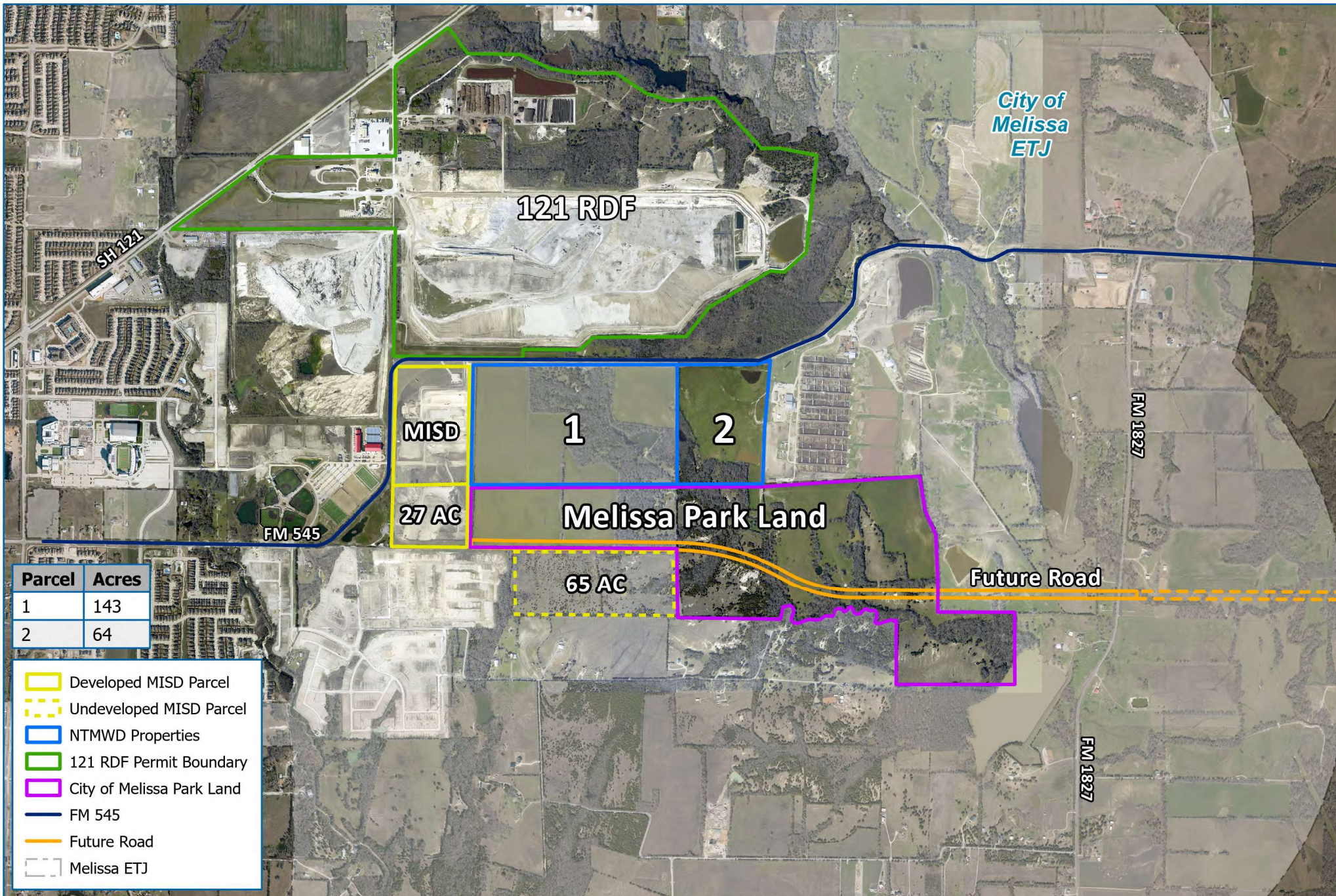
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**DONALD IMRIE, Secretary**

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**GEORGE CRUMP, President**

**(SEAL)**



Parcel	Acres
1	143
2	64

- Developed MISD Parcel
- Undeveloped MISD Parcel
- NTMWD Properties
- 121 RDF Permit Boundary
- City of Melissa Park Land
- FM 545
- Future Road
- Melissa ETJ

**121 Regional Disposal Facility**  
**Second Amendment of General Warranty Deed on 65.425**  
**Acres near the 121 Regional Disposal Facility**

11/5/2024



Grantor:

NORTH TEXAS MUNICIPAL WATER DISTRICT

By: \_\_\_\_\_  
Jennafer P. Covington, Executive Director

Grantee:

MELISSA INDEPENDENT SCHOOL DISTRICT

By: \_\_\_\_\_  
Keith Murphy, Superintendent

**ACKNOWLEDGMENT**

THE STATE OF TEXAS            §  
  §  
COUNTY OF COLLIN            §

Before me, the undersigned authority, on this day personally appeared Jennafer P. Covington, Executive Director of the North Texas Municipal Water District, who being by me first duly sworn, upon oath states that she has read the above and foregoing Second Amendment of General Warranty Deed, is authorized to execute said Amendment on behalf of the North Texas Municipal Water District in her capacity as Executive Director of the North Texas Municipal Water District, and has executed the same for the considerations state herein.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Notary Public, State of Texas

My Commission Expires: \_\_\_\_\_

**ACKNOWLEDGMENT**

THE STATE OF TEXAS            §  
  §  
COUNTY OF COLLIN            §

Before me, the undersigned authority, on this day personally appeared Keith Murphy, Superintendent of Melissa Independent School District, who being by me first duly sworn, upon oath states that he has read the above and foregoing Second Amendment of General Warranty Deed, is authorized to execute said Amendment on behalf of the Melissa Independent School District in his capacity as Superintendent of the Melissa Independent School District, and has executed the same for the considerations state herein.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Notary Public, State of Texas

My Commission Expires: \_\_\_\_\_



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11/21/2024

Administrative Memorandum No. 24-6083

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**Regional Water System**

**Preliminary Development Agreement with Bois d’Arc Lake Acquisitions, LLC**

**SUBJECT**

Authorize execution of a Preliminary Development Agreement with Bois d’Arc Lake Acquisitions, LLC, a subsidiary of Lakewood Capital Group, to construct improvements and use shoreline on NTMWD property adjacent to Bois d’Arc Lake for residential purposes and authorize the subsequent execution of a Lease and Use Agreement with the future property owners association (POA) who will own the improvements as required by the Preliminary Development Agreement.

**PURPOSE**

Bois d’Arc Lake Acquisitions, LLC is a residential property developer that wishes to construct certain improvements and to use NTMWD property adjacent to Bois d’Arc Lake for its residential development called Five Points and the Harbor at Five Points. The NTMWD Bois d’Arc Lake Shoreline Management Plan allows for such improvements and provides that shoreline uses associated with planned residential developments may be authorized by separate agreements.

**RECOMMENDATION**

The Executive Director and NTMWD staff recommend the Board of Directors authorize the Executive Director to execute a Preliminary Development Agreement with Bois d’Arc Lake Acquisitions, LLC and the Lease and Use Agreement required by the Preliminary Development Agreement with the future property owners association, as follows:

- Contracting Party: Bois d’Arc Lake Acquisitions, LLC
- Scope: Preliminary Development Agreement
- Contract Term: 5-years
- Committee: This will be an item on the November 20, 2024, Real Estate Committee meeting agenda

**DRIVER(S) FOR THIS PROJECT**

Strategic Objective:	3.2 Engaged Members, Customers and Stakeholders
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<input type="checkbox"/> Regulatory Compliance	<input type="checkbox"/> Asset Condition
<input type="checkbox"/> Capacity	<input type="checkbox"/> Redundancy/Resiliency
<input checked="" type="checkbox"/> Relocation or External Requests	<input type="checkbox"/> Operational Efficiency
<input type="checkbox"/> Safety	<input checked="" type="checkbox"/> Administrative
<input type="checkbox"/> Policy	<input type="checkbox"/> Other _____

**BACKGROUND**

- Bois d’Arc Lake (the Lake) is a water supply reservoir developed to meet the needs of the NTMWD’s Member Cities and Customers.
- Given the importance of the Lake as a significant public water supply source for the NTMWD, the NTMWD Board of Directors adopted Resolution 20-53 Authorizing the Adoption, Implementation and Enforcement of the Bois d’Arc Lake Shoreline Management Plan (the “Plan”) to protect and manage the Lake shoreline, protect and maintain water quality within the Lake, promote the safe use of the shoreline and waters by the general public, and allow for some recreational uses to support the economy of Fannin County.
- The Plan establishes guidelines and standards for public and private uses and improvements on NTMWD-owned property along the Bois d’Arc Lake shoreline.
- In December 2023, Administrative Memorandum 23-5974 authorized amendments to the Plan to reflect current administrative systems and processes, update agreement templates, and provide additional guidance to future applicants seeking approval for certain shoreline uses and improvements.
- Lakewood Capital Group is a residential property development company that owns approximately 186 acres through its subsidiary, Bois d’Arc Lake Acquisitions, LLC (the Developer)
- This residential development, called Five Points and the Harbor at Five Points, is subject to rules and regulations established by Five Points and the Harbor at Five Points POA (POA)
- Five Points and the Harbor at Five Points residential development abuts NTMWD property at Bois d’Arc Lake. The Developer wishes to construct certain improvements on NTMWD property for use by future residents
- The Plan provides that such improvements for planned residential developments shall generally conform to the requirements of the Plan and may be authorized through individual agreement(s)
- NTMWD has received an application package from the Developer, which includes proposed improvements that generally conform to the requirements of the Plan

- NTMWD and its legal counsel have applied the approved agreement templates in the Plan to create a Preliminary Development Agreement to facilitate the construction of these community improvements and the use of NTMWD property by the Developer and future residents
- The Preliminary Development Agreement requires the Developer and POA to enter a Lease and Use Agreement with NTMWD once construction of the improvements is complete to NTMWD's satisfaction
- The subsequent Lease and Use Agreement must conform to the draft included as an attachment to this Preliminary Development Agreement and this action authorizes the Executive Director to enter into that subsequent agreement with the Developer and POA

### **KEY COMPONENTS OF THE PRELIMINARY DEVELOPMENT AGREEMENT**

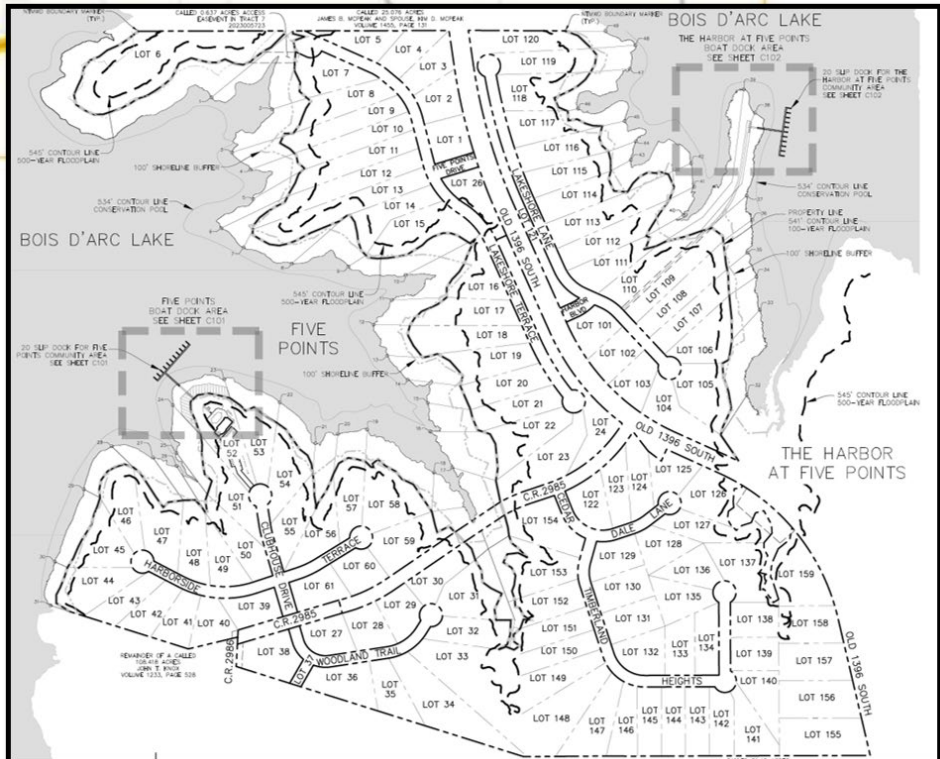
- Agreement term of 5 years
- Authorizes the following construction activities and improvements which shall generally conform to the NTMWD Bois d'Arc Lake Shoreline Management Plan:
  - Two (2) docks with solar-powered lighting accessible to certain residents consisting of the following number of boat slips:
    - Dock 1 - 20 slips
    - Dock 2 - 20 slips
  - Access paths to each dock
  - Shoreline erosion control structures adjacent to each dock
  - Vegetation modification within defined areas and limits
- Annual fees to be paid to NTMWD during the initial term of the agreement as follows:
  - Year 1 = \$22,065
  - Years 2-5 = \$6,500
- List of fines that may be levied against the Developer and/or POA for certain violations as well as additional remedies for non-compliance
- Requirements for construction of improvements and use of NTMWD property to protect water quality and ensure compliance with the Plan
- Requires and authorizes execution of a subsequent Shoreline Lease and Use Agreement with the Developer and the POA upon completion of construction
- Includes defined areas in which the POA will allow residents to seek separate, future approvals from NTMWD for docks associated with individual private lots
- The agreement will substantially conform to the attached draft

### **FUNDING**

No funding is requested.



# Approximate Location of Lakewood Capital's planned residential development (Five Points and the Harbor)





**Approximate Location of Lakewood Capital's planned residential development (Five Points and the Harbor)**

**PRELIMINARY DEVELOPMENT AGREEMENT BETWEEN THE NORTH TEXAS MUNICIPAL WATER DISTRICT AND BOIS D'ARC LAKE ACQUISITIONS, LLC.**

This Preliminary Development Agreement (“Agreement”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2024 (the “Effective Date”) by and between North Texas Municipal Water District (“NTMWD”), a wholesale water and wastewater provider that owns and operates Bois d’Arc Lake (the “Lake”) in Fannin County, Texas, and Bois d’Arc Lake Acquisitions, LLC (“Developer”) seeking to develop approximately 99.629 acres for Five Points and approximately 86.534 acres for The Harbor at Five Points of property adjacent to the Lake (the “Property”) (collectively “Party” or “Parties”).

**RECITALS**

WHEREAS, the Parties are authorized to enter into this Agreement pursuant to Chapter 62, Acts of the 52<sup>nd</sup> Legislature, 1951 (Article 8280-141, Vernon’s Texas Civil Statutes) and other applicable laws;

WHEREAS, Developer owns the Property and plans to construct facilities and enter into agreements affecting the Property before the Property is ultimately transferred to Five Points & The Harbor at Five Points POA (the “Association”);

WHEREAS, Developer intends to develop the Property as a master-planned community for residential and recreational use (the “Development”);

WHEREAS, the Developer has obtained final plat approval for the Development from Fannin County and has sold lots to third parties;

WHEREAS, prior to the sale of lots within the Development, the Developer predetermined areas adjacent to certain lots where future owners may request a Lease and Use Agreement from NTMWD;

WHEREAS, the Developer disclosed those predetermined areas to lot owners at the time of sale and lot owners may not request a Lease and Use Agreement from NTMWD outside of those predetermined areas without prior approval from the Developer or Association.

WHEREAS, Developer plans to transfer the common areas of the Development identified in **Exhibit A** to the Association after the Developer has completed the construction of the improvements and facilities on the Property;

WHEREAS, the Association’s covenants, conditions, and restrictions for the Development are attached hereto as **Exhibit A** (“CC&Rs”);

WHEREAS, control of the Association will transfer to individual lot owners after the Control Transfer Date as stated in the CC&Rs; and all construction of the improvements and the Project (defined below) has been completed;

WHEREAS, the Development is adjacent to the Lake that is owned and operated by NTMWD;

WHEREAS, NTMWD owns the property below the 541 feet mean sea level (“MSL”) of the Lake and owns a Permanent Flowage and Flood Easement (the “Easement”) located between the 541 MSL and 545 MSL elevations across the Property (the “Shoreline”);

WHEREAS, as part of the Development, Developer seeks to make certain improvements to the Shoreline such as community docks and pathways as described in **Exhibit A** (the “Project”);

WHEREAS, before the Project proceeds, Developer must obtain authorization for the Project from NTMWD, as the owner and the Easement holder of the Shoreline; and

WHEREAS, the Parties seek to enter into an agreement to authorize the Project and effect the transfer of the Project to the Association.

THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, including the agreements set forth below, the Parties agree as follows:

#### **AGREEMENT**

1. **PURPOSE.** The purpose of the Agreement is to establish a preliminary development agreement for Developer to begin construction of the Project contingent upon the Association and Developer subsequently entering into a Shoreline Lease and Use Agreement with NTMWD, as further provided herein, and enforcing the CC&Rs.
2. **EFFECTIVE DATE.** This Agreement is effective as of the date first written above.
3. **PROJECT ACTIVITIES.** All Project activities identified in **Exhibit A** may not begin until the following conditions occur: (1) the Developer and its contractors meet with NTMWD to obtain approval to commence work on the Project activities in **Exhibit A**; and (2) NTMWD approves of the Project activities and issues Developer written authorization to work on the Project activities. Any deviations from the Project activities identified in **Exhibit A** require prior written approval by NTMWD after Developer submits a request to NTMWD for a deviation in writing. NTMWD has forty-five (45) days to review any deviation request and respond to the request from Developer. Anything not expressly authorized in writing by NTMWD as a Project activity or an approved deviation from a Project activity is expressly prohibited.
4. **PROJECT ABANDONMENT.** Abandonment of the Project occurs in either of the following situations: (1) failure to maintain the Project within the terms of the Agreement; or (2) failure to comply with Sections 6 and 7 of the Agreement (“Abandonment”). In the event of Abandonment of the Project, Developer shall be required to remove any improvements associated with the Project and restore the Shoreline to the satisfaction of NTMWD within thirty (30) days of receiving written notice from NTMWD requiring removal and restoration. In the event Developer shall fail to remove said improvements

associated with the Project and restore the Shoreline, NTMWD shall have the option to take over the improvements without compensation to Developer, or to remove the improvements and perform the restoration at the expense of Developer, and Developer shall have no claim against NTMWD or its officers or agents for such action and no refund by NTMWD of any fee theretofore paid shall be made. Developer shall reimburse NTMWD for any and all costs associated with NTMWD's removal of improvements and restoration within thirty (30) days of NTMWD's request for reimbursement.

5. **DEADLINE FOR COMPLETION.** The deadline for completion of the Project is one year from the latest date of NTMWD's notices to proceed to Developer as provided in Sections 3 and 4. If the Project is not complete by the one-year deadline, NTMWD has the authority to remove any improvements from the Property and terminate this Agreement effective immediately.
6. **EXTENSION OF DEADLINE FOR COMPLETION.** At NTMWD's sole discretion, the deadline for completion may be extended. For such an extension to be considered, Developer must submit a written extension request to NTMWD at least thirty (30) days before the expiration of the deadline for completion. NTMWD has thirty (30) days to grant or deny Developer's extension request.
7. **DREDGING, EXCAVATION, AND REGRADING ACTIVITIES.** Developer is responsible for notifying NTMWD and obtaining written authorization from NTMWD before every individual dredging, excavation, or regrading project commences on the Shoreline. Any activities are limited to those approved activities included in **Exhibit A**. Notification includes as follows: (1) written acknowledgement that Developer has complied with all applicable local, state, and federal laws and regulations; (2) the estimated start date and end date for the dredging, excavation, or regrading activity; (3) a point of contact and contact information for every dredging, excavation, or regrading activity; and (4) a description of the specifications and construction methods to be employed during the dredging, excavation, or regrading activity. NTMWD has the authority to reject any proposed construction methods proposed by Developer for the Project.
8. **ASSOCIATION TO SIGN SHORELINE LEASE AND USE AGREEMENT.** Developer agrees to include the Shoreline Lease and Use Agreement for the Association's signature during the transfer of assets, including but not limited to the transfer of all real property, personal property, fixtures and any other improvements on the Shoreline, from Developer to the Association (the "Transfer"). The Shoreline Lease and Use Agreement is attached as **Exhibit B**, which may be revised by NTMWD in its sole discretion. Any revised version of the Shoreline Lease and Use Agreement included in **Exhibit B** shall be substantially similar to the version included in **Exhibit B**. Developer agrees to include a provision in the agreement(s) regarding the Transfer from Developer to the Association that requires the Association and the Developer to execute the Shoreline Lease and Use Agreement simultaneously at the time of execution of the agreement(s) regarding the Transfer. Developer is solely responsible for paying any fees required under the Bois d'Arc Lake Shoreline Management Plan ("SMP"), including but not limited to application fees for the Shoreline Lease and Use Agreement.

9. **FINANCIAL ASSURANCES.** Developer, at its own expense, shall procure and maintain for the duration of the design and construction phase of the Project, a performance bond in an amount of not less than \$1,899,500 for construction of the Project (the "Performance Bond"). The amount covered must be sufficient to cover the entire cost of the Project, and cover the cost needed to remove any Project activities on the Shoreline and restore the Shoreline to its original condition in the event of Abandonment of the Project. Developer must maintain the Performance Bond until all construction of the improvements and the Project has been completed. The Performance Bond shall be on forms reasonably acceptable to NTMWD. The Performance Bond shall be executed by a surety company authorized to do business in the State of Texas and listed in the current Federal Department of Treasury Circular 570. Developer shall provide evidence of the Performance Bond within ten (10) days following the Effective Date.
10. **OPERATION, MAINTENANCE, REPAIR, & REPLACEMENT.** The operation, maintenance, repair, or replacement of the Project authorized by this Agreement shall be performed at no cost or expense to NTMWD and subject to the express written approval of NTMWD. Anything not expressly authorized in writing by NTMWD as a Project activity or an approved deviation from a Project activity is expressly prohibited. Upon the completion of any of such operation, maintenance, repair, or replacement, Developer shall immediately restore the Shoreline to the satisfaction of NTMWD. The use and occupation of the Shoreline for the purposes herein granted shall be subject to NTMWD's property ownership rights, the policies as set forth in the SMP, and to all applicable federal, state, and local laws and regulations. If the Project is removed for storage or extensive maintenance, NTMWD may require portions of the Project be removed from the Shoreline. Further, Developer agrees to operate and maintain the Project and/or use in a manner so as to provide safety, minimize any adverse impact on fish and wildlife habitat, and natural, environmental, or cultural resource values, and in a manner so as to minimize the degradation of water quality.
11. **IMPROVEMENT STANDARDS.** Unless otherwise authorized in Sections 3 and 4 of this Agreement, docks and other permitted improvements must conform to the standards found in the SMP and **Exhibit A**. These standards address electrical service and lighting, signage, improvement size and length, improvement location and spacing, orientation of the improvement to the Shoreline, improvement maintenance, and other features and amenities as described in the SMP. Any deviation from the SMP requirements will be considered a breach of this Agreement.
12. **FLOATS AND FLOTATION MATERIALS.** Floats and the flotation material for all docks shall be fabricated of materials manufactured for marine use and in accordance with the approved plans in **Exhibit A**. The float and its flotation material shall be one hundred (100) percent warranted for a minimum of eight (8) years against sinking, becoming waterlogged, cracking, peeling, fragmenting, or losing beads. All floats shall resist puncture and penetration and shall not be subject to damage by animals under normal conditions for the area. All floats and the flotation material used in them shall be fire

resistant. The use of new or recycled plastic or metal drums or non-compartmentalized air containers for encasement or floats is prohibited.

13. **ANCHORING.** The gangways to boat docks, fishing piers, or any other overwater structure shall be securely attached to the shore in accordance with the approved plans by means of moorings that do not create tripping hazards along the shoreline or adversely affect the natural terrain or vegetation. Anchoring to vegetation is prohibited.
14. **AGREEMENT DISPLAY TAG.** The Agreement Display Tag shall be posted at the Project and/or on the land areas covered by the Agreement so that it can be visually checked with ease in accordance with instructions provided by NTMWD.
15. **CONSTRUCTION DISPLAY SIGN.** During the period in which Developer is building roads, docks, and amenities, including site preparation, Developer is required to post a construction display sign from NTMWD. This is required in addition to the required construction notification, and other notifications, permits, and authorizations required by local, state, and federal laws, including but not limited to, obtaining and posting notice of any required construction stormwater general permit.
16. **PROHIBITED ITEMS.** Treated landscape timbers or the storage, transfer, or use of hydrocarbons or other petrochemical products, paint, pesticides, herbicides, or any other toxic or hazardous materials are not allowed on the Shoreline or the Lake.
17. **ELECTRICAL SAFETY AND COMPLIANCE.** Developer shall comply with all applicable federal, state, county, municipal laws, ordinances, and regulations wherein the permitted facilities/activities are located, including, but not limited to, the provisions of the latest edition of the National Electrical Code (NEC). Failure to abide by these applicable laws and regulations may be cause for revocation of this Agreement.
18. **POLLUTION PREVENTION.** Within the limits of their respective legal powers, the Parties hereto shall protect the Shoreline against pollution of its air, ground, and water. Developer shall promptly comply with any laws, regulations, conditions, or instructions affecting the activity hereby authorized if and when issued by the Environmental Protection Agency (“EPA”), the United States Army Corps of Engineers (“USACE”), the Texas Commission on Environmental Quality (“TCEQ”), or any federal, state, or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the Shoreline is strictly prohibited. Such regulations, conditions, or instructions in effect or prescribed by the said EPA, USACE, TCEQ, or any federal, state, or local governmental agency are hereby made a condition of this Agreement. Developer shall not discharge waste or effluent from the Shoreline in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.
19. **PESTICIDES AND HERBICIDES.** The use of any pesticides or herbicides within the Shoreline and the Lake shall be in conformance with all applicable federal, state, and local

laws and regulations. Developer must obtain approval in writing from NTMWD before any pesticides or herbicides are applied to the Shoreline and the Lake.

20. **ENVIRONMENTAL IMPACT.** Developer will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs arising from Developer's activities, Developer shall be required to restore the damaged resources.
21. **TIMBER CLEARING.** Unless expressly authorized under Sections 3 and 4 of this Agreement, no timber above the 534 MSL contour shall be cleared. Standing timber below the 534 MSL contour may be cleared only if approved through this Agreement after Developer submits a timber clearing proposal to NTMWD. Developer shall provide documentation of coordination with the USACE in accordance with the procedures described in the SMP. Such USACE coordination shall only occur after NTMWD has reviewed the timber clearing proposal and provided direction to engage in such coordination. Any timber clearing authorized under this Agreement must be in compliance with any required USACE approvals, authorizations, or permits. Timber clearing shall be approved by NTMWD in writing and shall be in accordance with the Clean Water Act Section 404 Permit for Bois d'Arc Lake as provided in the SMP. Timber clearing not approved by NTMWD in writing is prohibited and any prohibited timber clearing shall be considered a breach of this Agreement.
22. **AGREEMENT FEES.** Developer shall pay, in advance, to NTMWD, compensation in accordance with **Exhibit C**. Fees are subject to change upon renewal of the Agreement.
23. **DEVELOPER COMPLIANCE WITH LOCAL, STATE, AND FEDERAL LAWS AND REGULATIONS.** It is Developer's sole responsibility for ensuring its performance of this Agreement complies with all local, state, and federal regulations. NTMWD shall not be responsible for ensuring Developer's compliance with these laws and regulations.
24. **WAIVER OF ANY TAKINGS CLAIM.** Developer **WAIVES ANY CLAIM IT MAY NOW OR IN THE FUTURE HAVE AGAINST NTMWD FOR A STATE OR FEDERAL "TAKINGS" or "INVERSE CONDEMNATION"** of either the Project or the portion of the Shoreline on which the Project is located resulting from Lake levels being inconstant or from flooding, high water, drought, or similar occurrence, even if any of these occurrences is caused or alleged to be caused, in whole or in part, by NTMWD, whether through NTMWD's negligence or otherwise.
25. **INDEMNIFICATION.** NTMWD shall have no liability whatsoever, either to Developer, Developer's successors, assigns, guest invitees or any other third party, for property damage to Developer's Project or the contents thereof, caused by inundation or flooding of the property or the effects of drought, **EVEN IF CAUSED BY NTMWD'S NEGLIGENCE.** NTMWD shall not be liable to Developer or Developer's contractors, subcontractors, guests, visitors, invitees or to any other person whomsoever, for any injury to person or damage to property on or about the Property due to **ANY CAUSE WHATSOEVER, INCLUDING WITHOUT LIMITATION, INUNDATION OR**



**FLOODING OF THE PROPERTY OR THE EFFECTS OF DROUGHT**, and Developer agrees to indemnify NTMWD and hold it harmless from any loss, expenses, or claims including attorney's fees, arising out of any such damage or injury, **INCLUDING INJURY TO PERSON OR DAMAGE TO PROPERTY THE SOLE OR CONTRIBUTING CAUSE OF WHICH IS THE NEGLIGENCE OF NTMWD**. If any action or proceeding is brought against NTMWD by reason of any such claim, Developer, upon notice from NTMWD, will defend such action or proceeding with counsel acceptable to NTMWD.

26. **RELEASE & ASSUMPTION OF RISK**. Developer acknowledges that Bois d'Arc Lake is not a "constant level" or "controlled level" lake and is **SUBJECT TO DROUGHT OR FLOODING WITHOUT WARNING**. Developer acknowledges and agrees that the Property is being improved upon "**AS-IS, WHERE-IS**," with all defects, whether known or unknown. Developer recognizes the risk inherent in constructing improvements in close proximity to, and over, the Lake because of the risks associated with flooding, high water, and drought conditions. These risks include, but are not limited to, lake level fluctuations resulting in improvements, such as docks, being completely unusable during flood or drought conditions, which can extend over months or years, as it relates to multi-year drought conditions. As a condition of, and in consideration for, NTMWD's entering into this Agreement, as between NTMWD and Developer, Developer **AGREES TO ASSUME ALL RISK** of destruction of or damage to any improvements and the property of Developer or third parties located on the Property and to assume all risk of bodily injury or death to any person on the Property associated with the Project resulting from any cause. As part of the assumption of risk, Developer, for itself and its heirs and assigns, **EXPRESSLY RELEASES NTMWD FROM ALL LOSS, COSTS, AND LIABILITY FOR (1) DAMAGE OR DESTRUCTION TO ANY OF ITS PROPERTY LOCATED ON OR AT THE PROPERTY RESULTING FROM ANY CAUSE AND (2) BODILY INJURY OR DEATH TO DEVELOPER OR ANY CONTRACTOR OR SUBCONTRACTOR OR OTHER PERSON AT THE PROPERTY**.
27. **NO GOODS OR SERVICES PROVIDED TO NTMWD**. The Parties agree that pursuant to this Agreement Developer is not providing any "good or services" to NTMWD and this Agreement is not a contract subject to Chapter 271, Subchapter I of the Texas Local Government Code because no "goods or services," as such terms have been interpreted by courts in the State of Texas, are provided by Developer to NTMWD pursuant to this Agreement.
28. **DAMAGE TO SHORELINE**. Developer shall be liable for any and all damage that may be caused to the Shoreline by the activities of Developer, or individual property owners of the Development, under this Agreement and shall exercise due diligence in the protection of all property located on the Property against fire or damage from any and all other causes. Any property of NTMWD damaged or destroyed by Developer, or individual property owners of the Development, incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by Developer or the individual property owner of the Development to a condition satisfactory to NTMWD, or at the election of

NTMWD, reimbursement made therefore by Developer in an amount necessary to restore or replace the property to a condition satisfactory to NTMWD.

29. **NTMWD's ACCESS TO SHORELINE.** The right is reserved to NTMWD, its officers, agents, and employees to enter upon the Shoreline at any time and for any purpose necessary or convenient in connection with NTMWD work, to make inspections, to remove any material, except property of Developer approved for use on the Shoreline, and/or to make any other use of the lands as may be necessary in connection with NTMWD purposes, and Developer shall have no claim for damages on account thereof against NTMWD or any officer, agent, or employee thereof. NTMWD's authorized representative shall be allowed to cross the Property, as necessary, to inspect the Project. NTMWD will notify Developer of any deficiencies noted and will establish a schedule for their correction. No deviation or changes from approved plans for the Project will be allowed without prior written approval of NTMWD. Any deviations from the Project must be approved in writing by NTMWD after Developer submits a request to NTMWD for a deviation in writing. NTMWD has forty-five (45) days to review and respond to the request from Developer. Notwithstanding the foregoing, if NTMWD determines during an inspection that a noncompliance issue concerns a significant imminent threat to the environment or public health, safety, and general welfare, NTMWD may take whatever action necessary within the authority of NTMWD to eliminate such threat, including but not limited to, requiring Developer to immediately address the noncompliance issue.
30. **LAKE AND SHORELINE ACCESS.** All watercraft must be launched from a NTMWD-approved ramp or a dock. This excludes non-motorized watercraft such as kayaks, canoes, and stand up paddle boards. Unless otherwise approved, neither Developer nor individual lot owner may build a boat ramp or use any of their property to launch a watercraft except as set forth herein.
31. **PROPERTY LINE AND SIDE YARD DELINEATION.** For this Agreement, Developer will delineate the boundary line between NTMWD-owned property and Developer's property in a visibly clear, but unobtrusive manner approved by NTMWD and in accordance with the SMP. Developer will also identify the intersection of the projected side yard line and the 534 MSL as depicted in the exhibit to this Agreement.
32. **SHORELINE MAINTENANCE.** NTMWD is under no obligation to Developer to maintain the Shoreline. Developer is responsible for maintaining the Shoreline in a clean and sanitary manner, including removing trash and other natural debris. Unless expressly authorized by this Agreement, Developer is responsible for acting in accordance with the SMP. Any materials and refuse from maintenance and repair activities are to be removed from the Shoreline and the Lake immediately upon completion of such activities.
33. **CULTURAL RESOURCES.** Developer shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural, or other cultural artifacts, relics, remains, or objects of antiquity on NTMWD-owned property. In the event such items are discovered on NTMWD-owned property, Developer shall immediately

notify NTMWD and protect the site and material from further disturbance until NTMWD authorizes any further activity.

34. **COMMERCIAL ACTIVITIES PROHIBITED.** No attempt shall be made by Developer to forbid the full and free use by the public of all waters adjacent to the Shoreline. No charge may be made for use by others of the Shoreline or the Lake nor shall commercial activities, including any form of advertising, be conducted thereon.
35. **COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS.** This Agreement is subject to all applicable federal and state laws and any applicable permits, ordinances, rules, orders, and regulations of any local, state or federal governmental authority having or asserting jurisdiction, including, but not limited to, the provisions of the latest edition of the National Electrical Code (NEC). Nothing contained herein shall be construed as a waiver of any right to question or contest any such law, ordinance, order, rule, or regulation in any forum, having jurisdiction. This Agreement does not authorize any injury to private property or invasion of private rights or any infringement of local, state or federal laws or regulations, nor does it obviate the necessity of obtaining local, state, or federal assent required by law for the operation, use, maintenance, or repair of the Improvement and/or use.
36. **RULES AND REGULATIONS.** The Property shall be expressly subject to all rules and regulations promulgated by NTMWD for the construction, use, maintenance, and enjoyment of the Property, including without limitation, all regulations and requirements of NTMWD, now or hereafter enacted. By signing this Agreement, Developer specifically acknowledges that it has read the applicable requirements of the Bois d'Arc Lake Rules and Regulations, the SMP, and the Fannin County Zoning Regulations and agrees that Developer's use of the Property shall at all times be in compliance with such plans and regulations.
37. **TERMINATION OF AGREEMENT.** Before NTMWD may terminate the Agreement, NTMWD must send a notification to Developer informing Developer of NTMWD's grounds for termination of the Agreement and giving Developer sixty (60) days to address and cure such grounds for termination. If the time period to cure has passed without Developer taking the required curative action, NTMWD may mail a notice to terminate to Developer by certified letter. The termination of the Agreement is effective as of the date of the termination letter. Unless terminated earlier, this Agreement shall terminate upon the Association's execution of the Shoreline Lease and Use Agreement.
38. **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, including termination as provided in Section 39, existing at law or in equity may be availed of by any Party hereto and shall be cumulative.
39. **NOTICE.** Unless otherwise provided herein, any notice, communication, request, reply or advice (herein severally and collectively, for convenience, called "Notice") herein provided or permitted to be given, made or accepted by any Party to any other Party must be in writing and

may be given or be served by depositing the same in the United States mail postpaid and registered or certified and addressed to the Party to be notified, with return receipt requested, or by delivering the same to an officer of such Party, or by electronic mail, addressed to the Party to be notified at the email address provided below. Notice deposited in the mail in the manner described above shall be conclusively deemed to be effective, unless otherwise stated herein, from and after the expiration of three (3) days after it is so deposited. Notice given in any other manner shall be effective only if and when received by the Party to be notified. For the purposes of notice, the contact information of the Parties shall, until changed as hereinafter provided, be as follows:

If to Developer, to:                      Bois d'Arc Lake Acquisitions, LLC.  
9827 Cogdill Rd. Suite # 1  
Knoxville, TX 37932  
912-223-4390  
logue@llcinvest.com

If to NTMWD, to:                            Jennafer P. Covington  
Executive Director/General Manager  
North Texas Municipal Water District  
P.O. Box 2408  
Wylie, Texas 75098  
972-442-5405  
jcovington@ntmwd.com

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

40. **SEVERABILITY.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.
41. **NO JOINT VENTURE.** It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create any partnership or joint venture among the Parties. NTMWD, its past, present, and future officers, elected officials, employees and agents of NTMWD, do not assume any responsibilities or liabilities to any third party in connection with the development of the Project or the design, construction or operation of any portion of the Project.
42. **REPRESENTATIONS AND WARRANTIES.** Each Party represents and warrants to the other Party that (i) the Party has full requisite power and authority to perform its obligations under this Agreement; (ii) the execution, delivery, and performance of this Agreement has

been duly authorized by all necessary action of the board of directors or other applicable governing body of the Party; (iii) this Agreement is a valid and binding obligation of the Party enforceable against the Party in accordance with its terms, except as the enforceability may be limited by applicable bankruptcy, insolvency or other law affecting creditors' rights generally, and by general equitable principles; and (iv) the execution, delivery, and performance of this Agreement by the Party does not, and will not: (A) violate the statute, charter, or other instrument pursuant to which the Party was created; (B) violate the Constitution of the State of Texas, or any other law, rule or regulation by which the Party is bound; (C) violate any judgment, writ, order, injunction, award, or decree of any court, arbitrator, administrative agency or other governmental authority which is binding upon the Party; or (D) result in a material breach, violation, or default under any indenture, mortgage, ordinance, bond resolution, contract, deed of trust, debenture, agreement, or other instrument to which the Party is a party.

43. **ENTIRE AGREEMENT – NO ORAL MODIFICATIONS.** This Agreement embodies the entire Agreement of the Parties, superseding all oral or written previous and contemporary agreements between the Parties relating to matters set forth in this Agreement. Except as otherwise provided elsewhere in this Agreement, this Agreement cannot be modified without a written supplemental agreement executed by both Parties.
44. **ASSIGNMENT.** Developer shall not assign this Agreement or any of its rights hereunder without first obtaining the express prior written agreement of NTMWD.
45. **NO THIRD-PARTY BENEFICIARIES.** Developer and NTMWD enter into this Agreement solely for the benefit of themselves and agree that nothing in this Agreement shall be construed to confer any right, privilege or benefit on any person or entity other than Developer and NTMWD.
46. **VENUE.** It is specifically agreed among the Parties to this Agreement that Fannin County, Texas, is the place of performance of this Agreement; and, in the event that any legal proceeding is brought to enforce this Agreement or any provision hereof, the same shall be brought in Fannin County, Texas.
47. **ADOPTION OF PREAMBLE AND EXHIBITS.** All of the statements in the preamble and all of the exhibits of this Agreement are true and correct and are hereby incorporated into the body of this Agreement as though fully set forth in their entirety herein.
48. **VIOLATIONS AND PENALTIES.** Developer will be held accountable to the conditions outlined herein. If a violation is identified, NTMWD will follow the steps outlined below:

*First Notice:* NTMWD will generally issue a written warning notifying Developer of the violation, outlining actions to correct the violation, and providing a resolution timeframe. Depending on the noncompliance issue (e.g. is the issue an imminent health or safety concern), the time provided for resolution and the degree to which NTMWD may step in and proactively correct an issue may vary. Some violations may immediately generate a fine. NTMWD may, at its discretion, waive fines to be imposed at the first notice. NTMWD

will follow up within the specified timeframe to document resolution of the issue. Increased frequency of monitoring and inspection may be warranted for a period of time following resolution.

*Second Notice:* A second notice may involve the same activity or conditions as the first notice, or it may be a new issue. Second notices for the same situation that triggered the first notice will also be linked to increased fines and shorter resolution timeframes. Developer will be required to reimburse NTMWD for costs associated with monitoring, inspection, and follow-up for second notice actions.

*Third Notice:* Three notices for the same or different instances of noncompliance with this Agreement within one year will trigger a notice to revoke or terminate this Agreement. Developer will have 30 days to remove improvements at its expense and restore the Shoreline to its condition prior to the construction of the improvements (if applicable). Developer may appeal a notice of termination to NTMWD within 15 days of receiving the notice. NTMWD will respond to Developer within 30 days.

Resolution timeframes and fines are dependent on the harm that may occur to people, property, and resources if the violation were to continue. Violations that are hazardous, or potentially hazardous, generally have shorter resolution timeframes and higher penalties than administrative violations. **Exhibit C** outlines resolution timeframes, remedies, and penalties for various violations.

49. **EFFECTIVE DATE AND TERM.** This Agreement becomes effective as of the Effective Date, set forth above, and unless terminated early as provided herein, will be valid for five (5) years following the Effective Date or until NTMWD enters into a Shoreline Lease and Use with the Association and Developer as provided in Section 9 of this Agreement.

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

*[The remainder of this page is intentionally left blank. Signatures are on the following pages.]*



**NORTH TEXAS MUNICIPAL WATER DISTRICT**

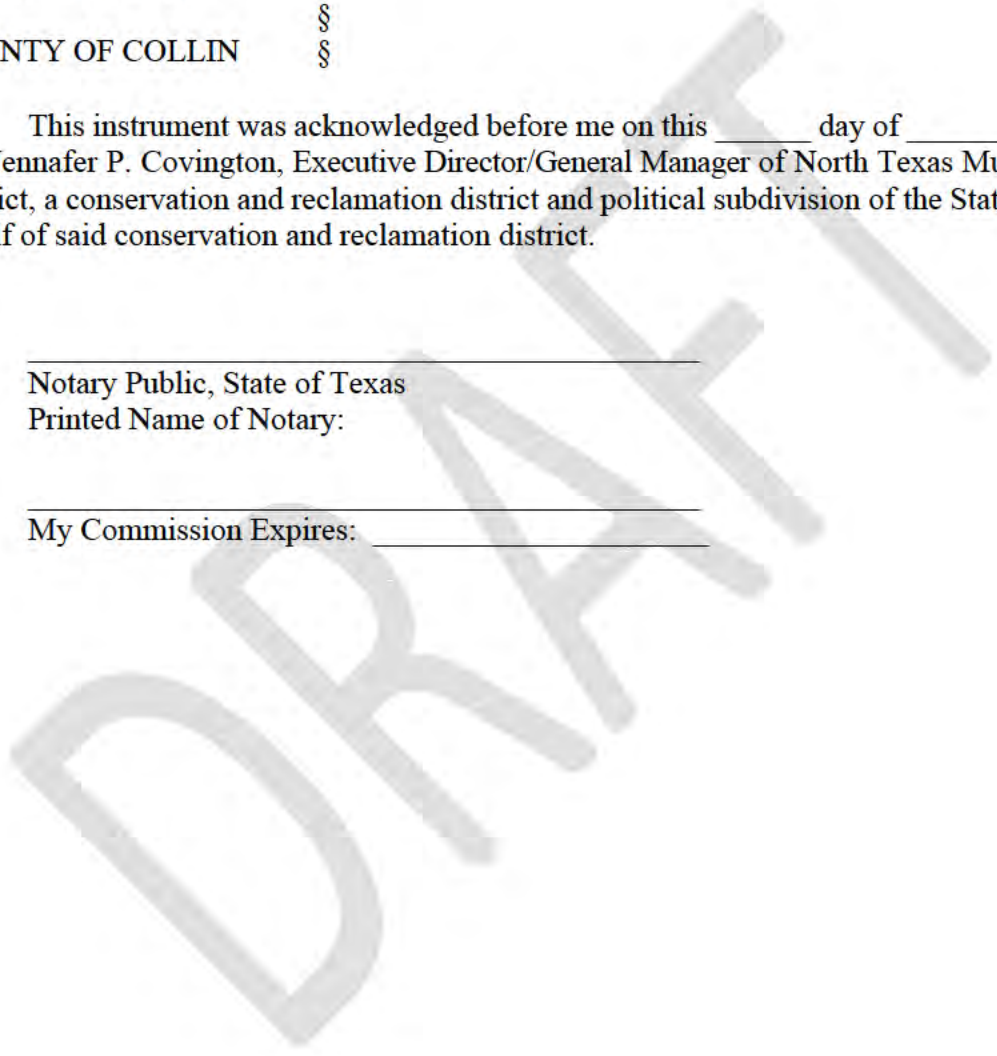
By: \_\_\_\_\_  
Jennafer P. Covington, Executive Director/General Manager      Date \_\_\_\_\_

STATE OF TEXAS            §  
   §  
COUNTY OF COLLIN      §

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by Jennafer P. Covington, Executive Director/General Manager of North Texas Municipal Water District, a conservation and reclamation district and political subdivision of the State of Texas, on behalf of said conservation and reclamation district.

\_\_\_\_\_  
Notary Public, State of Texas  
Printed Name of Notary:

\_\_\_\_\_  
My Commission Expires: \_\_\_\_\_





# **EXHIBIT A**

Developer Documents

DRAFT

SHORELINE LEASE AND USE AGREEMENT APPLICATION
Bois d'Arc Lake, North Texas Municipal Water District (NTMWD)
To be submitted through MGO Connect

APPLICANT INFORMATION

Date of Application: 8/22/24
E-mail Address: logue@llcinvest.com
Name of Applicant: Bois Darc Lake Acq, LLC
Address: 9827 Cogdill Rd Ste 1
Telephone: (912) 223-4390
City, State, Zip Code: Knoxville, TN 37932

CONTRACTOR INFORMATION

Name of Contractor: JLC Excavation
Address: PO Box 1228
Telephone: (903) 840-9080
City, State, Zip Code: Canton, TX 75169
E-mail Address: john.canada@jlcexcavation.com

AGREEMENT TYPE (check one)

- [x] New
[ ] Change in Ownership (Reissue Agreement); please provide agreement number:
[ ] Agreement Renewal; please provide agreement number:

TYPE OF FACILITY (check one or more as appropriate)

Water-Based:

- [ ] Single-Owner Boat Dock
[x] Community Boat Dock
[ ] Other/Exception (describe):

Land-Based:

- [ ] Vegetation Modification (including clearing standing timber)
[ ] Land-based Recreational Facilities
[x] Access Path
[ ] Other/Exception (describe):

PROJECT DESCRIPTION

Brief description of facility location (include adjacent parcel numbers) and the proposed activity on NTMWD land or easement: Location Property ID 141644 - Common Area Lot / Clubhouse - Five Points Subdivision 20 Slip Covered Dock w/ sidewalk from Clubhouse to Dock

**CONSISTENCY WITH STANDARDS, POLICIES, AND PLANS**

Please explain how the proposed project is consistent with NTMWD standards and policies and with the Bois d’Arc Lake Shoreline Management Plan (SMP).

*This property directly adjoins NTMWD-owned property, there is 100'+ spacing, concrete walkway, 20 slips for the subdivision - Concrete walkway from Lot 52 to boat slips*

**PROJECT EXCEPTIONS (if applicable)**

Please explain and justify any deviations in the proposed project from NTMWD standards and policies and the Bois d’Arc Lake SMP.

*N/A*

Length of time to complete construction (if applying for a new agreement) (maximum of one year allowed): *6 months - including production time*

Date of pre-application site inspection (for new dock construction): *6/10/24*

**ALTERNATE POINT OF CONTACT**

The following alternative party will be available on short-notice call and responsible for providing any access to and surveillance of the structure as needed.

Name of Alternate Contact: *Matt Logue* Address: *9827 Cogd. Rd. Knoxville, TN*  
Telephone: *(912) 223-4390* Email Address: *logue@llinvest.com*

**APPLICATION FEE**

See Fee Table. Application fee submitted to *\$10,560<sup>00</sup>*

Please note that annual fees may also apply to your Agreement.

**ATTACHMENTS to be included with Agreement Application (see Appendix F for submittal requirements)**

- For all new Agreements:
  - Provide proof of land ownership (e.g. warranty deed, tax assessor notice) that is immediately adjacent to and shares a common boundary with District land. Submit site map, aerial photos, survey plats, or other documents depicting location of private property.

- A copy of the boundary line survey including the seal and signature of a licensed Professional Land Surveyor. The survey should include the boundary line between NTMWD property and the adjacent landowner/applicant along the entire length requested for use plus an additional 100 feet to either side of the requested use footprint or to the property boundary (whichever is shorter).
- A site plan showing the location of the proposed improvements/activities on NTMWD-owned property. The site plan should show the surveyed boundary line and the relative locations of any proposed improvements/activities on NTMWD land as well as any useful landmarks such as an adjacent residence.
- Access paths: include a plan view showing path route and dimensions and materials to be used. Plan should show topography and appropriate erosion control measures proposed.
- Vegetation modification: include a plan view showing the area to be included in the agreement. Describe the existing vegetation including species and type (e.g. trees, shrubs, grasses) to be removed or modified. If planting is proposed, please refer to the native plant list when making selections.
- For applications for new docks, please also attach:
  - One electronic set of structural plans, electrical plans, and specifications for dock facility that have been approved by a structural engineer. Please include all amenities proposed (e.g. storage box, solar battery storage, boat or PWC lift etc.) and provide construction materials and dimensions of facility. Reference to an approved dock plan on file with NTMWD is also acceptable. Please identify any additions or alterations to an approved plan. Structural alterations proposed are required to be stamped by a structural engineer and/or electrician as appropriate.
  - If the adjoining private land is jointly-owned (e.g. Trust, LLC, Non-Profit, etc.), dock applicants must provide documentation indicating their interest in the jointly-owned property.
  - If replacing an existing dock, submit a letter stating the old dock will be dismantled and removed within 30 days of the installation of the new dock.
  - For Community Docks, provide authorized contact and alternates including name, address, and phone numbers.
- For reissuance or renewal of dock agreements only:
  - Electrical Certification (if applicable);
  - Certificate of Compliance or signed statement that all noted deficiencies have been corrected. This signifies the dock meets current inspection criteria.
  - For Community Docks, provide authorized contact and alternates including name, address, and phone numbers.

Appendix C-1 • Shoreline Lease and Use Agreement

Please review the conditions that are required of all Shoreline Lease and Use Agreements as found in the SMP. General conditions for Shoreline Lease and Use Agreements are found in Appendix C of the SMP. The general conditions will be applied to all Shoreline Lease and Use Agreements. Additional site-specific conditions may be developed following review of your application.

Note: NTMWD reserves the right to alter this form or to request additional information not specified in this form.

**SIGNATURE**

I hereby designate and authorize the agent/consultant identified above to act on my behalf in processing of this agreement application, and to furnish, upon request, supplemental information in support of this application for shoreline use.

  
\_\_\_\_\_  
(Signature of Applicant/Adjacent Landowner)

8/22/24  
(Date)

Brian M Logue  
(Printed Name of Applicant/Adjacent Landowner)

8/22/24  
(Date)

\_\_\_\_\_  
(Signature of Applicant/Adjacent Landowner)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Printed Name of Applicant/Adjacent Landowner)

\_\_\_\_\_  
(Date)

I certify that the information provided on this form and all attachments related to this project are true and accurate to the best of my knowledge. I understand that failure to provide true and accurate information may result in the Application being denied or a previously approved Agreement being terminated.

  
\_\_\_\_\_  
(Signature of Applicant)

8/22/24  
(Date)

Brian M Logue  
(Printed Name of Applicant)

8/22/24  
(Date)

\_\_\_\_\_  
(Signature of Applicant)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Printed Name of Applicant)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature of Contractor)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Printed Name of Contractor)

\_\_\_\_\_  
(Date)

SHORELINE LEASE AND USE AGREEMENT APPLICATION
Bois d'Arc Lake, North Texas Municipal Water District (NTMWD)
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Date of Application: 8/22/24
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Name of Contractor: JLC Excavation
Address: P.O. Box 1228
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City, State, Zip Code: Canton TX 75169
E-mail Address: johncanada@jlcexcavation.com

AGREEMENT TYPE (check one)

- [x] New
[ ] Change in Ownership (Reissue Agreement); please provide agreement number:
[ ] Agreement Renewal; please provide agreement number:

TYPE OF FACILITY (check one or more as appropriate)

Water-Based:

- [ ] Single-Owner Boat Dock
[x] Community Boat Dock
[ ] Other/Exception (describe):

Land-Based:

- [ ] Vegetation Modification (including clearing standing timber)
[ ] Land-based Recreational Facilities
[x] Access Path
[ ] Other/Exception (describe):

PROJECT DESCRIPTION

Brief description of facility location (include adjacent parcel numbers) and the proposed activity on NTMWD land or easement: Location of the facility is on Parcel ID 116466 (NTMWD) - Our adjacent property ID\*s are 141672 & 141673 - 20 slip dock (community) golf cart path to access the docks.

**CONSISTENCY WITH STANDARDS, POLICIES, AND PLANS**

Please explain how the proposed project is consistent with NTMWD standards and policies and with the Bois d'Arc Lake Shoreline Management Plan (SMP).

Our property adjoins NTMWD-owned property - there is 100' + dock spacing, dock capable shoreline, concrete 10' wide golf cart path, 20 slip community dock

**PROJECT EXCEPTIONS (if applicable)**

Please explain and justify any deviations in the proposed project from NTMWD standards and policies and the Bois d'Arc Lake SMP.

A 10' wide golf cart path is requested to access the 20 slip community dock in case of fire or emergency. Fire and EMS vehicles will have access

Length of time to complete construction (if applying for a new agreement) (maximum of one year allowed): 6 months - including production time of docks

Date of pre-application site inspection (for new dock construction): 6/10/24

**ALTERNATE POINT OF CONTACT**

The following alternative party will be available on short-notice call and responsible for providing any access to and surveillance of the structure as needed.

Name of Alternate Contact: Matt Logue Address: 9827 Cogdill Rd. Stel  
Telephone: (912) 223-4390 Email Address: logue@llcinvest.com

**APPLICATION FEE**

See Fee Table. Application fee submitted to \$22,897.50

Please note that annual fees may also apply to your Agreement.

**ATTACHMENTS to be included with Agreement Application (see Appendix F for submittal requirements)**

- For all new Agreements:
  - Provide proof of land ownership (e.g. warranty deed, tax assessor notice) that is immediately adjacent to and shares a common boundary with District land. Submit site map, aerial photos, survey plats, or other documents depicting location of private property.



- A copy of the boundary line survey including the seal and signature of a licensed Professional Land Surveyor. The survey should include the boundary line between NTMWD property and the adjacent landowner/applicant along the entire length requested for use plus an additional 100 feet to either side of the requested use footprint or to the property boundary (whichever is shorter).
- A site plan showing the location of the proposed improvements/activities on NTMWD-owned property. The site plan should show the surveyed boundary line and the relative locations of any proposed improvements/activities on NTMWD land as well as any useful landmarks such as an adjacent residence.
- Access paths: include a plan view showing path route and dimensions and materials to be used. Plan should show topography and appropriate erosion control measures proposed.
- Vegetation modification: include a plan view showing the area to be included in the agreement. Describe the existing vegetation including species and type (e.g. trees, shrubs, grasses) to be removed or modified. If planting is proposed, please refer to the native plant list when making selections.
- For applications for new docks, please also attach:
  - One electronic set of structural plans, electrical plans, and specifications for dock facility that have been approved by a structural engineer. Please include all amenities proposed (e.g. storage box, solar battery storage, boat or PWC lift etc.) and provide construction materials and dimensions of facility. Reference to an approved dock plan on file with NTMWD is also acceptable. Please identify any additions or alterations to an approved plan. Structural alterations proposed are required to be stamped by a structural engineer and/or electrician as appropriate.
  - If the adjoining private land is jointly-owned (e.g. Trust, LLC, Non-Profit, etc.), dock applicants must provide documentation indicating their interest in the jointly-owned property.
  - If replacing an existing dock, submit a letter stating the old dock will be dismantled and removed within 30 days of the installation of the new dock.
  - For Community Docks, provide authorized contact and alternates including name, address, and phone numbers.
- For reissuance or renewal of dock agreements only:
  - Electrical Certification (if applicable);
  - Certificate of Compliance or signed statement that all noted deficiencies have been corrected. This signifies the dock meets current inspection criteria.
  - For Community Docks, provide authorized contact and alternates including name, address, and phone numbers.

Please review the conditions that are required of all Shoreline Lease and Use Agreements as found in the SMP. General conditions for Shoreline Lease and Use Agreements are found in Appendix C of the SMP. The general conditions will be applied to all Shoreline Lease and Use Agreements. Additional site-specific conditions may be developed following review of your application.

Note: NTMWD reserves the right to alter this form or to request additional information not specified in this form.

**SIGNATURE**

I hereby designate and authorize the agent/consultant identified above to act on my behalf in processing of this agreement application, and to furnish, upon request, supplemental information in support of this application for shoreline use.

  
\_\_\_\_\_  
(Signature of Applicant/Adjacent Landowner)

8/22/24  
(Date)

Brian M Logue  
(Printed Name of Applicant/Adjacent Landowner)

8/22/24  
(Date)

\_\_\_\_\_  
(Signature of Applicant/Adjacent Landowner)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Printed Name of Applicant/Adjacent Landowner)

\_\_\_\_\_  
(Date)

I certify that the information provided on this form and all attachments related to this project are true and accurate to the best of my knowledge. I understand that failure to provide true and accurate information may result in the Application being denied or a previously approved Agreement being terminated.

  
\_\_\_\_\_  
(Signature of Applicant)

8/22/24  
(Date)

Brian M Logue  
(Printed Name of Applicant)

8/22/24  
(Date)

\_\_\_\_\_  
(Signature of Applicant)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Printed Name of Applicant)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature of Contractor)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Printed Name of Contractor)

\_\_\_\_\_  
(Date)

**DECLARATION OF COVENANTS, RESTRICTIONS, PROPERTY OWNERS  
ASSOCIATION AND LIMITATIONS RUNNING WITH THE LAND  
FOR FIVE POINTS SUBDIVISION AND THE HARBOR AT FIVE POINTS  
SUBDIVISION**

THIS DECLARATION OF COVENANTS, RESTRICTIONS, PROPERTY OWNERS ASSOCIATION AND LIMITATIONS FOR FIVE POINTS and THE HARBOR AT FIVE POINTS (hereinafter together referred to as, "FIVE POINTS MEMBERS"), made and published this 18th day of June, 2024 by Bois d'Arc Lake Acquisitions, LLC, a Tennessee limited liability company, hereafter referred to together with its successors-in-title who come to stand in the same relation to the property as its predecessor did as "Declarant".

WHEREAS, FIVE POINTS MEMBERS will share use of Common Areas with one another and future subdivisions to become FIVE POINTS MEMBERS and it is the intent of Declarant to establish a general plan and uniform scheme of development and improvement of the upon referenced Property and each subdivision having the same standards for improvements, maintenance and conduct; and

WHEREAS, Declarant wishes to provide for the preservation and enhancement of property values, amenities and opportunity within the Property in order to contribute to the personal and general health, safety and welfare of the property Owners and residents therein and do maintain the land and improvements therein, and to this end wish to subject each subdivision comprising the Property to the covenants, restrictions, Owners association, easements, reservations, assessments, charges, liens and other provisions hereinafter set forth;

NOW THEREFORE, for and in consideration of the premises and of the benefits to be derived by the FIVE POINTS MEMBERS and each and every subsequent Owner of any of the parcels and numbered lots in said developments, Declarant does hereby set up, establish, promulgate and declare the following to apply to all of said parcels, numbered lots, marina and boat dock slips and to all persons owning said parcels or numbered lots or any of them, hereafter. These covenants shall become effective immediately and run with the land and shall be binding on all persons claiming under and through Bois d'Arc Lake Acquisitions, LLC, their heirs, successors, successor-in-title and assigns, and any of the subdivisions designated as FIVE POINTS MEMBERS, to-wit:

**ARTICLE ONE  
DEFINITIONS**

The following terms, as used in this Declaration, shall have the following meanings:

- 1.1 DECLARANT shall mean Bois d'Arc Lake Acquisitions, LLC, a Tennessee limited liability company, or any successor, successor-in-title, or assign who takes title to any portion of the property described on Exhibits "A" and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant.
- 1.2 PARCEL AND LOT shall initially mean and refer those Lots surveyed, platted and recorded as shown as FIVE POINTS SUBDIVISION in Plat Cabinet D, Slide 103 and those refer those Lots surveyed, platted and recorded as shown as THE HARBOR AT FIVE POINTS SUBDIVISION in Plat Cabinet D, Slide 104 of the Clerk of Fannin County, Texas, incorporated herein by reference and made a part hereof, as specified in Exhibit "A", being attached hereto and incorporated herein, and shall also include those Lots surveyed, platted and recorded as shown in future annexed subdivisions referred to as FIVE POINTS MEMBERS through duly recorded Supplemental and Annexation to these Declarations.
- 1.3 OWNER shall mean and refer to the record Owner, whether one or more persons or entities, of any Lot or parcel which is a part of this Declaration, including contract sellers and Declarant. Owner shall not include a mortgage holder unless and until such mortgage holder has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.
- 1.4 ASSOCIATION shall mean and refer to Five Points POA, its successors and assigns.
- 1.5 BOARD shall mean and refer to the Board of Directors of the Five Points POA, its successors and assigns.
- 1.6 PROPERTY shall mean that real estate which is submitted to this Declaration as described on the plats of survey above referenced and as specified in Exhibit "A" hereof in addition to future annexed properties identified as FIVE POINTS MEMBERS.
- 1.7 ARC shall mean and refer to the Architectural Review Committee. The ARC will review and approve all construction plans.
- 1.8 ACC Checklist shall refer to the Architectural Control Checklist. The ACC Checklist must be completed and submitted to the ARC or Association prior to the commencement of any construction.

- 1.9 HOMES shall refer to houses within the Property.
- 1.10 COMMUNITY WIDE STANDARD shall refer to the standard for which the home design and construction shall be measured by prior to approval.
- 1.11 IMPACT FEE shall refer to the amount due prior to construction commencement.
- 1.12 PRIVATE ROAD shall refer to the road running through the community, excepting County Road 2985 which shall be maintained in accordance with this Declaration, but remain a Fannin County road.
- 1.13 BOAT DOCK shall refer to the Common Boat Dock which will contain multiple boat slips whether private or common, but shall not refer to private Boat Docks.
- 1.14 PRIVATE SLIP shall refer to those slips in the Common Property that are privately owned by individual Lot Owners.
- 1.15 COMMON SLIP shall refer to those slips in the Common Property that may be used by all Property Owners.
- 1.16 NTMWD shall refer to North Texas Municipal Water District. They constructed the lake and manage shoreline.
- 1.17 COMMON PROPERTY shall mean any and all real and personal property and easements and other interests therein, together with any facilities and improvements located thereon, now owned by the Declarant and hereafter owned by the Association for the common use and enjoyment of the Owners of all FIVE POINTS, including, but not limited to, roads as defined in Section 5.1, the boat docks, boat slips, clubhouse, pool, putt-putt golf course, walking and golf cart paths etc., located upon the Property and/or that tract leased from the County.
- 1.18 FIVE POINTS MEMBER shall refer to collectively to FIVE POINTS subdivision, THE HARBOR AT FIVE POINTS subdivision and one or more separate associated subdivisions which are bound, or will be bound, by this Declaration in order to create a general plan and uniform scheme of development and share in the use, maintenance and costs of the Common Areas and improvement for the purposes of member subdivisions having the same standards for improvements, maintenance and conduct.
- 1.18 DEVELOPER shall mean Bois d'Arc Lake Acquisitions, LLC, its heirs and assigns.

**ARTICLE TWO  
PROPERTY SUBJECT TO THIS DECLARATION**

- 2.1 EXISTING PROPERTY. The initial property subject to this Declaration upon the recordation hereof in the county public records, are the Property, said property being described on the plat of survey referenced herein and as specified in Exhibit "A".
- 2.2 ADDITIONAL PROPERTY. Additional property annexed in accordance with procedures set forth in Article Eleven (11) of this Declaration shall become subject to this Declaration. Additional property shall mean all or any portion of any Fannin County, Texas property owned presently or in the future by the Declarant and/or any of its affiliated entities which it holds an ownership interest therein. Additional property must be adjacent to, contiguous with, across the road from FIVE POINTS MEMBERS or accessed from County Road 2985 to be annexed.

**ARTICLE THREE  
USE RESTRICTIONS**

- 3.1 SUBDIVISION OF LOTS. No Lot shall be subdivided after conveyed by Declarant.
- (a) Lot 6 may be subdivided one time to create two separate Lots with County approval. Each subdivided parcel must meet County standards and the Lot Owner shall go through the permitting process with the County to get County approval.
- (b) Should Lot 6 be subdivided; both Lots shall become part of FIVE POINTS MEMBERS and be governed by this Declaration. Each Lot shall pay yearly dues.
- 3.2 COMMERCIAL ACTIVITY. No Lot shall be used for any commercial activity or business.
- 3.3 CONSTRUCTION OF HOMES. All homes and buildings must be completed within 12 months from the date construction begins.
- 3.4 GARAGES. Each house must contain a minimum two car garage, built in compliance with the Building Requirements of Article IV.
- 3.5 FENCES. Fences must be constructed of iron, aluminum or wood. All fences must

be approved by the Association. No chain link, barbed wire or privacy fences allowed, and the height of the fence may not exceed five feet.

- 3.6 LANDSCAPING. All residents must do a reasonable amount of landscaping. The reasonableness of the amount of landscaping done is to be determined by the Association. Each lot shall be maintained in a neat and attractive condition including but not limited to mowing and/or weed eating so as not to become an eyesore to adjoining lots. Landscaping must be completed within three (3) months of completion of construction.
- 3.7 PONDS AND WATER FLOW. No building of ponds, redirection or restriction of water flow in any creek, stream, branch, or spring is permitted. Maintenance of existing ponds, creeks, streams, branches, or springs is allowed.
- 3.8 LAND DISTURBING ACTIVITIES. No mining, quarrying, drilling, or other such land disturbing activities shall be permitted on any portion of said property, provided, however, land disturbing activities as necessary for construction of road, trails, utility lines, house sites, driveways, septic tanks and drain fields shall be permitted so long as all disturbances for any and all such land disturbing activities are done in an environmentally sound manner with minimal impact on the sensitive water environment and resources including but not limited to (i) the construction and maintenance of all sedimentation fences, etc. necessary to prevent all sedimentation, siltation, erosion, etc. from entering into the said streams, branches and/or springs and (ii) taking all steps necessary to prevent chemicals and/or other pollutants from entering into the said streams and/or branches.
- 3.9 CUTTING OF TREES. Lot Owners shall make every effort to maintain as much of the natural tree canopy as possible. Cutting for views must be approved by the Declarant or the Association and Owners shall only remove 10 percent of the trees on their Lot without the prior written consent of the Association. Furthermore, no tree with a diameter of 8 inches or larger may be removed without the consent of the Association. All trees that have been cut must be entirely removed from property immediately.
- (a) No trees may be cut on individual Lots without prior approval of the Declarant or ARC unless home construction plans have been approved.
- 3.10 ANTENNAS AND SATELLITE DISHES. No large antenna or satellite dishes of more than 18 inches in diameter are permitted.
- 3.11 EROSION CONTROL. Owners must construct erosion control methods such as siltation fences and/or screens, etc. during the home building process.
- 3.12 NOISES. No loud or obnoxious noise, including but not limited to, incessant dog



barking, shall be permitted.

- 3.13 SIGNS. No advertising signs of any manner shall be permitted except during the 12 months of construction. During construction, one sign may be placed on the Lot advertising the construction company's name. This sign shall not exceed 24 inches by 24 inches in size and shall be removed at the completion of the home. No more than one sign may be placed on a Lot at a time without written approval of the Association. Construction signs shall not be placed upon a Lot until construction commences.
- 3.14 FOR SALE SIGNS AND REAL ESTATE AGENTS. No For Sale signs shall be placed on a Lot within the first 90 days of purchasing said Lot, or until such time as eighty percent of the Property has been conveyed by Declarant, or until the Declarant turns over control of the Association, or three years from the recording of this Declaration, whichever occurs first. The For Sale sign shall not exceed 18 inches by 18 inches in size and shall be constructed in the same manner and color as the original Lot sign. No generic For Sale Sign, nor shall there be any signs permitted at the entrance of the property.
- (a) The Declarant or Association reserves the right to restrict or prohibit brokers, real estate agents or associates from entering the Property if rules and regulations are not observed.
  - (b) The entrance gate code shall not be made public nor given out without the Association's approval.
  - (c) All prospective clients must be accompanied by the listing real estate agent as they enter the Property. No persons shall be granted access to the Property without written permission or without being accompanied by the Property Owner or their licensed agent.
  - (d) It is the responsibility of the existing Property Owner to notify the Association of intent to sell their Lot and to supply the Association with the new Property Owners contact information.
- 3.15 PROPANE TANKS. All propane tanks shall be placed underground.
- 3.16 SEWAGE DISPOSAL. All septic systems shall be approved by the Fannin County Health Department or its respective governing agent at the time of construction.
- 3.17 TEMPORARY STRUCTURES. No structure of a temporary character, such as a basement, trailer, tent, shed, shack, garage, barn or other outbuilding will be used on any Lot at any time as a residence whether temporarily or permanently.

- 3.18 MANUFACTURED HOME OR MOBILE HOME. No manufactured home or mobile home of any type shall be used or located on any Lot at any time whether temporarily or permanently.
- 3.19 RESIDENTIAL USE. There shall be only one single family, private, residential dwelling per parcel or Lot. No further subdivision of parcels or Lots shall be allowed. No residence may be used as a school, church, kindergarten, or business/commercial enterprise of any type and no such activity shall take place on any parcel or Lot whether temporarily or permanently.
- 3.20 SETBACKS. The minimum setbacks allowed within the Property shall be 50 feet along the front and 15 feet along the sides and 15 feet along the back. Setbacks are subject to change with County approval.
- 3.20 CLOTHESLINES. No clotheslines or outside drying area shall be located on any parcel or Lot.
- 3.21 GARBAGE AND TRASH CONTAINERS. No parcel or Lot shall be used or maintained as a dumping ground for rubbish, trash, or other waste. All trash, garbage and other waste shall be kept in sanitary containers except as required during trash collection.
- 3.22 PETS. No animals, livestock, cattle, goats, pigs or poultry shall be raised, bred, kept or maintained on any parcel or Lot, except that dogs, cats, or other ordinary household pets may be kept, provided they are not kept, bred or maintained for commercial purposes. No pet shall be permitted outside the boundaries of the Owners Lot unless accompanied by their Owners and all dogs must be on a leash.
- 3.23 RECREATIONAL VEHICLES. No recreational vehicle ("RV") shall be used on a Lot as temporary or permanent residence, nor shall recreational vehicles be parked on subdivision roads within the development; however, recreational vehicles may be parked on said lots provided that they are enclosed with a structure that has the same siding as the house located on the Lot. Professionally "State Licensed" RV's of 20 feet or longer in length shall be allowed on said Lot up to 3 consecutive days during a 30 day period, however, concrete pads or temporary power poles shall not be permitted.
- 3.24 NUISANCES. No Lot shall be used in whole or in part for any illegal activity or for the storage of rubbish of any character whatsoever or for the storage of any property or thing that will cause such Lot to appear in any unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any Lot that will emit foul or obnoxious odors or that will cause any noise that will or might disturb the peace, quiet, comfort, or serenity of the occupants of surrounding property. No accumulation of discarded personal

effects, debris, waste or garbage shall be permitted on any Lot at any time.

- (a) No automobiles, trucks or other motor vehicles may be parked on the subdivision roads or in the cul-de-sacs.
- (b) No automobiles, trucks, or other motor vehicles without a current year license tag may be placed or allowed to remain on the property.
- (c) No trail bikes, three and/or multi wheelers, dune buggies, or other externally mounted engine vehicles shall be permitted in the development, including the Common Property, except for ingress and egress. Golf carts, Segways and small utility vehicles shall be permitted; however, all such vehicles shall be properly muffled so as not to disturb occupants of the surrounding property and must not be an annoyance to others.

3.25 TOWERS. No towers of any kind shall be erected.

3.26 LEASES. All rentals or leases of any property must be for a minimum of seven days in duration unless a lease for a shorter amount of time is approved by the Association. All leases must be in writing.

- (a) Under no circumstances shall a lease for an outbuilding or guest quarters be permitted. Any usage of outbuilding or guest quarters must be as part of a lease of the entire property under the terms herein.
- (b) Lot Owners are fully responsible for their tenants and must give written notice to the Association of their intent to lease or rent their property in advance. Additionally, the Association must be supplied with name of each lessee, their contact information and a signed rental agreement at least forty-eight hours prior to lessee occupying the property.
- (c) Property Owners shall not be allowed to lease their property if their tenants do not abide by the rules set forth in this section.

3.27 BOATS AND BOAT TRAILERS. Boats and boat trailers may be stored in the driveway of a house for no more than five days out of any thirty day period, however, they may be stored in the garage. Visible boats or trailers shall be removed immediately upon request of Declarant or Association.

3.28 CAMPERS AND TRAILERS. No campers or utility trailers may be stored on a Lot for more than two weeks per year unless they are stored in a garage.

3.29 COMMON PROPERTY. There shall be no obstruction of the Common Property, nor shall anything be kept, parked or stored on any part of the Common Property

without prior written consent of the Association, except as specifically provided herein. This includes, but is not limited to, parking in any of the roadways or streets that serve the subdivision, or the cul-de-sacs, or the Common Property.

(a) Neither the Declarant nor the Association shall be liable for any damage or injury resulting from such use of the Common Property to the extent permitted by law.

3.30 PRIVATE SLIPS. Private slips shall be leased for exclusive use to those Lot Owners who have obtained the right to lease and shall be used solely by the Lot Owner on record.

(a) Unincumbered Lease Rights for Private Slips may be transferred to another Lot Owner subject to approval of the POA or, if not previously conveyed, shall be conveyed with the Lot upon transfer of title of that individual Lot.

(b) In the event of foreclosure of a Lot, the rights to lease a Private Slip owned by the Lot Owner shall transfer with the Lot through said foreclosure.

(c) The right to Lease a Private Slip shall be attached to a Lot and such right that is attached to a Lot in any subdivision of FIVE POINTS MEMBERS shall only be transferred to an owner of a Lot within the same subdivision, attaching to new Owner's Lot after transfer of the right to Lease.

3.31 CAMPING. No camping on any Lot, with the exception of a one night backyard campout where a dwelling already exists.

3.32 SOLAR PANELS. Solar panels shall not be permitted upon a Lot without written consent of the ARC.

3.33 MAILBOX. Developer anticipates mail to be picked up and delivered at the local post office. However, the Developer has designated an area at the clubhouse for mailboxes to be constructed by the Association, should the need arise.

#### **ARTICLE FOUR BUILDING REQUIREMENTS**

4.1 MINIMUM BUILDING REQUIREMENTS. The following shall be minimum requirements for construction of any improvement on any Lot. All construction plans shall be approved by the Association or the Architectural Review Committee ("ARC").

(a) Home Size. All homes are required to be at least 2,000 square feet. Square

footage shall not include basements, garages or porches.

- (b) Construction. All dwellings must be site-built and constructed of either, brick, decorative block, rock, wood, stucco or Hardie Board. No vinyl or aluminum siding permitted. At least twenty percent (20%) of the exterior of the home must be stone, block or brick.
- (c) System Built Homes. System-built homes are not permitted unless prior approval of the Association or ARC has been given in writing.
- (d) Color. The ARC shall attempt to keep the exterior color schemes in harmony with the natural surroundings, and thus keeping a strong emphasis on earth tones. No bright or unusual colors shall be permitted.
- (e) Staining and Painting. Staining and/or painting of all exterior surfaces of improvements shall be adequately done by Lot Owner as needed or at least once every ten years.
- (f) Roof and Pitch. All roofs on dwellings shall have at least a 6:12 pitch, unless the home has a modern look with multiple pitches, which may be considered by the ARC. Except as a component of a modern look as stated, flat or shed roofs shall only be permitted over porches and deck areas. Standing seam metal roofs are permitted.
- (g) Driveways. All driveways and parking areas shall have a hard surface constructed of either concrete, asphalt or pavers. Driveways shall not be constructed without prior approval of the Declarant or ARC. Driveways must be completed within three months of the completion of the home.
- (h) Building Locations. All buildings must meet local building codes and setback requirements.
- (i) Garages. All Homes must, at a minimum, include a two car garage. All garages must be side loading or courtyard style. A variances for a front loading garage shall be reviewed when the topography of the land warrants such a request and no other options exist.
  - 1. Detached garages permitted. The detached garage shall be constructed in the same manner as the primary residence with regard to siding, style and roof color and shall have at least two garage doors.
  - 2. Guest quarters shall be permitted above the detached garage with county approval.

3. The detached garage shall not be constructed prior to home construction and may not be used as the primary residence.
- (j) Foundations. All home foundations shall be finished with brick, stone, stucco or built of split-face block that has the appearance of natural stone. No exposed block shall be permitted either on the side of the home, or under decks or porches. All retaining walls shall be constructed of cement or cement blocks and finished to the same standards. No exposed blocks or concrete permitted. Railroad ties shall not be permitted for the construction of retaining walls.
- (k) Utility Lines. All utility lines (including electrical, telephone and cable TV lines) shall be placed underground.
- (l) Property Appearance. The Owner of each Lot, whether vacant or occupied, shall maintain the Lot in a neat and attractive condition.
- (m) Swimming Pools. In ground pools shall be permitted but must have prior approval of the Association or ARC prior to construction. No above ground pools permitted.
- (n) Private Boat Docks. Owners of lakefront lots may apply for a Private Boat Dock permit NTMWD and be:
1. No larger than 1000 square feet.
  2. Located and placed pursuant to the survey showing Private Boat Dock placement.
- (o) Landscaping. Landscaping around dwellings shall be completed within three months of completion of construction.
- (p) Irrigation. Lawn irrigation is strongly encouraged.
- (q) Builders. All contractors, builders and subcontractors must be approved by the Association or ARC prior to start of construction. Declarant shall have the sole authority to approve or disapprove of contractors.
1. The Declarant reserves the right to restrict or deny contractors, subcontractors or builders from entering or building in the community at their sole discretion.
- (r) Miscellaneous Controls. There shall be no window air conditioning units. **No lattice shall be allowed** on houses and no exposed concrete or block walls permitted.

(s) ARC. The ARC shall have the full and complete authority to deny construction plans, at their sole discretion, if said plans do not represent the Community Wide Standard.

(t) Boat Ramp. Construction of a Boat Ramp, or dropping a boat into the water with use of a vehicle and trailer is prohibited from any Lot or Common Area, unless a Permit is obtained from NTMWD.

4.2 PARCEL OR LOT SIZE. Notwithstanding other provisions of these covenants Declarant shall have the right to combine any lots or parcels, or portions of lots or parcels into other lots that are a part of this subdivision, in effect changing the boundary line of the lots so long as the number of resulting lots is no more than shown on the Final Survey for any individual FIVE POINTS MEMBERS, and so long as the Lot size meets county, city and local building requirements. However, other than the above exception for Declarant, no residential parcel or Lot shall be subdivided into smaller tracts than the original tract size as shown on the above referenced plats of survey, except for Lot 6 which may be subdivided one time with county approval. The Association does not have any authority to grant variances under this paragraph.

4.3 ARCHITECTURAL AND BUILDING CONTROLS. With the specific exception of Declarant, all building plans with regard to exterior color and overall aesthetic appeal must be approved by the Declarant for five years from the date of these covenants provided Declarant still owns a Lot in this subdivision or until Declarant turns this authority over to the Association at an earlier time, at Declarant's sole discretion. Once Declarant no longer has the authority to approve building plans pursuant to this paragraph they must be approved by a two-thirds vote of the Board of Directors for the Association with regard to exterior color and overall aesthetic appeal. It is the aesthetic goal of this development that all improvements shall be uniform in appearance. All construction shall be in compliance with state and local building codes at all times.

(a) The standard for approval of building plans shall include, but not be limited to: (i) aesthetic consideration; (ii) materials to be used; (iii) compliance with the standards then in effect at the Property and widely adopted (the "Community-Wide Standard"), this Declaration, or the design standards which may be adopted by the Association or Architectural Review Committee (ARC); (iv) harmony with the external design of the existing buildings, lots and structures, and the location in relation to surrounding structures and topography; and (v) any other matter deemed to be relevant or appropriate by the Board or ARC.

(b) Before construction commences, Owners must present two copies of blue line schematic drawings to the ARC and a completed Architectural Control

Checklist ("ACC Checklist") for approval. The ACC Checklist consists of the following:

1. A copy of the preliminary site plan disclosing location of all improvements to be placed upon Lot.
  2. A copy of the schematic drawings of home, locating improvements on Lot, showing elevation on all four sides, color schemes, building materials, and all site improvements.
  3. Proof of insurance, builder's risk, errors and omission, liability and workmen's compensation.
  4. List of all subcontractors to be used during construction.
- (c) Upon receipt of a completed ACC Checklist, the ARC must respond within thirty days for final approval.
- (d) One copy of site plan and schematic drawings will be returned to Owner.
- (e) Property Owners are responsible for agents, employees, contractors and subcontractors.
- (f) For so long as Declarant shall own a Lot in a FIVE POINTS MEMBERS subdivisions, regardless of how ownership is taken, Declarant shall not be required to submit any plans for approval. However, the Declarant shall abide by the limitations, controls and restrictions of these Declarations.
- (g) Review and approval of any application pursuant to this paragraph may be made on any basis, including solely the basis of aesthetic considerations. Neither the Declarant, Association nor ARC shall bear any responsibility for ensuring the design, quality, structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes, zoning regulations and other governmental requirements. Neither the Association, the ARC, the Declarant nor member of any of the foregoing shall be held liable for any injury, damages or loss arising out of the manner, design or quality of approved construction on or modifications to any Lot.
- (h) The ARC shall have the authority and standing, on behalf of the Association, to impose reasonable fines and to pursue all legal and equitable remedies available to enforce the provisions of this paragraph and the ARC's decisions.

**ARTICLE FIVE  
MAINTENANCE OF ROADWAY, IMPROVEMENTS,**



## AND COMMON PROPERTY

- 5.1 ROADS. The roads within the communities of FIVE POINTS MEMBERS are and will remain private roads.
- 5.2 ROAD REPAIR. Declarant shall maintain the Roads within the Property until Declarant turns road repair over to the Association upon the first Association meeting. Each Lot Owner covenant and agrees to participate and cooperate, on a pro rata basis, in the repair, replacement, maintenance and operation of the Roads and to maintain all slopes or other supports on all Lots for purposes of providing lateral support to the Roads including, but not limited to, costs, repair and expenses. It is expressly acknowledged and understood by the Lot Owners that damage to the subdivision Road caused directly by any construction by or other activities of a particular Lot Owner shall be the responsibility of said Owner to repair. Said damage shall include, but not be limited to, that damage caused by irresponsible use of and/or loading on said road during adverse conditions. Declarant shall deed the roads to Association once Declarant conveys all the Lots in the subdivision; provided, however, nothing shall prevent Declarant from deeding the roads at an earlier time at Declarant's sole discretion.
- (a) Upon approval of the ARC of building plans submitted to it, pursuant to Section 4.3 above, there will be due a \$2,000.00 Impact Fee, from each Lot Owner, for maintenance and road improvement. Any approval given shall be contingent upon receipt of this fee, whether specified or not in said approval. This fee shall be paid prior to construction on said Lot. If a Lot Owner fails to pay this fee prior to the beginning of construction, the ARC may file a lien against the Property Owners for the amount owed plus penalties; withdraw any prior approval given, or any other remedies available at law or in equity. If the Impact Fee has not been paid prior to construction commencement the fee shall be increased to \$2,500.00. The Impact Fee shall increase at \$500.00 increments every fifteen days until the fee has been paid.
- (b) Lot Owners shall be responsible for damage created to the Property by their contractors and sub-contractors. The amount due for such damage shall be determined by the ARC.
- (c) So long as Declarant is responsible for maintaining the subdivision roads, the above Impact Fee shall be used by Declarant to repair roads. Declarant shall keep said fee in an escrow account, and keep an accurate accounting of how the funds were used.
- (d) Pursuant to an agreement with Fannin County, Developer shall pave and maintain that portion of County Road 2985 lying between the intersection of County Road 2985 and F. M. Highway 1396 to the end of Lot 38 of FIVE

POINTS subdivision, at which time the Association shall assume the responsibility of maintaining the above described section of County Road. According to the agreement with Fannin County, should additional communities be constructed, that use County Road 2985 to access their property, those additional lots shall financially assist in the maintenance of County Road 2985. Developer reserves the right to expand the maintenance requirements of the Association on County Road 2985 if any portion of County Road 2985 falls within the borders of real property controlled by Developer, Declarant or the Association.

(e) In the event Developer acquires an additional tract of land or additional tracts of land that could be accessed from County Road 2985, Developer may, without Owner approval, dedicate to the Association as a Private Road and/or Right of Way, for limited and intended use by OWNERS, all or part of County Road 2985. Developer also reserves the authority to accept dedication of all or part of County Road 2985 as a Right of Way and/or Private Road or otherwise from the Developer, Declarant or County on behalf of the Association.

5.3 RESPONSIBILITY. Owners shall be solely responsible for any repairs, and costs of such repair, for the acts of their guests, invitees, agents or family members for damage to the private roads caused by gross negligence, intentional misfeasance of usage of the Private Road in a manner not constituting reasonable, ordinary, everyday or typical use of the Private Road. All such repair shall be completed in a timely and workmanlike manner.

5.4 MAINTENANCE OF COMMON PROPERTY/AREA. Declarant shall maintain and keep in good repair the Common Property until it deeds the Common Property to the Association, at which time the Association shall take title to said property of both subdivisions. Thereafter, the Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, all maintenance, repair, and replacement subject to any insurance then in effect, of all landscaping grass areas, paving, and other improvements, if any, situated on the Common Property.

## ARTICLE SIX EASEMENTS

6.1 EASEMENT GRANTS. The following easements are hereby granted and/or reserved over, across, and through the property.

(a) ROAD INGRESS AND EGRESS. There is hereby granted to all parcel or Lot Owners of FIVE POINT, their heirs, successors, and assigns, and to all Owners

of the limited Common Property, their heirs, successors, and assigns, a reciprocal easement for ingress and egress across all roadways contained in all FIVE POINTS subdivisions as well as access from the public roads to each subdivisions' roads.

- (b) NTMWD EASEMENT. The NTMWD shall have a perpetual, non-exclusive easement of ingress and egress over and across all roadways of FIVE POINTS MEMBERS to access Leased Property for the purpose of inspecting the Leased Property and improvements thereon and enforcements of the terms of the Lease Agreement pertaining to the Leased Property.
- (c) PUBLIC EASEMENTS. Fire, police, health, sanitation, medical, ambulance and other public service personnel and their vehicles have a perpetual, non-exclusive easement of ingress and egress over and across all roadways contained in both subdivisions for the performance of their respective duties.
- (d) GATED ENTRANCE. Each FIVE POINTS MEMBERS will have a gate across the entrance to each separate subdivision. All gates and their use shall be governed by the Association and said gates shall not inhibit, in any way, the peaceful and unfettered enjoyment of the easements described herein.
- (e) UTILITY EASEMENTS. Declarant does hereby establish for the benefit of, and grant and convey to, the Owner of each Lot, a perpetual, nonexclusive easement appurtenant to each of the other Lots for the purpose of construction, installation, maintenance, repair, replacement, renewing, connecting into and use by such Owner of gas, telephone, power, water, sewer, or other utility lines serving any portion of a Lot within ten feet of the boundary line(s) of any Lot(s), provided there are no buildings or structures constructed in such areas. All such utility lines shall be installed and maintained below the ground level or surface of the Lots (except for such parts thereof that cannot be and are not customarily placed below the surface, such as transformers and control panels, which shall be placed in such location as approved by the Owner of the affected Lot.
- (f) GOLF CART EASEMENTS. There shall be a golf cart path easement ten (10) feet in width for the use by Lot Owners and their guests for ingress and egress at Lot 24 and Lot 104. These Cart Paths shall be maintained by the FIVE POINTS POA.

**ARTICLE SEVEN  
FIVE POINTS PROPERTY OWNERS ASSOCIATION**

- 7.1 MEMBERSHIP. All Lot Owners shall become members of FIVE POINTS POA.

("Association") at time of closing. Each Lot shall have one vote only regardless of whether the parcel or Lot is owned by multiple titleholders owning jointly. The Declarant and its successors are all members of the Association until all Lots are sold or the Declarant reacquires any previously sold Lots.

7.2 CONTROL BY DEVELOPER. Declarant shall have the absolute authority to control the Association as long as they own at least one Lot. Declarant may relinquish partial or total control of the Association earlier in Declarant's sole discretion. Members of the Association, including Declarant after control is relinquished, are entitled to one vote per Lot owned, and may assign the Declarant rights at their discretion. Declarant may establish by a separate document with rules governing the affairs of the Association. Once the Declarant has relinquished total control, the Association may amend those rules by a seventy-five percent (75%) approval by a quorum of members and eighty percent (80%) approval by the Board.

7.3 MEETING. An Association meeting shall be called and convened each year at some time during the months of July or August after Declarant has relinquished control of the Association, or another date so agreed upon by the new Board of Directors. Declarant, or an assigned representative, shall preside as temporary chairman at the first Association meeting and shall serve as the Board of Directors until such time as the Declarant no longer has control or has relinquished control. Prior to relinquishing control, a special meeting shall be called and a new Board of Directors shall be appointed by Developer. Future Annual Meetings, shall provide for the election of Board Members. Written notice of any meeting called shall be sent to all Association members not less than thirty days or more than sixty days in advance of the meeting. At the meetings the presence of members either in person or by proxies entitled to cast fifty percent of all votes shall constitute a quorum. No quorum shall be required for the Declarant to relinquish control of the Association.

(a) The acts approved by a majority of those present at a meeting either in person or by proxies at which a quorum is present shall constitute the acts of the members, except when approval by a greater number of members is required by the Declaration or By-Laws.

7.4 ASSESSMENTS. The annual Association assessment shall be **Two Thousand, Four Hundred and no/100 dollars (\$2,400.00)** per Lot, per year.

(a) This amount may be reviewed by the Association on an annual basis and may be increased, or decreased, as necessary to meet the needs as described herein. Any increase up to five percent (5%) may be made by a seventy-five vote of the Board after the Declarant has relinquished control of the Association. Any increase of more than five percent (5%) in a given year must be approved by a vote of seventy-five percent (75%) of Lot Owners once the Declarant has

relinquished control of the Association.

- (b) The Lot Owners of each Lot owned within the Property, by acceptance of a deed, therefore, hereby covenants, whether or not it shall be so expressed in such deed, and is deemed to covenant and agree to pay the Association's annual assessments and special assessments subject to the terms of this paragraph.
- (c) Declarant and later the Association shall keep the Assessment funds in an escrow account, and keep an accurate accounting of how this money was used. Any funds in this escrow account, upon Declarant relinquishing this responsibility to the Association, shall be turned over to the Association.
- (d) Annual assessments are due the 1st day of January of each new calendar year.
- (e) No Lot(s) within FIVE POINTS subdivisions which are owned or legally reclaimed by the Declarant, or one of their affiliate companies, shall be assessed the yearly dues until said Lot(s) have been sold, and conveyed by the Declarant.

7.5 ASSESSMENT PURPOSE. Annual assessments shall be used for road maintenance (all roads), landscaping, entrance gate maintenance, insurance premiums, taxes, utility fees and improvements, maintenance, cleaning and caring of the Common Property regardless of whether the Declarant or the Association owns the Common Property, or other purposes the Declarant or later the ARC desires to use said assessments for that exclusively promote the recreation, health, safety and welfare of the residents in the subdivision; provided, however, the maintenance of Common Property and the payment of the insurance described above shall be given absolute priority over any other use of the Assessments that may be determined by the Association at a later date.

- (a) The annual assessment shall be used to mow the grass along the edges of the road and mow the Common Property a minimum of two times per month, or as needed, to maintain community appeal and Community Wide Standard.

7.6 PRIVATE SLIP ASSESSMENT. There shall be a Private Slip Assessment required to be paid by each Owner of a Lot which is accompanied by a Right to Lease a Private Slip equal to the Slip Lessee's pro-rata share of the annual insurance premium plus the Lessee's pro-rata share of the Association's obligation under the Property Lease agreement for community and shared Docks based on the total number of Private Slips.

- (a) The Private Slip Lessees, by acceptance of a deed for a Lot which is accompanied by a Right to Lease a Private Slip, hereby covenants, whether or not it shall be so expressed in such instrument, and is deemed to covenant and agree to pay the Association's Private Slip Assessment subject to the terms of

this paragraph.

- (b) Declarant and later the Association shall use Assessment funds to pay the Boat Dock insurance premiums and the lease fees of the Property Lease when they become and keep an accurate accounting of how this money was used.
- (c) Annual Private Slip Assessments are due on the 1st day of January of each new calendar year.
- (d) No Private Slips within FIVE POINTS subdivisions that are leased by the Declarant, or one of their affiliate companies, shall be assessed the yearly dues until said Lot(s) have been sold and conveyed by the Declarant.

7.7 SPECIAL ASSESSMENTS. Special assessments may be made for any lawful purpose by the approval of seventy-five percent of the membership at the meeting once a quorum is established.

7.8 DELINQUENT ASSESSMENTS.

- (a) If the annual, private slip or special assessments, or assessments for maintenance of Common Property, are not paid on or before thirty days after the date when due, then such assessment shall become delinquent and shall, together with interest thereon and costs of collection thereof as hereinafter provided, thereupon become a continuing lien on the property which shall bind such property in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. If the Association files a claim of lien on the public records of Fannin County, against any Lot, a lien fee shall be added to the unpaid assessment and secured by the lien hereby created.
- (b) If the annual assessment is not paid within thirty days after the date when due, the assessment shall bear interest from the date of delinquency at the rate of fifteen percent per annum, or the maximum allowed by law. The Association may bring an action of law against the Owner personally obligated to pay the same, or to foreclose the lien against the property, in the same manner as foreclosure of a mortgage, and there shall be added to the amount of such assessment interest as provided herein together with the costs of the action and collection of the assessment, including a reasonable attorney's fee and costs and fees on appeal. Reasonable attorney's fees and costs of collection shall be recoverable whether or not suit is brought. In addition, if the annual assessment is not paid within thirty days after the date when due, then the Owner shall lose right to use of the Common Property and assigned slips (excluding subdivision roads) until such time as assessments are paid in full.
- (c) The lien of the assessments provided for herein shall be subordinate to the lien

of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien; however, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessment as to payment which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessment thereafter becoming due or from the lien thereof.

- (d) The Association shall upon demand at any time furnish to any Lot Owner liable for said assessment a certificate in writing and in recordable form, signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

#### 7.9 INSURANCE.

- (a) The Declarant shall obtain a public liability policy applicable to the Common Property and Boat Docks, covering the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents in their capacities as such, and, if reasonably available, directors' and officers' liability insurance. The public liability policy shall have a combined single limit of at least one million dollars (\$1,000,000.00). The Association shall be responsible for ensuring this policy stays intact once the Common Property and the Boat Docks are turned over to the Association.
- (b) Insurance coverage obtained by the Association shall be written in the name of the Association, as trustee, for the respective benefitted parties, as further identified in subparagraph (ii) below. Such insurance shall be governed by the provisions hereinafter set forth;
  - (i) All policies shall be written with a company licensed to do business in Texas;
  - (ii) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Board; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto;
  - (iii) In no event shall the insurance coverage obtained and maintained by the Association hereunder be brought into contribution with insurance purchased by individual Lot Owners or Private Slip Owners whichever is applicable, occupants, or their Mortgagees, and the insurance carried by the Association shall be primary;
  - (iv) All casualty insurance shall have an inflation guard endorsement and an agreed amount endorsement if these are reasonably available and all insurance policies shall be reviewed annually by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the county where the

- property is located;
- (v) The Board shall be required to make every reasonable effort to secure insurance policies that provide for the following;
    - (1) a waiver of subrogation by the insurer as to any claims against the Association, the Association's manager, the Owners and their respective tenants, servants, agents, and guests;
    - (2) a waiver by the insurer of its rights to repair and reconstruct instead of paying cash;
    - (3) a provision that no policy may be canceled, invalidated, suspended or subjected to non-renewal on account of any one or more individual Owners;
    - (4) a provision that no policy may be canceled, invalidated, suspended, or subjected to non-renewal on account of any defect or the conduct of any director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect or to cease the conduct and the allowance of a reasonable time thereafter within which a cure may be effected by the Association, its manager, any Owner or Mortgagee;
    - (5) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and
    - (6) that no policy may be canceled or substantially modified or subjected to non-renewal without at least thirty days prior written notice to the Association.
  - (c) Each Owner covenants and agrees that in the event of damage and destruction of structures on their Lot(s), Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with this Declaration, unless a determination not to rebuild is made. The Owner shall pay all costs of repair or reconstruction which are not covered by insurance proceeds. In the event that the structure is totally destroyed and a determination is made not to rebuild or to reconstruct, Owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction and thereafter the Owner shall continue to maintain the Lot in a neat and attractive condition consistent with the community-wide standard.
  - (d) Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with this Declaration, unless a determination not to rebuild is mutually made by owners affected by the



damaged Boat Dock finger. The Owner shall pay all costs of repair or reconstruction which are not covered by insurance proceeds. In the event that the structure is totally destroyed and a determination is made not to rebuild or to reconstruct, Owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction and thereafter the Owner shall continue to maintain the Lot in a neat and attractive condition consistent with the community-wide standard.

7.10 REPAIR AND RECONSTRUCTION. In the event of damage to or destruction of all or any part of the Common Property as a result of fire, weather or other casualty, unless at least seventy five percent (75%) of the Lot Owners vote not to proceed with the reconstruction and repair of the structure, the Association or its duly authorized agent shall arrange for and supervise the prompt repair and restoration of the damaged structures.

(a) Cost Estimates. Immediately after a fire, weather or other casualty causing damage to the Common Property, the Association shall obtain reliable and detailed estimates of the cost of repairing and restoring the structures to substantially the condition which existed before such casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. Such costs may also include professional fees and premiums for such bonds as the Association determines to be necessary.

(b) Source and Allocation of Proceeds. Excepting Boat Docks, if the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair, as determined by the Association, or if at any time during the reconstruction and repair or upon completion of reconstruction and repair the funds for the payment of the costs thereof are insufficient, a special assessment shall be made against all of the Lot Owners without the necessity of a vote of the members. If after repair and reconstruction is completed there is a surplus of funds, such funds shall be common funds of the Property to be used as directed by the Board.

(c) Source and Allocation of Proceeds Boat Docks. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair, as determined by the Association, or if at any time during the reconstruction and repair or upon completion of reconstruction and repair the funds for the payment of the costs thereof are insufficient, a special assessment shall be made against all Lot Owners for the Community Slip portion of repairs of the Boat Dock and Private Slip Owners on a pro-rata basis with each Private Slip Owners paying one share per slip owned and damaged divided by total boat slips on the Boat Dock destroyed or damaged. If after repair and reconstruction is completed there is a surplus of funds, the portion of Private Boat slip funds collected through assessment shall be returned to the Private Boat Slip owners

with the community Boat Slip portion shall be common funds of the Property to be used as directed by the Board.

- (d) Plans and Specifications. Any such reconstruction or repair shall be substantially in accordance with the plans and specifications under which the structures were originally constructed, except where changes are necessary to comply with current applicable building codes or where improvements not in accordance with the original plans and specifications are approved by the Association.
- (e) Construction Fund. The net proceeds of the insurance collected on account of a casualty and the funds collected by the Association from assessments against Lot Owners, if any, on account of such casualty shall constitute a construction fund which shall be disbursed in payment of the cost of reconstruction and repair in the manner set forth in this paragraph to be disbursed by the Association in appropriate progress payments to such contractor(s), supplier(s), and personnel performing the work or supplying materials or services for the repair and reconstruction of the buildings as are designated by the Association.
- (f) Damage to or Destruction of Dwellings on Lots or individual Boat Slip. In the event of damage to or destruction of structures on a Lot or an individual Boat Slip, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with this Declaration, unless a determination not to rebuild is made by the Lot Owner in cases of substantial damage or destruction. If the structure is substantially destroyed and a determination is made not to rebuild or to reconstruct, the Owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction, and, thereafter, the Owner shall continue to maintain the Lot in a neat and attractive condition consistent with the Community-Wide Standard. In the case where some, but not all fingers of the Boat Dock are damaged, the Boat Slip Owners utilizing that finger shall be responsible for the repairs of damaged finger.
- (g) Tree damage on Lot. Lot Owner(s) shall proceed promptly to remove all damaged or fallen trees or those that have been cut on said Lot.

7.11 SALE OF LOTS. Within thirty days after receiving title to a Lot, the purchaser of the Lot shall give the Association written notice of their Ownership of the Lot(s). Upon failure of an Owner to give the required notice within the thirty-day time period provided herein, the Association may levy fines against the Lot and Owner thereof, and assess the Owner for all costs incurred by the Association in determining their identity.

- 7.12 SECURITY. The Declarant or Association may, but shall not be required to, from time to time, provide measures or take actions which directly or indirectly improve safety on the Property; however, each Owner, for himself or herself and his or her tenants, guests, licensees, and invitees, acknowledges and agrees that the Association is not a provider of security and shall have no duty to provide security on the Property. It shall be the responsibility of each Owner to protect his or her person and property and all responsibility to provide security shall lie solely with each Lot Owner. Neither the Declarant nor Association shall be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.
- 7.13 ESCROW ACCOUNT. All funds collected are required to be held in an escrow account under these covenants.
- 7.14 DECLARANT'S RIGHT TO ASSESSMENTS. So long as Declarant owns and/or maintains the Common Property, Declarant shall have the right to the proceeds collected by the Association from any and all Assessments to pay for the maintenance, taxes and insurance of the Common Property. In the event the Association fails to reimburse or pay, on demand, the Declarant the amounts necessary as set forth above, the Declarant shall have the right, by written notice to each Lot Owner, to instruct that all further Assessments be paid to Declarant in lieu of the Association, and to enforce non-payment of Assessments by Lot Owners in such an event in the manner set forth above.

## **ARTICLE EIGHT PROPERTY RIGHTS IN COMMON PROPERTY AND CLUBHOUSE**

- 8.1 USE OF COMMON PROPERTY. There shall be no obstruction of the Common Property, nor shall anything be kept, parked or stored on any part of the Common Property without prior written consent by the Association, except as specifically provided herein.
- (a) The use of the Common Property shall be governed by the Declarant, until such time as they turn the Common Property over to the Association, after such time the use of the Common Property shall be governed by the Association. The Declarant, while in control of the Common Property, and thereafter the Association, shall have the authority to establish written policies for the use of the Common Property.
- (b) Anyone who uses a portion of the Common Property hereunder shall assume, on behalf of himself/herself/themselves and his/her/their guests, occupants and family, all risks associated with the use of the Common Property and all liability for any damage or injury to any person or thing as a result of such use.

Neither the Declarant, nor Board, nor Association shall be liable for any damage or injury resulting from such use unless such damage or injury is caused solely by the willful acts or gross negligence of the Association, its agents or employees.

- (c) All trash must be removed immediately upon use of the Common Property. Trash shall not be deposited into the lake, other common areas or upon Lots. Upon use of the fire pits or grills, the user shall clean and remove all debris, ashes, burnt logs, etc.
- (d) Common Slips shall be used on a temporary basis and shall not be occupied overnight.
- (e) All Common Properties shall be for the sole use of Lot Owners and their guests.
- (f) Guests using Common Properties must be accompanied by Lot Owner.
- (g) No boat trailers may be parked in the parking area.
- (h) Use of the Common Property shall be revoked for any Property Owner that is delinquent on the annual dues by more than thirty days.

8.2 DECLARANT USE OF COMMON PROPERTY. Declarant shall be permitted full use and enjoyment of common property for so ever long as Declarant owns a Lot or property within any subdivision of FIVE POINTS.

8.3 TITLE TO COMMON PROPERTY. The roadways and Common Property shall be conveyed to the Association at any time Declarant desires, but in all events before Declarant conveys the last Lot owned in this subdivision. However, title shall be conveyed subject to the following covenant which shall be deemed to run with the land and shall be binding upon the Association, its successors and assigns:

- (a) In order to preserve and enhance the property values and amenities of the development, the Common Properties and all facilities now or hereafter built or installed thereon shall at all times be maintained in good repair and condition. The maintenance and repair of the Common Properties shall include, but not be limited to the repair of damage to roadways, walkways, outdoor lighting, fences, decking, stonework, clubhouse repair, pool maintenance, and landscape maintenance.
- (b) This section shall not be amended to reduce or eliminate the obligation for maintenance and repair of the Common Property.

8.5 SWIMMING POOL. The community swimming pool shall be available to Lot

Owners and their Guest at such times set by the Association as times allowable by law. There is no lifeguard on duty and Owners accept responsibility and liability for themselves and their Guests and further indemnify the Declarant and the Association against any injury or death resulting from the use of the swimming pool, pavilion or any of the amenities of the Subdivision.

- 8.7 LEASED PROPERTY. The Declarant is working with NTMWD on a Shoreline Lease and Use Agreement ("Lease Agreement") for the use of the tract of land owned by NTMWD and being adjacent to the property line of FIVE POINTS and THE HARBOR AT FIVE POINTS extending to Bois d'Arc Lake as described in Lease Agreement ("Leased Property").
- (a) The Declarant has recommended that the Leased Property contain boat docks, access cart path and parking.
  - (b) The Association shall be responsible for adhering to the terms of the Lease Agreement by, including, but not limited to, maintenance and upkeep of improvements, setting and enforcing rules of use in accordance with the Lease Agreement and providing NTMWD with continued access and contact information for any necessary ongoing correspondence.

#### ARTICLE NINE ENFORCEMENT AND DURATION

- 9.1 ENFORCEMENT. If an Owner of any parcel or Lot within a subdivision of FIVE POINTS MEMBERS violate any of the covenants set forth in this Declaration, it shall be lawful for any other person owning real property in any FIVE POINTS subdivision or the Association to prosecute any proceeding at law or in equity against any person or persons violating any of such covenants and either to prevent such Owner from so doing or to recover damages for such violations, or both.
- 9.2 AMENDMENT. The covenants, restrictions, easements, reservations, terms and conditions contained in this declaration shall run with the land and shall be binding upon all Lot Owners and their heirs, successors and assigns, provided, however that the Declarant retains the absolute right to amend this declaration, as he may deem necessary, until the Declarant has fully turned over control of the Association. All such amendments shall be binding upon all Lot Owners. Except as clearly stated in Section 9.4 or as otherwise provided in this Declaration, the Association shall have the right to amend these covenants once Declarant has released full control of the Association by approval of the Owners of seventy-five percent of the Lots subject to this Declaration; provided, however, that the parcels and Lots shall NOT be divided into smaller tracts than as shown on the plats of survey above referenced except as provided in Section 4.2 above and that the land designated as Common

Property shall NOT be sold and shall not be used for residential or commercial purposes during the duration of these covenants and restrictions. All amendments to the Declaration shall become effective upon recordation, unless a later effective date is specified in the amendment.

- 9.4 **AMENDMENT AFFECTING DECLARANT.** No amendment may remove, revoke, or modify any right or privilege of the Declarant without the written consent of the Declarant or the assignee of such right or privilege.
- 9.5 **DURATION OF COVENANTS AND RESTRICTIONS.** These covenants and restrictions shall run with said land and shall be binding upon all portions and all persons claiming under them perpetually to the extent permitted by law. However, so long as Texas law limits the period during which covenants restricting lands to certain uses may run, any covenant affected by the law shall run with and bind the land so long as permitted by the law, after which time the provisions shall be automatically extended for successive periods of twenty years, unless seventy-five percent of the persons owning parcels or lots execute a document to terminate the covenants containing a legal description of the entire area affected by the covenant, a list of all Owners affected by the covenant, a description of the covenant to be terminated and evidence of the Owners voting to terminate recorded with the Clerk of Fannin Count, Texas. A written instrument reflecting any termination must be recorded no sooner than, but within two years immediately preceding the beginning of a twenty year renewal period. Every purchaser or grantee of any interest (including, without limitation, a security interest) in any real property subject to these covenants, by acceptance of a deed or other conveyance, agrees that the covenants contained herein may be extended and renewed as provided in this paragraph.
- 9.6 **BINDING OF HEIRS, ETC.** The terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of the Declarant and Owners and their respective heirs, administrators, executors, legal representatives, successors and assigns. Time is of the essence in each and every provision of these Agreements.

#### ARTICLE TEN RESERVATION BY DECLARANT OF EASEMENTS

- 10.1 Declarant hereby reserves unto Declarant, its heirs, successors and assigns, all necessary licenses, rights, privileges and easements over, under, upon, through and across the Property to, including without limitation, (i) use said Property for rights-of-way and easements to erect, install, maintain and use electric and telephone lines, wires, cables, conduits, water mains, pipes, and other suitable equipment for the conveyance and use of electricity, telephone equipment and service, cable,

television, water or other public/private conveniences or subdivision utilities; (ii) to access the Property for purposes of development and construction, including, but not limited to grading, installation and removing personal property such as silt fencing and other environmental control measures; and (iii) such other rights as may be reasonably necessary to complete in an orderly and economic manner the development of all present and future phases of FIVE POINTS MEMBERS; provided, however, that said reservation and right shall not be considered an obligation of Declarant to provide or maintain any such utility, development or service. Declarant also reserves the right to connect with and make use of the utility lines, wires, pipes, conduits, cable, television, sewers and drainage and other utility lines which may from time to time be in or along the streets and roads within the Property. All easements, rights-of-way, rights, licenses and privileges herein reserved in Declarant shall be binding upon the Property and shall inure to the benefit of Declarant, its heirs, successors and assigns until such time as Declarant has quit claimed all its interests in the Property by filing such quit claim document with the Clerk of Superior Court of Fannin County for purposes of recording same on the deed records of the county.

#### **ARTICLE ELEVEN ANNEXATION OF ADDITIONAL PROPERTY**

- 11.1 As the owner or, if not the owner, with the consent of the owner, Declarant shall have unilateral right, privilege, and option from time to time at any time until twenty (20) years after the recording of this Declaration to subject all or any portion of any Fannin County, Texas property that the Declarant and/or Scott Rye, individually or in a legal entity in which Scott Rye has an ownership interests presently or in the future, to the provisions of this Declaration and the jurisdiction of the Association by filing for record in Fannin County Texas, a Supplementary Declaration describing the property being annexed. Additionally, property located in Fannin County, Texas that is owned presently or in the future by the Declarant and/or Scott Rye, individually or in a legal entity in which Scott Rye has an ownership interests, shall be allowed to be annexed in accordance with all procedures as set forth. Any annexation shall be effective upon the filing for record of a Supplementary Declaration unless a different effective date is provided in the Supplementary Declaration. As long as covenants applicable to the real property previously subject to this Declaration are not changed and as long as rights of then Owners are not adversely affected, the Declarant may unilaterally amend this Declaration to reflect the different character of any annexed real property.
- 11.2 The rights reserved to Declarant to subject additional land to the Declaration shall not impose any obligation upon Declarant to subject any of such additional land to this Declaration or to the jurisdiction of the Association. If such additional land is not subject to this Declaration, Declarant's reserved rights shall not impose any

obligation on Declarant to impose any covenants and restrictions similar to those contained in the Declaration upon the additional land.



SO EXECUTED this 18 day of June, 2024.

**Bois d'Arc Lake Acquisitions, LLC, Declarant**

[Signature] (SEAL)  
By: Scott Rye, Managing Member

STATE OF Tn  
COUNTY OF Knox

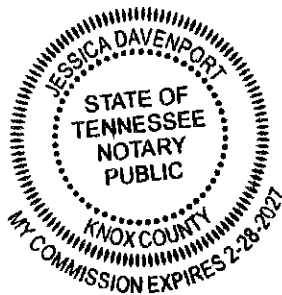
I, Jessica Davenport a Notary Public of the County and State aforesaid, do hereby certify that Scott Rye personally came before me this day and acknowledged that he is a Member of Bois d'Arc Lake Acquisitions, LLC, and further acknowledged execution of this Declaration of Covenants, Restrictions, Property Owners Association and Limitations Running With The Land For Five Points Subdivision and The Harbor at Five Points Subdivision on behalf of the LLC.

Witness my hand and official seal, this the 18 day of June, 2024.

*(Seal-Stamp)*

[Signature]  
Notary Public

My commission expires: 02/28/27



**EXHIBIT "A"**  
**PROPERTY DESCRIPTION**

FIVE POINTS

All that certain piece, parcel or lot of land lying and being situate in the State of Texas, County of Fannin, containing 99.629 acres, more or less, on a plat of survey for Bois d'Arc Lake Acquisitions, LLC, revised May 1, 2024 prepared by Hardin Surveying and recorded June 18, 2024, in Plat Cabinet D at Page 103, Fannin County records and known as FIVE POINTS. Reference is hereby made to the more recent plat for a more particular description by metes and bounds.

TOGETHER WITH:

THE HARBOR AT FIVE POINTS

All that certain piece, parcel or lot of land lying and being situate in the State of Texas, County of Fannin, containing 86.534 acres, more or less, on a plat of survey for Bois d'Arc Lake Acquisitions, LLC, dated February 14, 2024 prepared by Hardin Surveying and recorded June 18, 2024, in Plat Cabinet D at Page 104, Fannin County records and known as THE HARBOR AT FIVE POINTS. Reference is hereby made to the more recent plat for a more particular description by metes and bounds.

**FILED AND RECORDED**  
**Fannin County, Texas**  
**Tammy Biggar, County Clerk**  
**101 E. Sam Rayburn Dr. #102**  
**Bonham, Tx 75418**

FILING AND RECORDING DATE: 06/24/2024 10:37AM

RECORDING FEE: 145.00

Instrument Number: 2024003959

Document Type: DECLARATION

Number Of Pages: 32

Parties: BOIS D'ARC ACQUISITIONS LLC

To: FIVE POINTS ET AL

Receipt # 4051600

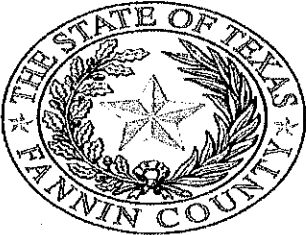
DocId 8071670

Received By: VICKIE MILLER

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**DO NOT DESTROY** - *Warning, this document is part of the Official Public Record.*

I hereby certify that this instrument was FILED AND RECORDED on the date and time stamped hereon and FILED AND RECORDED in the OFFICIAL PUBLIC RECORDS of Fannin County, Texas.



*Tammy Biggar*  
Tammy Biggar, Fannin County Clerk

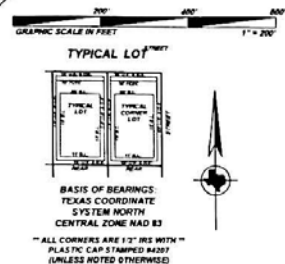
NOTICE: It is a crime to intentionally or knowingly file a fraudulent court record or instrument with the clerk.

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of

By: VICKIE MILLER  
Deputy

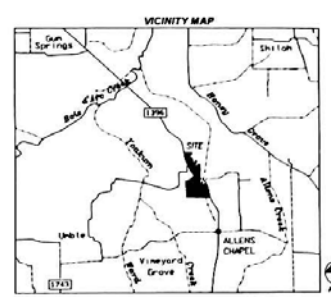
FILED AND RECORDED  
In the Official Public Records  
of Fannin County Texas  
Tammy Biggar, Fannin County Clerk  
Document #: 2024003959  
06/24/2024 10:37:33 AM  
DECLARATION  
Number of Pages: 32  
Receipt #: 4051600





OWNER/DEVELOPER  
BOIS D ARC LAKE  
ACQUISITIONS L.L.C.  
9827 CODGILL ROAD, STE 1  
KNOXVILLE, TENNESSEE 37932  
(800) 675-1800

# FINAL PLAT THE HARBOR AT FIVE POINTS



**FLOOD STATEMENT**  
THIS TRACT DOES NOT LIE WITHIN A FLOOD HAZARD AREA AND IS IN A NORMAL FLOOD HAZARD AREA (FEMA FIRM PANEL NO. 481470273) EFFECTIVE DATE OF FEB. 18, 2011. THIS STATEMENT IS BASED SOLELY ON THE FEMA FIRM MAP AND IS NOT INTENDED TO IMPLY THAT ANY FIELD VERIFICATION WAS MADE TO MAKE THIS DETERMINATION.

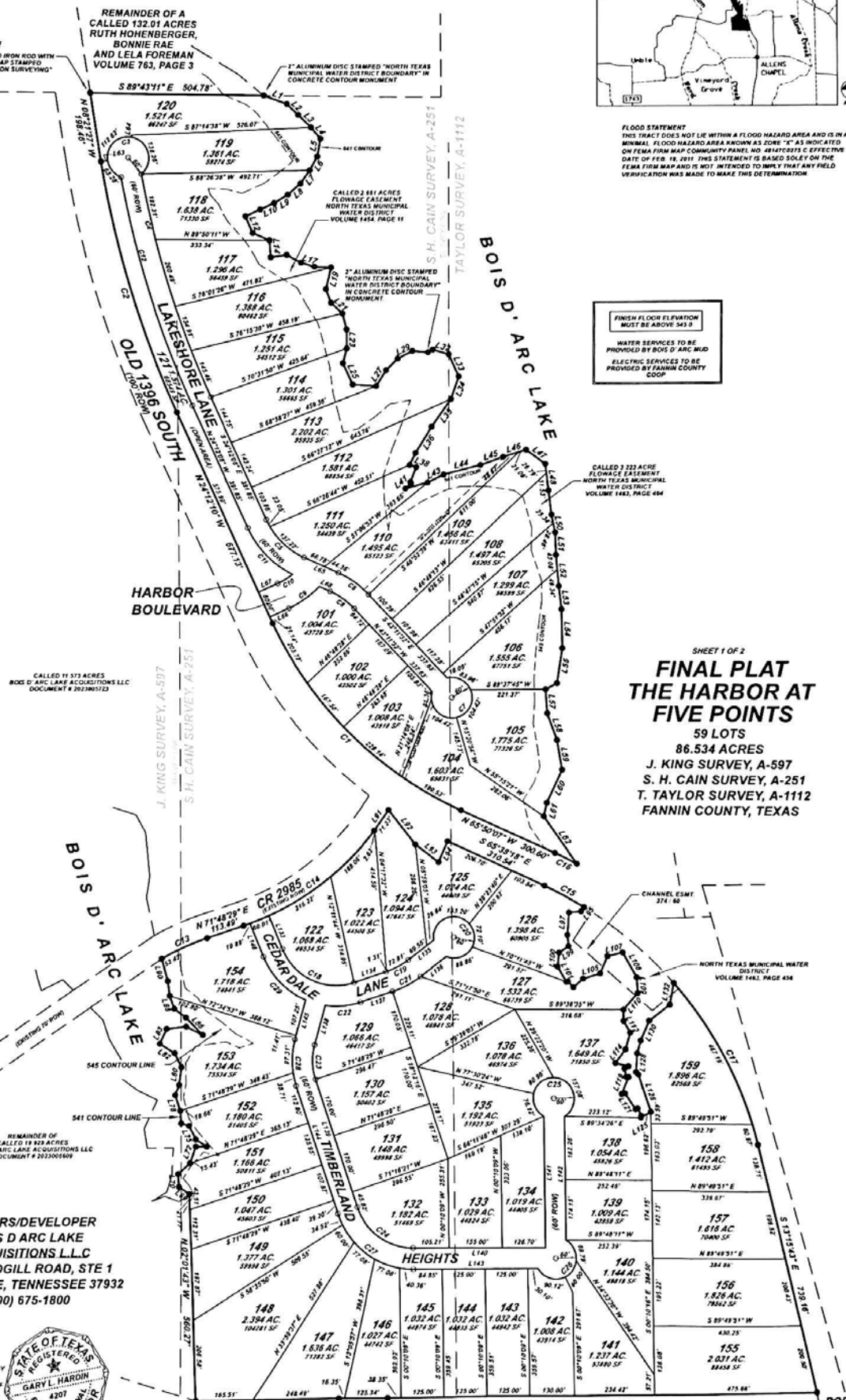
**FINISH FLOOR ELEVATION**  
MUST BE ABOVE 543.0

WATER SERVICES TO BE PROVIDED BY BOIS D ARC LAKO  
ELECTRIC SERVICES TO BE PROVIDED BY FANNIN COUNTY COOP

LINE	BEARING	DISTANCE	LINE	BEARING	DISTANCE
L1	S 70°04'52" E	71.68	L41	S 48°48'34" W	22.18
L2	S 45°14'01" E	51.87	L42	N 72°52'50" E	60.88
L3	S 28°44'14" E	62.39	L43	N 64°11'24" W	77.75
L4	S 20°04'42" W	71.42	L44	N 75°35'50" E	111.93
L5	S 23°34'10" W	45.04	L45	N 70°52'30" E	70.92
L6	S 25°12'05" W	41.77	L46	N 73°10'14" E	69.84
L7	S 29°12'05" W	41.77	L47	S 61°29'25" E	69.80
L8	S 29°09'01" W	46.86	L48	S 58°41'38" E	71.23
L9	S 25°12'05" W	41.77	L49	S 51°29'25" E	70.92
L10	S 25°12'05" W	41.77	L50	S 51°29'25" E	70.92
L11	S 25°12'05" W	41.77	L51	S 51°29'25" E	70.92
L12	S 25°12'05" W	41.77	L52	S 51°29'25" E	70.92
L13	S 25°12'05" W	41.77	L53	S 51°29'25" E	70.92
L14	S 25°12'05" W	41.77	L54	S 51°29'25" E	70.92
L15	S 25°12'05" W	41.77	L55	S 51°29'25" E	70.92
L16	S 25°12'05" W	41.77	L56	S 51°29'25" E	70.92
L17	S 25°12'05" W	41.77	L57	S 51°29'25" E	70.92
L18	S 25°12'05" W	41.77	L58	S 51°29'25" E	70.92
L19	S 25°12'05" W	41.77	L59	S 51°29'25" E	70.92
L20	S 25°12'05" W	41.77	L60	S 51°29'25" E	70.92
L21	S 25°12'05" W	41.77	L61	S 51°29'25" E	70.92
L22	S 25°12'05" W	41.77	L62	S 51°29'25" E	70.92
L23	S 25°12'05" W	41.77	L63	S 51°29'25" E	70.92
L24	S 25°12'05" W	41.77	L64	S 51°29'25" E	70.92
L25	S 25°12'05" W	41.77	L65	S 51°29'25" E	70.92
L26	S 25°12'05" W	41.77	L66	S 51°29'25" E	70.92
L27	S 25°12'05" W	41.77	L67	S 51°29'25" E	70.92
L28	S 25°12'05" W	41.77	L68	S 51°29'25" E	70.92
L29	S 25°12'05" W	41.77	L69	S 51°29'25" E	70.92
L30	S 25°12'05" W	41.77	L70	S 51°29'25" E	70.92
L31	S 25°12'05" W	41.77	L71	S 51°29'25" E	70.92
L32	S 25°12'05" W	41.77	L72	S 51°29'25" E	70.92
L33	S 25°12'05" W	41.77	L73	S 51°29'25" E	70.92
L34	S 25°12'05" W	41.77	L74	S 51°29'25" E	70.92
L35	S 25°12'05" W	41.77	L75	S 51°29'25" E	70.92
L36	S 25°12'05" W	41.77	L76	S 51°29'25" E	70.92
L37	S 25°12'05" W	41.77	L77	S 51°29'25" E	70.92
L38	S 25°12'05" W	41.77	L78	S 51°29'25" E	70.92
L39	S 25°12'05" W	41.77	L79	S 51°29'25" E	70.92
L40	S 25°12'05" W	41.77	L80	S 51°29'25" E	70.92

LINE	BEARING	DISTANCE	LINE	BEARING	DISTANCE
L81	N 25°48'22" W	44.48	L121	S 74°11'02" E	54.62
L82	N 27°12'31" W	21.76	L122	N 63°24'56" E	3.89
L83	N 25°12'05" W	41.77	L123	S 75°09'55" W	103.00
L84	N 23°18'33" E	52.43	L124	N 41°16'50" W	53.16
L85	N 23°18'33" E	52.43	L125	N 60°04'44" W	23.80
L86	N 23°18'33" E	52.43	L126	N 60°04'44" W	23.80
L87	N 23°18'33" E	52.43	L127	N 60°04'44" W	23.80
L88	N 23°18'33" E	52.43	L128	N 60°04'44" W	23.80
L89	N 23°18'33" E	52.43	L129	N 60°04'44" W	23.80
L90	N 23°18'33" E	52.43	L130	N 60°04'44" W	23.80
L91	N 23°18'33" E	52.43	L131	N 60°04'44" W	23.80
L92	N 23°18'33" E	52.43	L132	N 60°04'44" W	23.80
L93	N 23°18'33" E	52.43	L133	N 60°04'44" W	23.80
L94	N 23°18'33" E	52.43	L134	N 60°04'44" W	23.80
L95	N 23°18'33" E	52.43	L135	N 60°04'44" W	23.80
L96	N 23°18'33" E	52.43	L136	N 60°04'44" W	23.80
L97	N 23°18'33" E	52.43	L137	N 60°04'44" W	23.80
L98	N 23°18'33" E	52.43	L138	N 60°04'44" W	23.80
L99	N 23°18'33" E	52.43	L139	N 60°04'44" W	23.80
L100	N 23°18'33" E	52.43	L140	N 60°04'44" W	23.80
L101	N 23°18'33" E	52.43	L141	N 60°04'44" W	23.80
L102	N 23°18'33" E	52.43	L142	N 60°04'44" W	23.80
L103	N 23°18'33" E	52.43	L143	N 60°04'44" W	23.80
L104	N 23°18'33" E	52.43	L144	N 60°04'44" W	23.80
L105	N 23°18'33" E	52.43	L145	N 60°04'44" W	23.80
L106	N 23°18'33" E	52.43	L146	N 60°04'44" W	23.80
L107	N 23°18'33" E	52.43	L147	N 60°04'44" W	23.80
L108	N 23°18'33" E	52.43	L148	N 60°04'44" W	23.80
L109	N 23°18'33" E	52.43	L149	N 60°04'44" W	23.80
L110	N 23°18'33" E	52.43	L150	N 60°04'44" W	23.80
L111	N 23°18'33" E	52.43	L151	N 60°04'44" W	23.80
L112	N 23°18'33" E	52.43	L152	N 60°04'44" W	23.80
L113	N 23°18'33" E	52.43	L153	N 60°04'44" W	23.80
L114	N 23°18'33" E	52.43	L154	N 60°04'44" W	23.80
L115	N 23°18'33" E	52.43	L155	N 60°04'44" W	23.80
L116	N 23°18'33" E	52.43	L156	N 60°04'44" W	23.80
L117	N 23°18'33" E	52.43	L157	N 60°04'44" W	23.80
L118	N 23°18'33" E	52.43	L158	N 60°04'44" W	23.80
L119	N 23°18'33" E	52.43	L159	N 60°04'44" W	23.80
L120	N 23°18'33" E	52.43	L160	N 60°04'44" W	23.80

CURB	RADIUS	ARC LENGTH	CHORD BEARING	CHORD LENGTH
C1	223.23	128.41	N 45°11'50" W	181.91
C2	281.34	174.68	N 36°18'08" W	252.42
C3	62.80	114.16	N 80°34'41" E	60.00
C4	270.20	673.18	S 17°52'12" E	674.44
C5	160.00	160.00	S 45°29'50" E	160.00
C6	40.00	111.15	S 34°34'02" E	110.45
C7	40.00	318.16	S 46°48'28" W	400.00
C8	200.00	87.87	N 27°04'02" E	86.74
C9	200.00	111.84	S 34°44'58" W	111.15
C10	210.00	171.81	N 24°24'28" E	171.81
C11	280.00	192.87	N 23°55'09" W	188.58
C12	270.00	608.68	N 71°03'55" W	684.91
C13	240.00	141.48	N 80°34'41" E	143.54
C14	810.00	484.78	N 54°29'28" E	477.01
C15	1098.00	129.78	S 27°04'02" E	129.78
C16	1416.55	70.78	N 84°25'27" W	70.77
C17	180.00	110.58	N 27°04'02" E	110.58
C18	110.00	110.58	S 65°07'32" E	222.14
C19	220.00	74.12	N 47°09'23" E	72.77
C20	40.00	318.16	S 46°48'28" W	400.00
C21	240.00	84.31	S 62°09'25" W	83.88
C22	210.00	171.81	N 24°24'28" E	171.81
C23	270.00	100.54	S 21°45'52" E	99.58
C24	170.00	212.64	S 34°44'58" W	199.85
C25	80.00	114.16	N 80°34'41" E	60.00
C26	80.00	219.81	S 44°48'28" W	119.91
C27	210.00	171.81	N 24°24'28" E	171.81
C28	230.00	116.02	N 61°14'39" W	114.05
C29	230.00	160.71	N 42°48'45" W	176.19



SHEET 1 OF 2  
**FINAL PLAT  
THE HARBOR AT  
FIVE POINTS**  
59 LOTS  
86.534 ACRES  
J. KING SURVEY, A-597  
S. H. GAIN SURVEY, A-251  
T. TAYLOR SURVEY, A-1112  
FANNIN COUNTY, TEXAS

**D104**

**HARDIN SURVEYING**  
201 E. MASON STREET  
MABANK, TEXAS 75147  
(903) 887-5674  
FIRM# 10114700

OWNERS/DEVELOPER  
BOIS D ARC LAKE  
ACQUISITIONS L.L.C.  
9827 CODGILL ROAD, STE 1  
KNOXVILLE, TENNESSEE 37932  
(800) 675-1800

DATE PERFORMED: FEBRUARY 14, 2024  
SCALE: 1" = 200 FEET DRAWN BY: BH  
WORK ORDER: THE HARBOR AT FIVE POINTS  
FIELD BY: GF CHECKED BY: TP

**SURVEYOR'S CERTIFICATE**  
I, GARY L. HARDIN, REGISTERED PROFESSIONAL LAND SURVEYOR NO. 4207, DO HEREBY CERTIFY THAT THIS PLAT AND SURVEY REPRESENTS THE RESULTS OF A SURVEY MADE ON THE GROUND UNDER MY DIRECT ION AND SUPERVISION, THE LINES AND DIMENSIONS OF SAID PROPERTY BEING AS INDICATED.

GARY L. HARDIN R.P.L.S. # 4207  
SIGNATURE VOID IF NOT SEALED IN BLUE INK

# FINAL PLAT THE HARBOR AT FIVE POINTS



## OWNER'S CERTIFICATE

TRACT 1  
BEING ALL THAT CERTAIN LOT TRACT OR PARCEL OF LAND LOCATED IN THE J. KING SURVEY, A 397 AND J.H. MORRISON SURVEY, A 707, FANNIN COUNTY, TEXAS, BEING ALL OF A CALLED 117.96 ACRES TRACT OF LAND DESCRIBED IN DEED TO BOB D'ARCE LAKE ACQUISITIONS, L.L.C. RECORDED IN DOCUMENT # 20210909 OF THE OFFICIAL PUBLIC RECORDS, FANNIN COUNTY, TEXAS (OPRC#1) AND ALL OF A CALLED 111.88 ACRES TRACT OF LAND DESCRIBED IN DEED TO BOB D'ARCE LAKE ACQUISITIONS, L.L.C. RECORDED IN DOCUMENT # 20210909 OF THE OFFICIAL PUBLIC RECORDS OF THE OFFICE SAID LOT TRACT OR PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT 1/4" IRON ROD FOUND WITH YELLOW CAP STAMPED "ANDERSON SURVEYING" IN THE EAST LINE OF F.M. HIGHWAY 1398 AT THE SOUTHWEST CORNER OF THE REMAINDER OF A CALLED 133.61 ACRES TRACT OF LAND AS DESCRIBED IN DEED TO RUTH HOMERBERGER, BONNIE RAE AND LELLA FORBAM RECORDED IN VOLUME 763, PAGE 3 OF THE OPRC#1, BEING THE NORTHWEST CORNER OF THE SAID 19.13 ACRES TRACT AND THIS TRACT;

THENCE S 89°31'11" E, A DISTANCE OF 104.79 FEET ALONG THE COMMON LINE OF THE SAID 133.61 ACRES TRACT AND THE SAID 19.13 ACRES TRACT TO A CONCRETE MONUMENT WITH A 2" ALUMINUM DISC STAMPED "NORTH TEXAS MUNICIPAL WATER DISTRICT BOUNDARY" IN THE 541 CONTOUR LINE OF BOB D'ARCE LAKE AT THE NORTHEAST CORNER OF THE SAID 19.13 ACRES TRACT AND THIS TRACT;

THENCE, ALONG THE SAID 541 CONTOUR LINE AS FOLLOWS: S 70°06'53" E, A DISTANCE OF 71.88 FEET; S 48°53'28" E, A DISTANCE OF 43.78 FEET; S 42°47'31" E, A DISTANCE OF 51.88 FEET; S 34°46'14" E, A DISTANCE OF 42.38 FEET; S 10°20'42" W, A DISTANCE OF 32.19 FEET; S 79°21'14" W, A DISTANCE OF 41.04 FEET; S 33°21'51" W, A DISTANCE OF 47.13 FEET; S 48°30'28" W, A DISTANCE OF 49.15 FEET; S 18°01'11" W, A DISTANCE OF 44.84 FEET; S 64°32'25" W, A DISTANCE OF 48.95 FEET; S 85°11'54" W, A DISTANCE OF 47.87 FEET; S 21°31'46" E, A DISTANCE OF 32.41 FEET; S 67°08'49" E, A DISTANCE OF 33.04 FEET; S 55°41'28" E, A DISTANCE OF 48.85 FEET; N 81°18'43" E, A DISTANCE OF 41.12 FEET; S 51°21'47" E, A DISTANCE OF 41.88 FEET; S 73°19'51" E, A DISTANCE OF 46.81 FEET; S 47°33'17" E, A DISTANCE OF 49.81 FEET; S 15°18'06" W, A DISTANCE OF 83.94 FEET; S 20°19'51" E, A DISTANCE OF 41.89 FEET; S 47°27'51" E, A DISTANCE OF 45.28 FEET; S 14°31'06" E, A DISTANCE OF 49.00 FEET; S 0°14'00" E, A DISTANCE OF 56.73 FEET; S 15°08'37" W, A DISTANCE OF 46.45 FEET; S 24°41'21" E, A DISTANCE OF 49.47 FEET; S 83°34'42" E, A DISTANCE OF 70.41 FEET; S 82°34'11" E, A DISTANCE OF 34.30 FEET; N 87°04'44" E, A DISTANCE OF 41.58 FEET; S 82°32'51" E, A DISTANCE OF 48.18 FEET; S 84°55'37" E, A DISTANCE OF 44.26 FEET; N 81°21'04" E, A DISTANCE OF 18.88 FEET; S 73°15'29" E, A DISTANCE OF 48.88 FEET; S 24°24'34" E, A DISTANCE OF 79.73 FEET; S 19°24'34" W, A DISTANCE OF 49.44 FEET; S 33°17'40" W, A DISTANCE OF 49.29 FEET; S 32°18'34" W, A DISTANCE OF 50.13 FEET; S 24°19'14" W, A DISTANCE OF 39.11 FEET; S 22°16'34" E, A DISTANCE OF 30.30 FEET; S 23°55'11" W, A DISTANCE OF 49.18 FEET; S 23°21'00" E, A DISTANCE OF 3.08 FEET; S 49°48'24" W, A DISTANCE OF 22.88 FEET; N 74°33'30" E, A DISTANCE OF 88.88 FEET; N 87°12'42" E, A DISTANCE OF 41.81 FEET; S 80°08'59" E, A DISTANCE OF 110.82 FEET; N 70°07'20" E, A DISTANCE OF 74.42 FEET; N 73°07'16" E, A DISTANCE OF 68.81 FEET; S 33°28'43" E, A DISTANCE OF 69.80 FEET; S 0°01'45" E, A DISTANCE OF 78.32 FEET; S 04°41'01" E, A DISTANCE OF 61.71 FEET; S 17°04'31" E, A DISTANCE OF 33.80 FEET; S 01°28'49" E, A DISTANCE OF 45.12 FEET; S 03°08'52" E, A DISTANCE OF 89.43 FEET; S 84°14'33" E, A DISTANCE OF 41.81 FEET; S 01°08'59" E, A DISTANCE OF 114.80 FEET; S 01°08'59" E, A DISTANCE OF 184.40 FEET; S 84°18'41" W, A DISTANCE OF 37.81 FEET; S 62°23'11" E, A DISTANCE OF 70.45 FEET; S 19°24'20" E, A DISTANCE OF 83.11 FEET; S 08°47'08" E, A DISTANCE OF 183.87 FEET; S 20°01'11" W, A DISTANCE OF 107.30 FEET; S 19°15'34" W, A DISTANCE OF 41.87 FEET; S 34°44'32" E, A DISTANCE OF 168.71 FEET TO A POINT IN THE EAST LINE OF F.M. HIGHWAY 1398 AT THE SOUTHWEST CORNER OF THE SAID 118.86 ACRES TRACT AND THIS TRACT;

THENCE, ALONG THE EAST LINE OF F.M. HIGHWAY AS FOLLOWS: WITH A CURVE TURNING TO THE LEFT WITH AN ARC LENGTH OF 100.80 FEET HAVING A RADIUS OF 1428.81 FEET WITH A CHORD THAT BEARS N 64°22'27" W, A DISTANCE OF 70.77 FEET; N 85°00'27" E, A DISTANCE OF 200.16 FEET; THENCE WITH A CURVE TURNING TO THE RIGHT WITH AN ARC LENGTH OF 718.81 FEET HAVING A RADIUS OF 1123.22 FEET WITH A CHORD THAT BEARS N 85°18'41" E, A DISTANCE OF 781.81 FEET; N 24°12'10" W, A DISTANCE OF 87.13 FEET; THENCE WITH A CURVE TURNING TO THE RIGHT WITH AN ARC LENGTH OF 734.88 FEET HAVING A RADIUS OF 2411.74 FEET WITH A CHORD THAT BEARS N 19°31'04" W, A DISTANCE OF 732.42 FEET; N 08°21'27" W, A DISTANCE OF 188.44 FEET TO THE POINT OF BEGINNING AND CONTAINING 33.308 ACRES.

## TRACT 2

BEING ALL THAT CERTAIN LOT TRACT OR PARCEL OF LAND LOCATED IN THE J. KING SURVEY, A 397, S.H. CAIN SURVEY, A 231, T. LAYTON SURVEY, A 1112, FANNIN COUNTY, TEXAS, BEING ALL OF A CALLED 88.86 ACRES TRACT OF LAND DESCRIBED IN DEED TO BOB D'ARCE LAKE ACQUISITIONS, L.L.C. RECORDED IN DOCUMENT # 20210909 OF THE OFFICIAL PUBLIC RECORDS, FANNIN COUNTY, TEXAS (OPRC#1), AND ALL OF A CALLED 111.88 ACRES TRACT OF LAND (TRACT ONE), ALL OF A CALLED 18.29 ACRES TRACT OF LAND (TRACT TWO), AND ALL OF A CALLED 18.45 ACRES TRACT OF LAND (TRACT THREE), DESCRIBED IN DEED TO BOB D'ARCE LAKE ACQUISITIONS, L.L.C. RECORDED IN DOCUMENT # 20210909 OF THE OFFICIAL SAID LOT TRACT OR PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT FROM WHICH A FOUND FENCE CORNER POST BEARS S 83°53'23" E, A DISTANCE OF 6.47 FEET, SAID POINT BEING A NORTHWEST CORNER OF A CALLED 71.42 ACRES TRACT CONVEYED TO DEBORAH MEDOLE AND CHANN LAKE IN VOLUME 1487, PAGE 310 OF THE OFFICIAL PUBLIC RECORDS OF SAID COUNTY AND STATE, SAID POINT BEING IN THE WEST RIGHT-OF-WAY OF OLD 1398 SOUTH, SOUTHWEST CORNER OF THIS TRACT;

THENCE, S 89°49'51" W, A DISTANCE OF 1753.45 FEET TO A FOUND 1/4" IRON ROD, BEING AT THE NORTHWEST CORNER OF THE REFERENCED WOODS AND LAKE TRACT, AND BEING AT THE NORTHEAST CORNER OF A CALLED 24.014 ACRES TRACT CONVEYED TO NORTON TEXAS MUNICIPAL WATER DISTRICT IN VOLUME 1489, PAGE 245;

THENCE, WITH THE COMMON LINE OF THE REFERENCED 24.014 ACRES TRACT AND THE SAID COUNTY ROAD AS FOLLOWS: S 88°42'29" W, A DISTANCE OF 141.85 FEET TO A 1/4" FOUND IRON ROD; S 89°32'33" W, A DISTANCE OF 414.80 FEET TO A 1/4" FOUND IRON ROD WITH YELLOW CAP STAMPED "ANDERSON SURVEYING";

THENCE, N 67°31'43" W, THROUGH THE SAID 18.29 ACRES TRACT, A DISTANCE OF 378.83 FEET TO A POINT ON THE 541 CONTOUR LINE OF BOB D'ARCE LAKE;

THENCE, ALONG 23 CALLS WITH THE 541 CONTOUR LINE, THE FOLLOWING APPROXIMATE COURSES AND DISTANCES AS FOLLOWS: N 53°11'18" W, 18.87 FEET; S 04°54'33" W, 38.81 FEET; N 48°07'23" E, 47.14 FEET TO A CONCRETE MONUMENT WITH A 2" ALUMINUM DISC STAMPED "NORTH TEXAS MUNICIPAL WATER DISTRICT BOUNDARY" ON THE 541 CONTOUR LINE; N 19°31'17" W, 36.34 FEET; S 89°14'41" E, 31.82 FEET; S 04°38'30" W, 26.73 FEET; N 20°38'32" W, 23.88 FEET; S 26°32'52" W, 18.44 FEET; N 19°18'44" W, 43.88 FEET; N 31°28'47" E, 31.82 FEET; N 07°21'38" E, 51.84 FEET; N 28°34'28" W, 44.88 FEET; S 37°12'31" W, 21.70 FEET; N 2°13'32" E, 47.22 FEET; N 83°28'33" E, 27.47 FEET; S 83°28'33" E, 22.80 FEET; N 42°20'10" W, 70.10 FEET; N 57°04'46" W, 42.88 FEET; N 19°20'38" W, 39.82 FEET; N 07°20'14" W, 43.77 FEET; N 48°42'08" W, 84.88 FEET TO A 1/4" FOUND IRON ROD AT THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT IN THE SOUTH RIGHT-OF-WAY OF COUNTY ROAD 2983;

THENCE, ALONG THE SOUTH RIGHT-OF-WAY LINE OF COUNTY ROAD 2983 AND THE SAID CURVE TO THE LEFT AS FOLLOWS: R=740.00; L=1147.80; CHORD=1467.85; DELTA=114°22'29"; T=714.20; DEGREE OF CURVE=74°34'; AND CHORD BEARING=N 83°32'13" E TO A 1/4" FOUND IRON ROD FOR A CORNER OF THIS TRACT;

THENCE, N 71°48'29" E, ALONG THE SOUTH RIGHT-OF-WAY LINE OF COUNTY ROAD 2983, A DISTANCE OF 113.48 FEET TO A 1/4" FOUND IRON ROD AT THE BEGINNING OF A CURVE TO THE LEFT;

THENCE, ALONG THE SOUTH RIGHT-OF-WAY LINE OF COUNTY ROAD 2983 AND THE SAID CURVE TO THE LEFT AS FOLLOWS: R=610.00; L=648.19; CHORD=747.81; DELTA=134°14'57"; T=248.52; DEGREE OF CURVE=74°34'; AND CHORD BEARING=N 52°23'28" E TO A 1/4" FOUND IRON ROD FOR A CORNER OF THIS TRACT;

THENCE, N 35°12'48" E, A DISTANCE OF 73.85 FEET ALONG THE SOUTH RIGHT-OF-WAY LINE OF COUNTY ROAD 2983 TO A 1/4" FOUND IRON ROD WITH YELLOW CAP STAMPED "ANDERSON" FOR THE INTERSECTION OF THE SOUTH RIGHT-OF-WAY OF OLD 1398 SOUTH AND THE SOUTH LINE OF COUNTY ROAD 2983, SAID POINT BEING A NORTHWEST CORNER OF A CALLED 0.984 CONVEYED TO NORTH TEXAS MUNICIPAL WATER DISTRICT IN VOLUME 7124, PAGE 232, FOR A CORNER OF THIS TRACT;

THENCE, WITH THE SOUTH RIGHT-OF-WAY LINE OF OLD 1398 SOUTH AS FOLLOWS: S 77°32'35" E, A DISTANCE OF 127.44 FEET TO A 1/4" FOUND IRON ROD WITH YELLOW CAP STAMPED "ANDERSON"; S 75°13'38" E, A DISTANCE OF 89.81 FEET TO A FOUND CONCRETE RIGHT-OF-WAY MONUMENT; N 24°06'25" E, A DISTANCE OF 81.96 FEET TO A FOUND CONCRETE RIGHT-OF-WAY MONUMENT; S 82°08'18" E, PASSING A POINT AT A DISTANCE OF 84.31 FEET FROM WHICH A 1/4" FOUND IRON ROD BEARS NORTH 11.84 FEET AND CONTAINING A TOTAL DISTANCE OF 310.54 FEET TO A FOUND 5/8" IRON ROD WITH A 2" ALUMINUM DISC STAMPED "NORTH TEXAS MUNICIPAL WATER DISTRICT BOUNDARY" AT THE BEGINNING OF A CURVE TO THE RIGHT;

THENCE, ALONG SAID CURVE TO THE RIGHT WITH OLD 1398 SOUTH AS FOLLOWS: R=1096.28; T=84.83; DEG=105°13'28"; L=1294.71; CHORD=1414.40; DELTA=104°48'44"; AND BEARING=S 27°04'22" E TO A FOUND 5/8" IRON ROD WITH A 2" ALUMINUM DISC STAMPED "NORTH TEXAS MUNICIPAL WATER DISTRICT BOUNDARY" IN THE SOUTH RIGHT-OF-WAY OF OLD 1398 SOUTH, SAID POINT BEING THE NORTHWEST CORNER OF A CALLED 1.372 ACRES TRACT PARCEL CONVEYED TO NORTON TEXAS MUNICIPAL WATER DISTRICT IN VOLUME 1483, PAGE 438;

THENCE, ALONG 28 CALLS WITH THE 541 CONTOUR LINE, THE FOLLOWING APPROXIMATE COURSES AND DISTANCES AS FOLLOWS: S 34°59'57" W, 14.80 FEET; S 74°49'18" W, 31.55 FEET; S 04°39'50" W, 45.65 FEET; S 01°31'14" E, 22.28 FEET; S 50°42'28" W, 39.84 FEET; S 04°45'11" W, 49.81 FEET; S 22°49'55" E, 50.72 FEET; N 70°45'34" E, 48.84 FEET; S 44°01'45" E, 23.38 FEET; N 48°42'54" E, 27.88 FEET; N 72°27'34" E, 31.82 FEET; N 23°39'28" E, 54.88 FEET; N 20°04'41" E, 45.39 FEET; S 28°02'41" E, 62.33 FEET; S 02°46'44" E, 45.43 FEET; S 82°27'18" W, 46.84 FEET; S 09°03'11" W, 31.82 FEET; S 18°34'32" E, 38.14 FEET; S 19°10'10" W, 50.84 FEET; S 18°24'41" W, 38.24 FEET; S 18°24'41" W, 49.82 FEET; S 10°37'40" E, 38.84 FEET; S 04°04'54" W, 13.24 FEET; S 04°15'18" E, 24.84 FEET; S 88°53'57" E, 8.82 FEET; S 22°18'38" W, 12.21 FEET; N 78°27'41" E, 8.82 FEET; S 34°11'29" E, 54.82 FEET; N 47°04'58" E, 54.82 FEET; S 44°22'42" E, 24.84 FEET; S 18°28'17" W, 38.80 FEET; N 22°47'30" E, 83.88 FEET; S 51°21'46" E, 77.18 FEET; N 10°17'41" E, 44.84 FEET TO A FOUND 5/8" IRON ROD WITH A 2" ALUMINUM DISC STAMPED "NORTH TEXAS MUNICIPAL WATER DISTRICT BOUNDARY"; SAID POINT BEING A NORTHWEST CORNER OF THE REFERENCED WINDY TRACT PARCEL FOR A NORTHWEST CORNER OF THIS TRACT IN THE SOUTH RIGHT-OF-WAY OF OLD 1398 SOUTH;

THENCE, ALONG A CURVE TO THE RIGHT WITH THE OLD 1398 SOUTH PASSING A FOUND 5/8" IRON ROD WITH A 2" ALUMINUM DISC STAMPED "NORTH TEXAS MUNICIPAL WATER DISTRICT BOUNDARY" AT A DISTANCE OF 40.17 FEET AND CONTINUING WITH THE CURVE TO THE RIGHT AS FOLLOWS: R=1096.28; T=84.83; DEG=105°13'28"; L=1294.71; CHORD=1414.40; DELTA=104°48'44"; AND BEARING=S 27°04'22" E TO A FOUND CONCRETE RIGHT-OF-WAY MONUMENT IN THE SOUTH RIGHT-OF-WAY OF OLD 1398 SOUTH FOR A BULKHEAD IN THE EAST LINE OF THIS TRACT;

THENCE, S 13°15'43" E, A DISTANCE OF 738.14 FEET TO THE POINT OF BEGINNING AND CONTAINING 12.22 ACRES OF LAND MORE OR LESS;

## OWNER'S DEDICATION

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

THAT SCOTT RYE, MANAGING MEMBER OF BOB D'ARCE LAKE ACQUISITIONS, L.L.C. DO HEREBY ADOPT THIS PLAT OF 88.834 ACRES, DESIGNATING THE HEREIN ABOVE DESCRIBED PROPERTY AS THE HARBOR AT FIVE POINTS SUBDIVISION FANNIN COUNTY, TEXAS, AND DO HEREBY DEDICATE, IN FEE SIMPLE, THE USE HEREBY ESTABLISHED SHOWN THEREON. THE EASEMENTS SHOWN THEREON ARE HEREBY RESERVED FOR THE PURPOSES INDICATED. THE UTILITY AND FEE LANE EASEMENTS SHALL BE OPEN TO FIRE AND POLICE UNITS, GARBAGE AND RUBBISH COLLECTION AGENCIES, AND ALL PUBLIC AND PRIVATE UTILITIES FOR EACH PARTICULAR USE. THE MAINTENANCE OF PUBLIC UTILITY AND FEE LANE EASEMENTS IS THE RESPONSIBILITY OF THE PROPERTY OWNER. THE RIGHT OF ACCESS AND EGRESS TO PRIVATE PROPERTY FOR THE PURPOSE OF READING METERS AND ANY MAINTENANCE OR SERVICE REQUIRED OR ORDINARILY PERFORMED BY THAT UTILITY.

THE UNDERSIGNED OWNER OF THE ABOVE DESCRIBED PROPERTY STATES AND ACKNOWLEDGES THAT THE 80-FOOT WIDE STRIP OF LAND DESIGNATED AS LAKESHORE LANE, CEDARDALE LANE, TIMBERLAND HEIGHTS HARBOR BOULEVARD 80' ROAD, IS A PRIVATE ACCESS EASEMENT FOR THE BENEFIT OF ADJOINING LANDOWNERS ONLY AND THAT THE ROAD ON SAID EASEMENT IS A PRIVATE ROAD AND NOT A PUBLIC ROAD NOT A COUNTY ROAD OF WHICH ALL BUYERS OR TRANSFEREES OF ADJOINING PROPERTY ARE HEREBY NOTIFIED AND SHOULD TAKE NOTICE.

ALL BUYERS AND THEIR HEIRS WILL UNDERSTAND AND HOLD THE FANNIN COUNTY HARMLESS OF ANY LIABILITY FOR ANY UNOCCURRED ACCIDENT WITHIN THE ENTIRE PLATED LOTS INCLUDING PRIVATE ROADS.

EVERY DEED SHALL CONTAIN A NOTICE TO EACH GRANTEE THAT THE STREETS/ROADS ARE PRIVATE, THE OWNERS ARE LIABLE FOR MAINTENANCE AND THAT THE QUALITY OF THE STREETS/ROADS MAY AFFECT ACCESS BY EMERGENCY SERVICES.

FANNIN COUNTY TEXAS WILL NEVER ACCEPT OR MAINTAIN THE STREETS/ROADS UNLESS THEY MEET THE COUNTY CONSTRUCTION STANDARDS IN EFFECT ON THE DATE OF ACCEPTANCE. THE STREETS/ROADS WILL BE MAINTAINED IN PERPETUITY BY THE OWNERS IN THE SUBDIVISION AND PROVISIONS IS ESTABLISHED FOR ASSESSMENT OF PROPERTY TO PROVIDE REVENUE FOR PERPETUAL MAINTENANCE.

REGULATING THE FLOW OF WATER OR CONSTRUCTION IMPROVEMENTS AND FILLING OR OBSTRUCTION OF THE FLOOD WAYS IS PROHIBITED.

THIS PLAT APPROVED IS SUBJECT TO ALL PLATING ORDINANCES, RULES, REGULATIONS AND RESOLUTIONS OF FANNIN COUNTY TEXAS.

SELLING A PORTION OF THIS ADDITION BY METES AND BOUNDS IS A VIOLATION OF STATE LAW AND CITY ORDINANCES AND IS SUBJECT TO FINES AND WITHHOLDINGS OF UTILITIES AND BUILDING PERMITS.

WITNESS MY HAND ON THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2024.

SCOTT RYE, MANAGING MEMBER  
S.R. - 6/12/2024

STATE OF TEXAS, COUNTY OF FANNIN, TEXAS, I, TAYLOR PATRICK, A NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS ON THIS DAY PERSONALLY APPEARED SCOTT RYE, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2024.

Taylor Patrick  
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS  
My Notary ID# 13085992  
Expires October 12, 2024

COUNTY CLERK'S APPROVAL  
CERTIFICATE OF COMPLIANCE  
I, COUNTY CLERK OF FANNIN COUNTY, TEXAS, DO HEREBY CERTIFY THAT ON THE 18th DAY OF JUNE, 2024, THE FANNIN COUNTY COMMISSIONERS COURT BY APPROPRIATE WRITURE ORDER DID FIND THAT THIS FINAL PLAT OF THE HARBOR AT FIVE POINTS IS IN COMPLIANCE WITH APPLICABLE STATE AND COUNTY SUBDIVISION REGULATIONS AND DID APPROVE THE SAME FOR FILING IN THE PLAT RECORDS OF FANNIN COUNTY, TEXAS.  
CERTIFIED THIS 18th DAY OF JUNE, 2024.  
Cynthia J. DeLoach, Deputy  
FANNIN COUNTY CLERK, FANNIN COUNTY, TEXAS

COUNTY COMMISSIONERS APPROVAL  
STATE OF TEXAS  
COUNTY OF FANNIN  
FANNIN ALL MEN BY THESE PRESENTS

I, NEWELL CUNNINGHAM, COUNTY JUDGE OF FANNIN COUNTY, TEXAS DO HEREBY CERTIFY THAT THIS FINAL PLAT WITH FIELD NOTES IS IN COMPLIANCE WITH THE COMMISSIONERS COURT OF FANNIN COUNTY, TEXAS AND BY THE SAID COURT RULE CONSIDERED WAS ON THIS DAY APPROVED AND THE PLAT IS AUTHORIZED TO BE REGISTERED AND RECORDED IN THE PUBLIC RECORDS OF THE COUNTY CLERK OF FANNIN COUNTY, TEXAS.

NEWELL CUNNINGHAM  
COUNTY JUDGE  
FANNIN COUNTY, TEXAS  
DATE 6/18/24

**HARDIN SURVEYING**  
201 E. MASON STREET  
MABANK, TEXAS 75147  
(903) 857-5674  
FIRM# 10114700

DATE PERFORMED: FEBRUARY 19, 2024  
SCALE: 1"=200 FEET DRAWN BY: GH  
WORK ORDER: HARBOR AT FIVE POINTS  
FIELD BY: G CHECKED BY: TP

**SURVEYOR'S CERTIFICATE**  
I, GARY L. HARDIN, REGISTERED PROFESSIONAL LAND SURVEYOR NO. 4207, DO HEREBY CERTIFY THAT THE PLAT HEREON REPRESENTS THE RESULTS OF A SURVEY MADE ON THE GROUND UNDER MY DIRECTION AND SUPERVISION, THE LINES AND DIMENSIONS OF SAID PROPERTY BEING AS INDICATED.



EXISTING CREEKS OR DRAINAGE CHANNELS TRAVELING ALONG OR ACROSS THE ADDITION WILL REMAIN AS OPEN CHANNELS AND WILL BE MAINTAINED BY INDIVIDUAL OWNERS OF THE LOT OR LOTS THAT ARE TRAVERSED BY OR ADJACENT TO THE DRAINAGE COURSES ALONG OR ACROSS SAID LOTS.

THE COUNTY WILL NOT MAINTAIN ROADWAYS OR PUBLIC IMPROVEMENTS DEDICATED BY THIS PLAT EXCEPT BY AN EXPRESS ORDER OF THE COMMISSIONERS COURT, ENTERED OF RECORD IN THE MINUTES OF THE COMMISSIONERS COURT, SPECIFICALLY IDENTIFYING ANY ROADWAY OR PUBLIC IMPROVEMENT AND SPECIFICALLY ACCEPTING IT FOR COUNTY MAINTENANCE (SEC. 423.9)

OWNERS DEVELOPER  
BOB D'ARCE LAKE ACQUISITIONS, L.L.C.  
8827 COGGILL ROAD, STE 1  
KNOXVILLE, TENNESSEE 37922  
(615) 575-1800

SHEET 2 OF 3  
**FINAL PLAT  
THE HARBOR AT  
FIVE POINTS**  
59 LOTS  
86.534 ACRES  
J. KING SURVEY, A-57  
S. H. CAIN SURVEY, A-251  
T. TAYLOR SURVEY, A-1112  
FANNIN COUNTY, TEXAS



## Architectural Planning Criteria Dock Specifications

Complete, correct and in compliance with the SMP.

### Structural Components:

#### Commercial and residential -

All structural aluminum components shall be of 6000 series high strength marine grade aluminum.

Minimum thickness on all outer main frame E-channel shall be 3/16" and secondary components a minimum of 1/8".

Main frame E-channel minimum depth 10" with outer wall ribbed to provide aesthetics and increase web stiffness.

All tubing shall have radius corners and a minimum wall thickness of 1/8"; maximum 1/4"

### Decking Surface:

Extruded Lockdry™ aluminum decking panels to be 1" x 6" with raised ridges for added slip resistance.

Joist spacing to be set on a maximum of 36" centers maintaining minimal surface deflection.

Decking finish-Textured powder coat finish meets or exceeds AAMA 2604 for Salt Spray Resistance and Outdoor Exposure testing in South Florida.

Available colors: Buckskin, Hearthstone, and Granite Gray.

### Hardware:

All self drilling screws, bolts, nuts, and washers are stainless steel.

300 series - bolts

400 series - self drilling screws (zinc plating on self drilling flooring screws)

Main frame bolts shall be a minimum 3/8" diameter with self locking nuts.

**Flotation:**

Corp Approved EPS Billets – Totally enclosed with high-density polyethylene. Polyethylene shall contain UV Ray inhibitors and Carbon Black pigment to protect against ultraviolet deterioration. Nominal wall thickness .150. Impervious to petroleum products. Heavy duty mounting flanges and slots. 12-year warranty.

Foam: Virgin polystyrene beads closed cell with water absorption less than 3lbs./c.f. at seven days, when tested in accordance with ASTM C272.

**Dock access:**

Ramp/gangways to be all aluminum construction using an arched bridge truss design. High strength to weight ratio. Reinforcement gussets at all corners and connection points. Main structural component to be 2" tubing with radius corners.

Handrails/Guard Rail

37" to 42" above walking surface. No sharp corners, burrs, etc.

Ramp/gangways will meet ADA requirements where required with a minimum clear width of 5' and will include guardrail, handrail and kick plate.

Infill pickets are available to improve safety if desired. Spacing is 4" OC.

Rail shall be designed to accommodate a 250# concentrated load in any direction. Alternately guards shall be designed to resist a load of 50# per linear foot applied in any direction.

**Dock railing:**

Staircase and upper deck rails meet standard code with 4" centers for safety. Powder coat finish. Available in 36" to 42" height.

**Roof Panels - Commercial and Residential**

26 Gauge R-Loc panels with a Valspar Weather X coating. 30-year limited panel warranty. Optional 35-year warranty upon request.

Trimmed out & finished upper and lower perimeter edges.  
Color chart available.

**Bumpers:**

Vinyl Horizontal – All swim platforms or edges without vertical posts shall receive a P-shape, black rub rail fastened with stainless steel hardware.

Vinyl horizontal corner bumpers provided at finished ends of P-shape rub rail.



Frame Bumper – 1' x 1' polyethylene bumper, typically used around main frame perimeter concealing entire 10" band.

**Cleats:**

All cleats shall be 8" nylon. 10" cleats available if required.

Cleats will be provided on each side of every boat slip.

All parts of cleats should be smooth and incorporate large radii to ensure rope longevity.

**System Design:**

Main frame substructure consists of 2 1/4" x 10" heavy gauge E-channel integrated throughout.

Floor joist spacing for aluminum decking 24" OC. For decking supplied by others 12" up to 24" OC.

Floor joist material heavy weight 2 1/4" x 10" E-channel, 2 1/4" x 8" C-channel, and 2" x 2" square tube. Full 10" depth at post areas and braces.

Reinforcement bracing at high stress areas, corners, and connection points.

Roof support post constructed of 4" x 4" x 1/8" with radius corners integrated into main frame with 4" x 10" aluminum sleeve "receivers".

4" x 4" typically used for diagonal bracing where required for added strength and stability.

**Residential** - Structural roof support posts shall be a maximum of 8' spacing for upper deck roofs and 10' spacing for gable and hip roofs.

All purling material shall be of 6000 series heavy strength aluminum 2" x 2" tubing with all ends capped and shall be secured to C-channel truss system using stainless steel bolts, nuts and washers.

Roof support posts shall be incorporated into 8" C-channel roof truss and 10" E-channel main frame using corner sleeve extrusions with a 1/8" wall thickness.

Roof posts are secured in sleeves using double 3/8" stainless steel bolts and nylon lock nuts to give maximum anchorage and a secure connection.

**Commercial** – Structural roof support posts shall be a maximum of 6' spacing to meet R-Loc panel requirements.

All purling material shall be of 6000 series heavy strength aluminum 3" x 7" Z-beam and shall be secured to 4" support posts using stainless steel bolts, nuts and washers.

Double diagonal gussets included at all post sleeve locations in main frame as well as additional gussets added at all high stress and tension locations such as ramp/gangway and anchoring attachment points.

**Size Requirements:** Dock footprint shall meet square footage criteria regulated by permitting department.

**PLACEHOLDER FOR DESIGN DOCUMENTS TO BE INCLUDED PRIOR TO EXECUTION OF AGREEMENT**

Developer Documents

**EXHIBIT B**

Shoreline Lease and Use Agreement

DRAFT

**SHORELINE LEASE AND USE AGREEMENT  
BETWEEN NORTH TEXAS MUNICIPAL WATER DISTRICT and  
FIVE POINTS AND THE HARBOR AT FIVE POINTS POA**

This Shoreline Lease and Use Agreement (the “Agreement”) is between North Texas Municipal Water District (“NTMWD” or “District”), a wholesale water and wastewater provider that owns and operates Bois d’Arc Lake (the “Lake”) in Fannin County, Texas, and Bois d’Arc Lake Acquisitions, LLC. (“Developer”) and Five Points & The Harbor at Five Points POA (the “Association”), which serves Five Points and The Harbor at Five Points (Developer and Association may collectively be referred to as “Lessee”). NTMWD and Lessee may also be referred to individually as a “Party” or collectively as the “Parties.”

**Recitals**

WHEREAS, NTMWD and Lessee are authorized to enter into this Agreement pursuant to Chapter 62, Acts of the 52nd Legislature, 1951 (Article 8280-141, Vernon’s Texas Civil Statutes) and other applicable laws;

WHEREAS, NTMWD operates Bois d’Arc Lake (the “Lake”) as a public drinking water supply reservoir and allows opportunities for public recreation on the Lake;

WHEREAS, Developer owns land adjacent to NTMWD-owned property at the Lake (the “Property”) that is subject to the Five Points and The Harbor at Five Points covenants, conditions, and restrictions that are included herein as **Exhibit X**;

WHEREAS, the Developer has obtained final plat approval for the Development from Fannin County and has sold lots to third parties;

WHEREAS, prior to the sale of lots within the Development, the Developer predetermined areas adjacent to certain lots where future owners may request a Lease and Use Agreement from NTMWD;

WHEREAS, the Developer disclosed those predetermined areas to lot owners at the time of sale and lot owners may not request a Lease and Use Agreement from NTMWD outside of those predetermined areas without prior approval from the Developer or Association.

WHEREAS, Lessee seeks to lease and use the adjacent NTMWD-owned property (the “Leased Property”) and maintain improvements on the Leased Property, including structures and facilities on or over the water surface of the Lake (the “Improvements”) constructed by Developer pursuant to that certain Preliminary Development Agreement between the North Texas Municipal Water District and Bois d’Arc Lake Acquisitions, LLC. effective September \_\_, 2024 (the “Development Agreement”);

WHEREAS, the Association is the legal entity presiding over all shared Improvements within Five Points and the Harbor at Five Points communities and no other agreements will be allowed for shared Improvements on the Leased Property that were not part of the Development Agreement;

WHEREAS, Lessee acknowledges there is a Permanent Flowage and Flood Easement (the "Easement") associated with Property, on land located between the 541 feet mean sea level ("MSL") and 545 MSL contour elevations;

WHEREAS, Lessee is aware the conditions of the Easement are permanently in effect and are separate from the requirements and conditions of this Agreement and the Shoreline Management Plan ("SMP");

WHEREAS, this Agreement may authorize certain uses of the Easement, in addition to uses of the Leased Property, which shall not be inconsistent with conditions of the Easement, but may impose further restrictions on the Easement, for which Lessee agrees to comply with, in accordance with the terms of this Agreement;

WHEREAS, Developer completed construction of the Improvements on [REDACTED], 202 [REDACTED] (the "Project"); and

WHEREAS, pursuant to the Development Agreement, Lessee is required to enter into this Agreement, has reviewed this Agreement, and accepts its terms and conditions, including the general and special conditions described herein.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, NTMWD agrees to grant Lessee the right to lease and use the Leased Property, and Lessee agrees to pay for such lease and use, upon the terms and conditions and for the consideration hereinafter set forth, to wit:

**Lessee Information**

Name: Bois d'Arc Acquisitions, LLC.

Telephone, Area Code, and Number: 912-223-4390

Email: logue@llcinvest.com

Address: 9827 Cogdill Rd. Suite #1

City, State Zip Code: Knoxville, TN 37932

**Legal Description of Boundary Line with Leased Property (Survey attached)**

**[REDACTED], an addition to Fannin County, Texas according to the map and plat thereof recorded at [REDACTED] Official Map and Plat Records of Fannin County, Texas**

**Improvements Description (Specific structures and facilities) including a Site Plan**

**Use Description (Specific use and activities authorized)**

The following specific uses and activities are hereby authorized so long as such uses and activities are in compliance with the General Conditions of this Agreement and the SMP. Any uses or activities not authorized, such as a Special Event Authorization, must be separately authorized by NTMWD.

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## GENERAL CONDITIONS

1. **REFERENCES.** Except as otherwise specifically provided, any reference herein to NTMWD shall include its duly authorized representatives. Any reference to “Lessee” shall include their duly authorized representatives.
2. **AGREEMENT FEES.** Lessee shall pay, in advance, to NTMWD, compensation in accordance with **Exhibit X**. Fees are subject to change upon renewal of the Agreement.
3. **AGREEMENT SCOPE.** This Agreement is entered into solely with Lessee for the purpose described in this Agreement. The exercise of the privileges herein granted shall be:
  - a. without cost or expense to NTMWD;
  - b. subject to the right of NTMWD to improve, use, or maintain the Leased Property;
  - c. subject to other outgrants of NTMWD on the Leased Property except as otherwise provided herein;
  - d. this Agreement, or any interest therein, may not be transferred or assigned without the prior express written approval of NTMWD.
4. **TERM.** This Agreement shall be for a term of five (5) years with Lessee having the sole option to extend the Agreement for subsequent five-year terms subject to NTMWD revising the terms and conditions of the Agreement at the time of each renewal with such revisions being consistent with revisions made to other shoreline lease and use agreements, including but not limited to a current or updated fee/fine schedule. At least ninety (90) days prior to expiration of the Agreement, and any renewal thereof, Lessee may provide a Notice to Surrender its rights under the Agreement and elect to not renew the Agreement.
5. **RELEASE.** Upon the completion of Improvements as set forth herein and the transfer of Improvements to the Association, Developer may assign its rights and obligations under this Agreement to the Association and be released from Developer’s obligations and surrender any and all rights Developer may have under this Agreement to the Association with the prior express written approval of NTMWD.
6. **NOTICE.** Unless otherwise provided herein, any notice, communication, request, reply or advice (herein severally and collectively, for convenience, called “Notice”) herein provided or permitted to be given, made or accepted by any Party to any other Party must be in writing and may be given or be served by depositing the same in the United States mail postpaid and registered or certified and addressed to the Party to be notified, with return receipt requested, or by delivering the same to an officer of such Party, or by electronic mail, addressed to the Party to be notified at the email address provided below. Notice deposited in the mail in the manner described above shall be conclusively deemed to be effective, unless otherwise stated herein, from and after the expiration of three (3) days after it is so deposited. Notice given in any other manner shall be effective only if and when received by the Party to be notified. For the purposes of notice, the contact information of the Parties shall, until changed as hereinafter provided, be as follows:



If to Developer  
or Association:

If to NTMWD, to:

Jennafer P. Covington  
Executive Director/General Manager  
North Texas Municipal Water District  
P.O. Box 2408  
Wylie, Texas 75098  
972-442-5405  
jcovington@ntmwd.com

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

7. **OPERATION, MAINTENANCE REPAIR, & REPLACEMENT.** The operation, maintenance, repair, or replacement of Improvements authorized by this Agreement shall be performed at no cost or expense to NTMWD and subject to the express written approval of NTMWD. Anything not expressly authorized in writing by NTMWD as an Improvement activity or an approved deviation from an Improvement activity is expressly prohibited. Upon the completion of any of such operation, maintenance, repair or replacement, Lessee shall immediately restore the Leased Property to the satisfaction of NTMWD. The use and occupation of the Leased Property for the purposes herein granted shall be subject to NTMWD's property ownership rights, the policies as set forth in the SMP, and to all applicable federal, state, and local laws and regulations. If Improvements are removed for storage or extensive maintenance, NTMWD may require portions of the Improvements be removed from the Leased Property. Further, Lessee agrees to operate and maintain any Improvements and/or use in a manner so as to provide safety, minimize any adverse impact on fish and wildlife habitat, natural, environmental, or cultural resource values and in a manner so as to minimize the degradation of water quality.
8. **COMMUNITY FACILITY USE AND ACCESS.** NTMWD is not responsible for managing or maintaining access to, or use of, any Lessee community facilities located on the Leased Property. Lessee has sole responsibility of operation and maintenance of all Lessee community facilities located on the Leased Property. Lessee further has sole responsibility for interacting with individual property owners of the Association regarding access to, and use of, the Leased Property (including community facilities), and shall be solely responsible for ensuring property owners do not violate any terms of this Agreement. Any violation of this Agreement by an individual property owner shall be deemed a violation of this Agreement by Lessee and Lessee will be responsible for paying fines imposed by NTMWD due to violations by individual property owners, unless and excepting any improvements made by individual property owners after obtaining an individual Shoreline Lease and Use Agreement from NTMWD. Association shall continue to enforce covenants and restrictions, but individual lessees shall be solely responsible for

paying any fines imposed by NTMWD pursuant to the individual's Shoreline Lease and Use Agreement.

9. **LESSEE INSPECTION.** Lessee acknowledges it shall inspect the Improvements at reasonable intervals and immediately repair any defects found by such inspection or when required by NTMWD to repair any such defects.
10. **LESSEE'S REPRESENTATIONS.** Lessee represents that it will not be in violation of any regulations or restrictions imposed by Fannin County, Texas, or by any deed restrictions that may be attached to the Property, and that any required variance has been secured. Lessee further agrees to fully enforce the covenants, conditions, and restrictions of Association, as included in **Exhibit X** and as amended from time to time, against individual property owners of the Association. NTMWD assumes no responsibility for, and Lessee will hold NTMWD harmless from, disputes of title, rights, or liability for damages to persons or property arising from the construction, operation, maintenance, repair, or existence of any Improvements on the Leased Property. If at any time, the condition or presence of the Improvements interferes with the operation of the Lake or the safety of persons or property using the surface thereof, Lessee agrees to immediately make any and all changes or corrections necessary to make the Improvements comply with this Agreement or remove the Improvements from the Leased Property at Lessee's expense.
11. **RELEASE & ASSUMPTION OF RISK.** Lessee acknowledges that Bois d'Arc Lake is not a "constant level" or "controlled level" lake and is **SUBJECT TO DROUGHT OR FLOODING WITHOUT WARNING**. Lessee acknowledges and agrees that the Leased Property is accepted "**AS-IS, WHERE-IS,**" with all defects, whether known or unknown. Lessee recognizes the risk inherent in owning, operating, and maintaining Improvements in close proximity to, and over, the Lake because of the risks associated with flooding, high water, and drought conditions. These risks include, but are not limited to, lake level fluctuations resulting in Improvements, such as docks, being completely unusable during flood or drought conditions, which can extend over months or years, as it relates to multi-year drought conditions. As a condition of, and in consideration for, NTMWD's entering into this Agreement, as between NTMWD and Lessee, Lessee **AGREES TO ASSUME ALL RISK** of destruction of or damage to any Improvements and the property of Lessee or third parties located on the Property, Leased Property or Easement and to assume all risk of bodily injury or death to any person on the Property, Leased Property or Easement associated with the Improvements resulting from any cause. As part of the assumption of risk, Lessee, for itself and its heirs and assigns, **EXPRESSLY RELEASES NTMWD FROM ALL LOSS, COSTS, AND LIABILITY FOR (1) DAMAGE OR DESTRUCTION TO ANY OF ITS PROPERTY LOCATED ON OR AT THE PROPERTY, LEASED PROPERTY OR EASEMENT RESULTING FROM ANY CAUSE AND (2) BODILY INJURY OR DEATH TO LESSEE OR ANY FAMILY MEMBER OR OTHER PERSON AT THE PROPERTY, LEASED PROPERTY OR EASEMENT.**

12. **INDEMNIFICATION.** NTMWD shall have no liability whatsoever, either to Lessee, Lessee's successors, assigns, guest invitees or any other third party, for property damage to Lessee's Improvements or the contents thereof, **EVEN IF CAUSED BY NTMWD'S NEGLIGENCE.** NTMWD shall not be liable to Lessee or Lessee's guests, visitors, invitees or to any other person whomsoever, for any injury to person or damage to property on or about the Property, Leased Property or Easement due to **ANY CAUSE WHATSOEVER, INCLUDING WITHOUT LIMITATION, INUNDATION OR FLOODING OF THE PROPERTY, LEASED PROPERTY OR EASEMENT OR THE EFFECTS OF DROUGHT,** and Lessee agrees to indemnify NTMWD and hold it harmless from any loss, expenses, or claims including attorney's fees, arising out of any such damage or injury, **INCLUDING INJURY TO PERSON OR DAMAGE TO PROPERTY THE SOLE OR CONTRIBUTING CAUSE OF WHICH IS THE NEGLIGENCE OF NTMWD.** If any action or proceeding is brought against NTMWD by reason of any such claim, Lessee, upon notice from NTMWD, will defend such action or proceeding with counsel acceptable to NTMWD.
13. **WAIVER OF ANY TAKINGS CLAIM.** Lessee **WAIVES ANY CLAIM IT MAY NOW OR IN THE FUTURE HAVE AGAINST NTMWD FOR A STATE OR FEDERAL "TAKINGS" or "INVERSE CONDEMNATION"** of either the Property or the Improvements or the portion of the Leased Property or Easement on which the Improvements are located resulting from Lake levels being inconstant or from flooding, high water, drought, or similar occurrence, even if any of these occurrences are caused or alleged to be caused, in whole or in part, by NTMWD, whether through NTMWD's negligence or otherwise.
14. **NO GOODS OR SERVICES PROVIDED TO NTMWD.** The Parties agree that pursuant to this Agreement Lessee is not providing any "good or services" to NTMWD and this Agreement is not a contract subject to Chapter 271, Subchapter I of the Texas Local Government Code because no "goods or services," as such terms have been interpreted by courts in the State of Texas, are provided by Lessee to NTMWD pursuant to this Agreement.
15. **DAMAGE TO LEASED PROPERTY.** Lessee shall be liable for any and all damage that may be caused to the Leased Property by the activities of Lessee, or individual property owners of Lessee, under this Agreement and shall exercise due diligence in the protection of all property located on the Leased Property against fire or damage from any and all other causes. Any property of NTMWD damaged or destroyed by Lessee, or individual property owners of Lessee, incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by Lessee to a condition satisfactory to NTMWD, or at the election of NTMWD, reimbursement made therefore by Lessee in an amount necessary to restore or replace the property to a condition satisfactory to NTMWD.
16. **NTMWD'S ACCESS TO LEASED PROPERTY.** The right is reserved to NTMWD, its officers, agents, and employees to enter upon the Leased Property at any time and for any purpose necessary or convenient in connection with NTMWD work, to make inspections, to remove any material, except property of Lessee approved for use on the Leased Property,

and/or to make any other use of the lands as may be necessary in connection with NTMWD purposes, and Lessee shall have no claim for damages on account thereof against NTMWD or any officer, agent, or employee thereof. NTMWD's authorized representative shall be allowed to cross Lessee's property, excluding sold individual lots as shown on the recorded Plats unless such access is authorized by separate agreement, as necessary, to inspect Improvements. NTMWD will notify Lessee of any deficiencies noted and will establish a schedule for their correction. No deviation or changes from approved plans for Improvements will be allowed without prior written approval of NTMWD. Any deviations from the Improvements require prior written approval by NTMWD after Lessee submits a request to NTMWD for a deviation in writing. NTMWD has thirty (30) days to review and respond to the request from Lessee. Notwithstanding the foregoing, if NTMWD determines during an inspection that a noncompliance issue concerns a significant imminent threat to the environment or public health, safety, and general welfare, NTMWD may take whatever action necessary within the authority of NTMWD to eliminate such threat, including but not limited to, requiring Lessee to immediately address the noncompliance issue.

17. **COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS.** This Agreement is subject to all applicable federal and state laws and any applicable permits, ordinances, rules, orders, and regulations of any local, state or federal governmental authority having or asserting jurisdiction, including, but not limited to, the provisions of the latest edition of the National Electrical Code (NEC). Nothing contained herein shall be construed as a waiver of any right to question or contest any such law, ordinance, order, rule, or regulation in any forum, having jurisdiction. This Agreement does not authorize any injury to private property or invasion of private rights or any infringement of local, state or federal laws or regulations, nor does it obviate the necessity of obtaining local, state, or federal assent required by law for the operation, use, maintenance, or repair of the Improvement and/or use.
18. **RULES AND REGULATIONS.** The Leased Property shall be expressly subject to all rules and regulations promulgated by NTMWD for the construction, use, maintenance, and enjoyment of the Leased Property, including without limitation, all regulations and requirements of NTMWD, now or hereafter enacted. By signing this Agreement, Lessee specifically acknowledges that it has read the applicable requirements of the Bois d'Arc Lake Rules and Regulations, the SMP, and Fannin County Zoning Regulations and agrees that Lessee's use of the Leased Property shall at all times be in compliance with such plans and regulations.
19. **COMPLIANCE WITH OTHER AGREEMENTS.** Lessee shall remain in compliance with all other agreements between Lessee and NTMWD including, but not limited to, compliance with other agreements related to shoreline activities and applicable Flowage and Flood Easements. Non-compliance with any other NTMWD agreement, contract, lease, or easement shall be considered non-compliance with this Agreement.
20. **EROSION CONTROL STRUCTURES.** Lessee shall maintain, in a manner satisfactory to NTMWD, all soil and water conservation structures that may be in existence upon the

Leased Property at the beginning of this Agreement, and Lessee shall take appropriate measures to prevent or control soil erosion within the right-of-way herein granted. Lessee agrees to allow any adjacent landowner that holds a lease with NTMWD to connect to shoreline erosion control structures constructed by Lessee in order to facilitate contiguous shoreline erosion control between adjacent leased properties, including maintenance thereof. Any soil erosion occurring outside the Leased Property resulting from the use of the Leased Property shall be corrected by Lessee as directed by NTMWD.

21. **BOAT DOCK FACILITY USE.** Boat dock facilities shall be limited to the mooring of Lessee's, or Lessee's individual property owner's, vessels or watercrafts and the storage of equipment essential to the operation of such vessels or watercrafts. Equipment must be stored in enclosed storage box facilities, such as lockers or equipment closets. Equipment may not be left unsecured or unattended. Chemical and petrochemical products shall not be stored on a boat dock facility at any time and shall not be considered "equipment."
22. **COMMERCIAL ACTIVITIES PROHIBITED.** No attempt shall be made by Lessee to forbid the full and free use by the public of all waters adjacent to the Improvements. No charge may be made for use by others, excepting the assessments to cover non-commercial costs such as property lease payments, insurance, upkeep and maintenance to lot owners, of the Improvement nor shall commercial activities, including any form of advertising, be conducted thereon.
23. **HABITATION PROHIBITED.** No habitation is authorized on the Leased Property or the Easement. No Improvements, camping equipment, temporary structures, recreation vehicles, nor any moored vessel shall be used as a place of habitation or as a full or part-time residence or in any manner that gives the appearance of human habitation, including habitation of any pets, on the Leased Property or the Easement. Household furnishings are not permitted on boat docks or other structures.
24. **TRANSFER OF INTEREST.** Improvements authorized under this Agreement will not be rented (whether short-term or long-term, directly or indirectly, or through an internet-based company like Airbnb, Inc.), sub-let or provided to others by any means of engaging in commercial activities by Lessee or his/her agent for monetary gain. This does not preclude Lessee from selling total ownership of the Improvements or sub-letting boat slips to lot owners to share in the cost of lease and maintenance of the shared dock. If ownership of the Improvements is sold or transferred, Lessee or new owner will notify NTMWD of the action prior to finalization. The new owner must apply for a new Shoreline Lease and Use Agreement within thirty (30) days or remove the Improvements and restore the Leased Property within sixty (60) days from the date of ownership transfer. The new owner is responsible for paying any recording or processing fees.
25. **RECORD OF AGREEMENT FILED IN OFFICIAL PUBLIC RECORDS.** NTMWD will file a record of this Agreement, referred to as the "Record of Agreement," with the Fannin County Clerk in the Fannin County Official Public Records.

26. **FLOATS AND FLOTATION MATERIALS.** Floats and the flotation material for all docks shall be fabricated of materials manufactured for marine use and in accordance with the approved plans in **Exhibit X**. The float and its flotation material shall be one hundred (100) percent warranted for a minimum of eight (8) years against sinking, becoming waterlogged, cracking, peeling, fragmenting, or losing beads. All floats shall resist puncture and penetration and shall not be subject to damage by animals under normal conditions for the area. All floats and the flotation material used in them shall be fire resistant. The use of new or recycled plastic or metal drums or non-compartmentalized air containers for encasement or floats is prohibited.
27. **ANCHORING.** The gangways to boat docks, fishing piers, or any other overwater structure shall be securely attached to the shore in accordance with the approved plans by means of moorings that do not create tripping hazards along the shoreline or adversely affect the natural terrain or vegetation. Anchoring to vegetation is prohibited.
28. **DREDGING.** Unless authorized in writing by a special condition, this Agreement does not authorize lake dredging. Lake dredging requires an individualized analysis by the United States Army Corps of Engineers (“USACE”) to determine whether it must be approved by USACE. Lake dredging may be allowed for community docks, if the following conditions are met: 1) prior to dredging, the applicant must coordinate with NTMWD to obtain express written approval for the dredging activity; 2) if approval from NTMWD is obtained, the applicant must then obtain appropriate state or federal authorizations and/or permits, including a USACE Clean Water Act Section 404 permit, if required; 3) once any required state or federal authorizations and/or permits are obtained, the applicant must complete the NTMWD agreement process by providing NTMWD with copies of any such required authorizations and/or permits; and 4) Lessee must provide NTMWD with notification of the dredging activity that includes the estimated start date and end date for the dredging activity and a description of the specifications and construction methods to be employed during the dredging activity.
29. **IMPROVEMENT STANDARDS.** Docks and other permitted improvements must conform to the standards found in the SMP and **Exhibit X**. These standards address electrical service and lighting, signage, improvement size and length, improvement location and spacing, orientation of the improvement to the shoreline, improvement maintenance, and other features and amenities as described in the SMP. Any deviation from the SMP requirements will be considered a violation of this Agreement.
30. **PERSONAL PROPERTY.** Loose personal property that has the ability to float must be stored in a secure locker or removed from the Leased Property when not in use.
31. **AGREEMENT DISPLAY TAG.** The Agreement Display Tag shall be posted on the Improvements and/or on the land areas covered by the Agreement so that it can be visually checked with ease in accordance with instructions provided by NTMWD.
32. **VEGETATION.** No vegetation other than that prescribed in this Agreement will be damaged, destroyed, or removed. In no event will vegetation be disturbed to the extent the

right-of-way will be subject to erosion or natural beauty destroyed. All disturbed areas shall be seeded, replanted, or given some type of equivalent protection against subsequent erosion. No change in landform such as grading, excavation or filling is authorized by this Agreement. No vegetation planting of any kind may be done, other than that specifically prescribed. Only native species are allowed. An approved native plant list is provided in the SMP.

33. **VEGETATION MODIFICATION.** When vegetation modification is approved to control or remove invasive plants and is authorized by chemical means, the modification will be in accordance with appropriate federal, state, and local laws, rules, and regulations.
34. **LAKE AND SHORELINE ACCESS PRIOR TO LAKE OPENING.** NTMWD will notify Lessee in writing when the Lake is officially open for use. Until NTMWD notifies Lessee, Lessee is not permitted to use the Lake for any purpose, including but not limited to, launching watercraft from the shoreline for recreational use.
35. **LAKE AND SHORELINE ACCESS AFTER LAKE OPENING.** After the Lake is open, all watercraft must be launched from a NTMWD-approved ramp or a dock. This excludes non-motorized watercraft such as kayaks, canoes, and stand up paddle boards. Unless otherwise approved, neither Lessee nor individual lot owner may build a boat ramp or use any of their property to launch a watercraft except as set forth herein.
36. **PROPERTY LINE AND SIDE YARD LINE DELINEATION.** For this Agreement, Lessee will delineate the boundary line between the NTMWD-owned property and Lessee's property in a visibly clear, but unobtrusive manner approved by NTMWD and in accordance with the SMP. Lessee will also identify the intersection of the projected side yard line and the 534 MSL as depicted in the exhibits to this Agreement.
37. **PROHIBITED ITEMS.** Treated landscape timbers or the storage, transfer or use of hydrocarbons or other petrochemical products, paint, pesticides, herbicides, or any other toxic or hazardous materials are not allowed on the Leased Property.
38. **ELECTRICAL SAFETY AND COMPLIANCE.** Lessee shall comply with all applicable federal, state, county, municipal laws, ordinances, and regulations wherein the permitted facilities/activities are located, including, but not limited to, the provisions of the latest edition of the National Electrical Code (NEC). Failure to abide by these applicable laws and regulations may be cause for revocation of this Agreement.
39. **POLLUTION PREVENTION.** Within the limits of their respective legal powers, the Parties hereto shall protect the Leased Property against pollution of its air, ground, and water. Lessee shall promptly comply with any laws, regulations, conditions, or instructions affecting the activity hereby authorized if and when issued by the Environmental Protection Agency ("EPA"), USACE, Texas Commission on Environmental Quality ("TCEQ"), or any federal, state, or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the Leased Property is strictly prohibited. Such regulations, conditions, or instructions in effect or prescribed by

the said EPA, USACE, TCEQ, or any federal, state, or local governmental agency are hereby made a condition of this Agreement. Lessee shall not discharge waste or effluent from the Leased Property in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

40. **PESTICIDES AND HERBICIDES.** The use of any pesticides or herbicides within the Leased Property shall be in conformance with all applicable federal, state, and local laws and regulations. Lessee must obtain approval in writing from NTMWD before any pesticides or herbicides are applied to the Leased Property.
41. **ENVIRONMENTAL IMPACT.** Lessee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs arising from Lessee's activities, Lessee shall be liable to restore the damaged resources.
42. **TIMBER CLEARING.** No timber within the Leased Property above the 534 MSL contour shall be cleared. Standing timber below the 534 MSL contour may be cleared only if approved through this Shoreline Lease and Use Agreement. Lessee shall provide documentation of coordination with USACE in accordance with the procedures described in the SMP. Such USACE coordination shall only occur after NTMWD has reviewed the timber clearing proposal and provided direction to engage in such coordination. Any timber clearing authorized under this Agreement must be in compliance with any required USACE approvals, authorizations, or permits. Timber clearing shall be approved by NTMWD in writing and shall be in accordance with the Clean Water Act Section 404 Permit for Bois d'Arc Lake as provided in the SMP. Timber clearing not approved by NTMWD in writing is prohibited.
43. **CULTURAL RESOURCES.** Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural, or other cultural artifacts, relics, remains, or objects of antiquity on NTMWD-owned property. In the event such items are discovered on the NTMWD-owned property, Lessee shall immediately notify NTMWD and protect the site and material from further disturbance until NTMWD authorizes any further activity.
44. **TERMINATION OF AGREEMENT.** Because the cost of the Improvements was made with the expectation that Lessee would have the benefit of the Leased Property for the full term of this Agreement, Lessee may only be terminated if the matters noticed in **Exhibit X** under the Violations and Penalty Provisions of this Agreement have not been cured in accordance with such provisions.
45. **IMPROVEMENT REMOVAL.** On or before the expiration or termination of this Agreement or if Lessee ceases to use, operate, or maintain an Improvement and/or use, Lessee shall, without expense to NTMWD, remove said Improvements and restore the waterway and lands to the satisfaction of NTMWD within thirty (30) days. In the event Lessee shall fail to remove said Improvements and restore the Leased Property, NTMWD shall have the option to take over said Improvements without compensation, or to remove said Improvements and perform the restoration at the expense of Lessee, and Lessee shall



have no claim for damages against NTMWD or its officers or agents for such action and no refund by NTMWD of any fee theretofore paid shall be made. Lessee agrees that if subsequent operations by NTMWD require an alteration in the location of an Improvement and/or use and if in the opinion of NTMWD an Improvement and/or use shall cause unreasonable obstruction to NTMWD use of the land or water area where the Improvement or use is located, Lessee shall be required, upon written notice from NTMWD, to remove, alter, or relocate the Improvement without expense to NTMWD.

46. **OTHER PERMITS REQUIRED.** This Agreement is effective only insofar as the rights of NTMWD in the Leased Property and Easement are concerned, and Lessee shall obtain such permission as may be required on account of any other existing rights. It is understood that the granting of this Agreement does not eliminate the necessity of obtaining any other permit or license that may be required by federal, state, or local statute in connection with use of the Leased Property, including, but not limited to, any permits or authorization from USACE to ensure compliance with the Clean Water Act.
47. **SANITATION.** Lessee shall take all necessary action and provide all necessary Improvements to maintain the Leased Property in a clean and sanitary manner, removing promptly and regularly trash and garbage from the said area. Any materials and refuse from construction, maintenance and repair activities are to be removed from the Leased Property immediately upon completion of such activities.
48. **LICENSED PROFESSIONAL ENGINEER REQUIRED.** NTMWD may require that remedial measures other than minor repairs and maintenance, and plans for same, be reviewed, designed, and sealed by a Texas Licensed Professional Engineer and approved by NTMWD.
49. **FINAL PLAT MAPS.** In the event final plat maps were not provided by Developer to NTMWD prior to the Effective Date, Lessee shall be required to provide NTMWD with all final plat maps and specifications within thirty (30) days of such maps and specifications being finalized.
50. **SEVERABILITY.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.
51. **NO JOINT VENTURE.** It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create any partnership or joint venture among the Parties. NTMWD, its past, present, and future officers, elected officials, employees and agents of NTMWD, do not assume any responsibilities or liabilities to any third party in connection with the improvements to, or use of, the Leased Property.
52. **REPRESENTATIONS AND WARRANTIES.** Each Party represents and warrants to the other Party that (i) the Party has full requisite power and authority to perform its obligations

under this Agreement; (ii) the execution, delivery, and performance of this Agreement has been duly authorized by all necessary action of the board of directors or other applicable governing body of the Party; (iii) this Agreement is a valid and binding obligation of the Party enforceable against the Party in accordance with its terms, except as the enforceability may be limited by applicable bankruptcy, insolvency or other law affecting creditors' rights generally, and by general equitable principles; and (iv) the execution, delivery, and performance of this Agreement by the Party does not, and will not: (A) violate the statute, charter, or other instrument pursuant to which the Party was created; (B) violate the Constitution of the State of Texas, or any other law, rule or regulation by which the Party is bound; (C) violate any judgment, writ, order, injunction, award, or decree of any court, arbitrator, administrative agency or other governmental authority which is binding upon the Party; or (D) result in a material breach, violation, or default under any indenture, mortgage, ordinance, bond resolution, contract, deed of trust, debenture, agreement, or other instrument to which the Party is a party.

53. **ENTIRE AGREEMENT – NO ORAL MODIFICATIONS.** This Agreement embodies the entire Agreement of the Parties, superseding all oral or written previous and contemporary agreements between the Parties relating to matters set forth in this Agreement. Except as otherwise provided elsewhere in this Agreement, this Agreement cannot be modified without a written agreement executed by both Parties.
54. **NO THIRD PARTY BENEFICIARIES.** Lessee and NTMWD enter into this Agreement solely for the benefit of themselves and agree that nothing in this Agreement shall be construed to confer any right, privilege or benefit on any person or entity other than Lessee and NTMWD.
55. **VENUE.** It is specifically agreed among the Parties to this Agreement that Fannin County, Texas, is the place of performance of this Agreement; and, in the event that any legal proceeding is brought to enforce this Agreement or any provision hereof, the same shall be brought in Fannin County, Texas.
56. **ADOPTION OF PREAMBLE AND EXHIBITS.** All of the statements in the preamble and all of the exhibits of this Agreement are true and correct and are hereby incorporated into the body of this Agreement as though fully set forth in their entirety herein.

#### **SPECIAL CONDITIONS *(To be completed for each project)***

#### **VIOLATIONS AND PENALTIES**

1. Lessees will be held accountable to the conditions outlined herein. If a violation is identified, NTMWD will follow the steps outlined below:

*First Notice:* NTMWD will generally issue a written warning notifying Lessee of the violation, outlining actions to correct the violation, and providing a resolution timeframe. Depending on the non-compliance issue (e.g. is the issue an imminent health or safety concern), the time provided for resolution and the degree to which NTMWD may step in and proactively correct an issue may vary. Some violations may immediately generate a fine. NTMWD may, at its discretion, waive fines to be imposed at the first notice. NTMWD

will follow up within the specified timeframe to document resolution of the issue. Increased frequency of monitoring and inspection may be warranted for a period of time following resolution.

Second Notice: A second notice may involve the same activity or conditions as the first notice, or it may be a new issue. Second notices for the same situation that triggered the first notice will also be linked to increased fines and shorter resolution timeframes. Lessees will be required to reimburse NTMWD for costs associated with monitoring, inspection, and follow-up for second notice actions.

Third Notice: Three notices for the same or different instances of non-compliance with this Agreement within one year will trigger a notice to revoke or terminate this Agreement. Lessee will have thirty (30) days to remove Improvements at his or her expense and restore the Leased Property to its condition prior to the construction of the Improvements (if applicable). Lessee may appeal a notice of termination to NTMWD within fifteen (15) days of receiving the notice. NTMWD will respond to Lessee within thirty (30) days.

2. Resolution timeframes and fines are dependent on the harm that may occur to people, property, and resources if the violation were to continue. Violations that are hazardous, or potentially hazardous, generally have shorter resolution timeframes and higher penalties than administrative violations. **Exhibit X** outlines resolution timeframes, remedies, and penalties for various violations.

#### **EFFECTIVE DATE AND TERM**

This Agreement becomes effective on the date this Agreement is signed by both Parties (the “Effective Date”) and will be valid for five years after the date of the latest signature. This Agreement will expire on \_\_\_\_\_.

#### **AUTHORIZATION**

This Agreement authorizes the lease and use of NTMWD-owned property described herein. If Lessee implements a project that differs from the Project described herein, Lessee will be subject to penalties and fines, described in this Agreement, and potentially termination.

#### **EXECUTION**

The Parties hereto acting under authority of their respective governing bodies have caused this Agreement to be duly executed in several counterparts, each of which shall constitute an original.

*[The remainder of this page is intentionally left blank. Signatures are on the following pages.]*

**LESSEE: XXXXXXXXX**

By: \_\_\_\_\_  
**INSERT NAME, TITLE** Date \_\_\_\_\_

STATE OF TEXAS §  
  §  
COUNTY OF **INSERT** §

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_,  
by **INSERT NAME, TITLE of LESSEE.**

\_\_\_\_\_  
Notary Public, State of Texas  
Printed Name of Notary:

\_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**LESSEE: ASSOCIATION**

By: \_\_\_\_\_  
**INSERT NAME, TITLE** Date \_\_\_\_\_

STATE OF TEXAS §  
  §  
COUNTY OF **INSERT** §

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_,  
by **INSERT NAME, TITLE of LESSEE.**

\_\_\_\_\_  
Notary Public, State of Texas  
Printed Name of Notary:

\_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**NORTH TEXAS MUNICIPAL WATER DISTRICT**

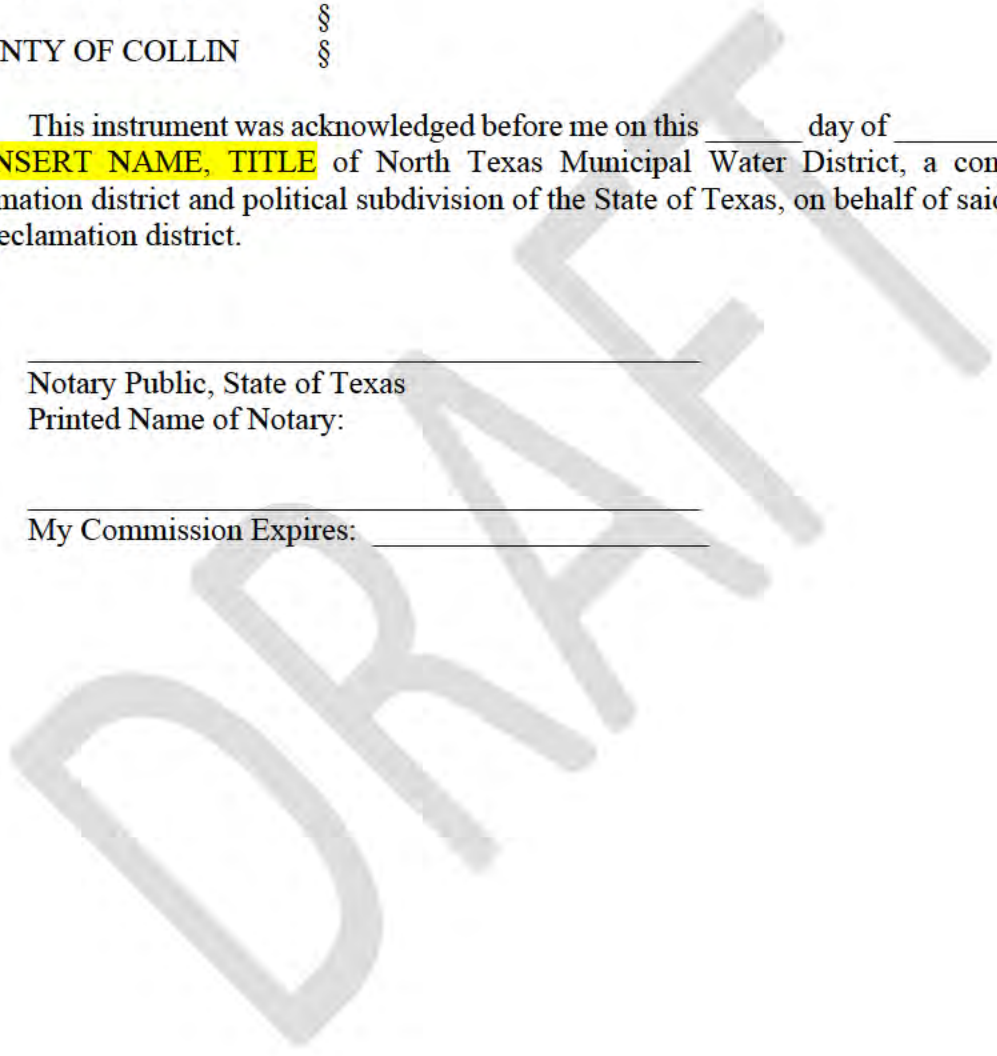
By: \_\_\_\_\_ Date \_\_\_\_\_  
**INSERT NAME, TITLE**

STATE OF TEXAS           §  
  §  
COUNTY OF COLLIN       §

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_, by **INSERT NAME, TITLE** of North Texas Municipal Water District, a conservation and reclamation district and political subdivision of the State of Texas, on behalf of said conservation and reclamation district.

\_\_\_\_\_  
Notary Public, State of Texas  
Printed Name of Notary:

\_\_\_\_\_  
My Commission Expires:



## **EXHIBIT C**

Agreement Fees and Remedies and Penalties for Violations

DRAFT

## Agreement Fee Schedule

Agreement Type	Activity/Facility	Application Fee (\$)	Annual Fee	Incentives/Additional Information
Preliminary Development Agreement	Community and Shared Dock/Overwater Structures	Application/ First Year: \$22,065	For years 2 through 5 of a 5-year agreement: \$6,500	All shoreline use activities/facilities will be combined on one permit. Only the higher fee identified will be assessed.  If erosion control or stormwater runoff treatment BMPs are provided supplementary to any required erosion control; an incentive reduction of 50 percent of the annual fee may be applied.
Preliminary Development Agreement	Modification fee	25-100 percent of the original application fee	N/A	

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## Remedies and Penalties for Violations

Violation <sup>1</sup>	Violation Category <sup>2</sup>	Remedy <sup>2</sup>	Resolution Timeframe (days) <i>First Notice</i> <sup>2</sup>	Resolution Timeframe (days) <i>Second Notice</i> <sup>2</sup>	Fine (\$) <i>First Notice</i> <sup>2</sup>	Fine (\$) <i>Second and Third Notices</i> <sup>2</sup>
Unauthorized burning	Major	Immediately stop unauthorized burning and remove debris from NTMWD-owned property	1	N/A	\$200	N/A
Storage or placement of fuel, oil, treated landscape timbers, pesticides, or other hazardous materials on docks or NTMWD-owned property	Major	Remove hazardous materials from NTMWD-owned property and store in secure location on private property	5	1	N/A	\$200
Unauthorized use of pesticides/fertilizers on leased property	Major	Stop unauthorized use of pesticides and report changes in water quality (e.g., algal blooms and/or dead fish) to NTMWD	1	N/A	\$200	N/A



<b>Violation<sup>1</sup></b>	<b>Violation Category<sup>2</sup></b>	<b>Remedy<sup>2</sup></b>	<b>Resolution Timeframe (days) First Notice<sup>2</sup></b>	<b>Resolution Timeframe (days) Second Notice<sup>2</sup></b>	<b>Fine (\$) First Notice<sup>2</sup></b>	<b>Fine (\$) Second and Third Notices<sup>2</sup></b>
Unauthorized placement or storage of personal property on NTMWD-owned property and/or water	Major	Remove personal property from NTMWD-owned property and store in a secure location on private property	5	1	N/A	\$200
Unauthorized use of private overwater facility (e.g., human habitation on boat dock, storing nonauthorized vessels or watercraft at an approved boat dock, subletting boat dock)	Major	Stop unauthorized use and restore facility to post-violation conditions (e.g., remove evidence of human habitation from boat dock)	15	3	200	\$200
Unauthorized dock structure or dock modification	Major	Stop construction (if applicable) and restore facility to pre-violation conditions	15	3	200	\$200
Unauthorized vegetation modification (e.g., removing vegetation outside of an authorized area, changing landform, planting unauthorized plants)	Major	Stop violation and restore to pre-violation conditions (e.g., replant with authorized native plant species)	30	5	200	\$200

<b>Violation<sup>1</sup></b>	<b>Violation Category<sup>2</sup></b>	<b>Remedy<sup>2</sup></b>	<b>Resolution Timeframe (days) First Notice<sup>2</sup></b>	<b>Resolution Timeframe (days) Second Notice<sup>2</sup></b>	<b>Fine (\$) First Notice<sup>2</sup></b>	<b>Fine (\$) Second and Third Notices<sup>2</sup></b>
Deviation from approved dock construction plans (e.g., construction materials, anchoring methods, etc.)	Major	Reconstruct dock to conform to approved construction plans	30	5	N/A	\$200
Unauthorized access path construction	Major	Stop construction and restore area to pre-violation conditions	15	5	200	\$200
Emerging erosion issues (signs may include shoreline recession, increased water turbidity and discoloration in the surrounding area, bare soil, exposed plant roots, and unstable banks)	Major	Stop erosion producing activity and install erosion control devices and/or plant native vegetation	30	5	200	\$200
Unauthorized use of a mobility assistance vehicle	Major	Stop unauthorized use, restore area to pre-violation conditions (if applicable)	15	3	N/A	\$200
Failure to delineate the NTMWD boundary line	Moderate	Delineate and mark the NTMWD boundary line using methods approved in the Shoreline Management Plan	15	10	N/A	\$200

Violation <sup>1</sup>	Violation Category <sup>2</sup>	Remedy <sup>2</sup>	Resolution Timeframe (days) First Notice <sup>2</sup>	Resolution Timeframe (days) Second Notice <sup>2</sup>	Fine (\$) First Notice <sup>2</sup>	Fine (\$) Second and Third Notices <sup>2</sup>
Failure to restore the leased area after completion of a permitted activity or after the lessee damages the area	Moderate	Restore area to pre-lease conditions (e.g., restore vegetation, install erosion control measures such as water bars and vegetated swales)	30	15	N/A	\$85/day
Failure of POA or developer to apply for shoreline use agreement for existing uses within 30 days or to restore the use area within 60 days from the date of ownership transfer	Moderate	Apply for a new shoreline lease and use agreement or restore the use area	30	15	N/A	\$85/day
Failure to display agreement tags on authorized facilities	Minor	Display agreement tags according to agreement conditions and Shoreline Management Plan requirements	30	15	N/A	\$150/week
Failure to have a copy of the agreement with the mobility assistance vehicle during use on NTMWD-owned property	Minor	Carry agreement according to authorization conditions	1	1	N/A	\$150

<b>Violation<sup>1</sup></b>	<b>Violation Category<sup>2</sup></b>	<b>Remedy<sup>2</sup></b>	<b>Resolution Timeframe (days) First Notice<sup>2</sup></b>	<b>Resolution Timeframe (days) Second Notice<sup>2</sup></b>	<b>Fine (\$) First Notice<sup>2</sup></b>	<b>Fine (\$) Second and Third Notices<sup>2</sup></b>
Failure to pay agreement fees	Minor	Pay outstanding agreement fee	30	15	N/A	\$150/week
Failure to renew an agreement	Minor	Apply for a new agreement and pay associated application fees	30	15	N/A	\$150/week
Failure to complete construction within allowed time limit	Minor	Apply for new agreement and pay associated application fees	30	15	N/A	\$150/week
Noncompliance with applicable laws, ordinances, and regulations	NA	NTMWD reports violations to the appropriate authority for enforcement	Depends on law/regulation	Depends on law/regulation	Depends on law/regulation	Depends on law/regulation

<sup>1</sup>Penalties may be assessed individually for discrete facilities and occurrences

<sup>2</sup>NTMWD = North Texas Municipal Water District; N/A = not applicable; SMP = Shoreline Management Plan