

**CONTRACT FOR RESERVATION, DIVERSION, AND USE OF RAW WATER
BY AND BETWEEN THE CITY OF GARLAND AND
THE NORTH TEXAS MUNICIPAL WATER DISTRICT**

This Contract for Reservation, Diversion and Use of Raw Water (the “*Agreement*”) is made and entered into as of the ____ day of March, 2024 (the “*Effective Date*”), by and between North Texas Municipal Water District, a conservation and reclamation district established pursuant to the Constitution and laws of the State of Texas (hereafter called “*District*”), and the City of Garland, a home rule city in the State of Texas operating pursuant to its home rule charter and the laws of the State of Texas (hereafter called “*Garland*”). In this Agreement, *District* and *Garland* are individually called a “*Party*,” and collectively called the “*Parties*.”

RECITALS:

Whereas, *District* is a conservation and reclamation district and political subdivision of the State of Texas, created and functioning under Article 16, Section 59 of the Texas Constitution and its enabling legislation, Article 8280-141, as amended (the “*District Act*”);

Whereas, *District* and *Garland* are authorized to enter into this Agreement pursuant to the *District Act*, and Chapter 791 of the Texas Government Code, and other applicable laws;

Whereas, *Garland* owns and operates a municipal electric generating plant and distribution system, has constructed an electric generating plant (the “*Plant*”) on the perimeter of Lavon Lake, and water in said reservoir is used, in part, for condenser circulating water at the *Plant*;

Whereas, *District* is authorized to divert and use water from Lavon Lake for industrial purposes pursuant to Certificate of Adjudication No. 08-2410, as amended;

Whereas, *District* has ongoing agreements with the United States of America (Contract No. DA-41-443-eng-3413 and Contract No. DACW63-67-C-0116) to utilize water storage space in Lavon Lake, said agreements include provisions for *District* to participate in cost-sharing with the United States of America for operation and maintenance activities associated with Lavon Lake;

Whereas, the *Parties* entered into that certain North Texas Municipal Water District Regional Water Supply Facilities Amendatory Contract dated August 1, 1988, as amended, under which *Garland* is being supplied treated water for municipal purposes;

Whereas, the *Parties* entered into that certain Industrial Raw Water Supply Contract dated August 1, 1988, amended as of February 28, 2008 (the “*1988 Contract*”) that expires on August 1, 2023, under which *Garland* purchases raw water for industrial purposes from the *District* to operate the *Plant*;

Whereas, the *1988 Contract* requires *Garland* to compensate *District* for raw water diverted and used as required by *Garland* in an amount not to exceed 4,000 acre-feet per calendar year, said compensation based costs for raw water and for use of conservation storage space in Lavon Lake;

Whereas, *Garland* desires to continue purchasing raw water for industrial purposes from *District* for use at the *Plant*, but desires less than the amount authorized for diversion and use in the *1988 Contract* due, in part, to future improvements at the *Plant* that involve the use of more water efficient power generation equipment;

Whereas, *Garland* desires to have the right, but not the obligation, to divert and use at the *Plant* up to one-thousand five-hundred (1,500) acre-feet of raw water per calendar year from Lavon Lake for industrial purposes;

Whereas, *Garland* and *District* entered into letter agreements to extend the *1988 Contract* through April 30, 2024 on August 23, 2023 and December 20, 2023 and *Garland* and *District* now desire to enter into this Agreement to completely replace and supersede the 1988 Contract in its entirety; and

Whereas, the *Parties* recognize that this Agreement has some terms and conditions consistent with terms and conditions of the Contract for Reservation, Diversion, and Use of Effluent dated July 5, 2007 as may be amended (the “*Reuse Contract*”) regarding the *District’s* purchase of effluent water, and the Parties further recognize that such consistency shall be maintained in any amendment to, or replacement of, the *Reuse Contract*;

For and in consideration of this Agreement, the consideration stated below, in consideration of the mutual covenants set forth herein, and for other good and valuable consideration, the receipt of and sufficiency of which are hereby acknowledged and confessed, the *Parties* agree as follows:

I. TERM

- 1.01. **Primary Term.** The initial term of this Agreement (the “*Primary Term*”) is a period of twenty-five (25) years, commencing on the Effective Date, subject, however, to the right of *Garland* to unilaterally terminate this Agreement as provided in Section 1.03 below.
- 1.02. **Renewal Term.** Upon the mutual written agreement of the *Parties*, the *Primary Term* may be extended for one (1) additional term of twenty-five years (the “*Renewal Term*”), commencing immediately following the termination date of the *Primary Term*, subject, however, to the right of *Garland* to unilaterally terminate this Agreement as provided in Section 1.03 below. Unless expressly waived by the *Parties*, their mutual written agreement to extend the *Primary Term* shall be executed at least five (5) years prior to the termination of the *Primary Term*.
- 1.03. **Garland’s Right of Unilateral Termination.** At any time within the *Primary Term* or the *Renewal Term*, *Garland* reserves the unilateral right and option, but not the obligation, to terminate this Agreement at the time that: (a) *Garland* determines in its sole discretion that raw water from Lavon Lake is no longer desired at the *Plant*, or (b) the *Plant* ceases to be operated by *Garland*. Such right or option to terminate shall become effective on the 365th day following the date that *Garland* deposits written notice of its election to exercise such right or option to *District* by certified mail, return receipt requested, together with *Garland’s* pre-payment of a *Reserved Water Fee* (described in Section 4.01 below), calculated at the minimum flow rate specified in Section 2.01 below and for the following twelve (12) month period.
- 1.04. **District’s Right to Terminate.** At any time within the *Primary Term* or the *Renewal Term* the *District* reserves the right and option, but not the obligation, to terminate this Agreement at the time that:
 - a. (i) *Garland* is in breach of a material term of this Agreement; (ii) *District* has provided *Garland* with written notice of such breach; and, (iii) following a period of ninety (90) days, *Garland* has failed to cure such breach; or

- b. *Garland*, except in the event of a force majeure, has abandoned the *Plant* or has substantially discontinued the use of *Diverted Water* (as defined in Section 3.01 below) for purposes of the *Plant* for a period of five (5) or more years.

II.

QUANTITY, QUALITY AND DELIVERY OF RESERVED WATER

2.01 **Reserved Water Quantity.** For and in consideration of the *Reserved Water Fee* described in Section 4.01 below, and except as provided in Section 2.02 below, *District* shall tender and make available to *Garland*, for its own diversion and use and at the delivery point hereinafter specified, one-thousand five-hundred (1,500) acre-feet of raw water per calendar year. Any such raw water made available by the *District* shall be referred to as “*Reserved Water.*” The *District* hereby agrees to maintain during the *Primary Term*, and during the *Renewal Term* if this Agreement is extended pursuant to the provisions of Section 1.02 above, availability of *Reserved Water* for *Garland*’s diversion and use. *Garland* hereby agrees to pay the *District* for all *Reserved Water*, whether diverted or not, in accordance with the provisions of Part IV hereof, captioned “Consideration.”

2.02 **Water Quality.**

- a. THE WATER THAT *DISTRICT* OFFERS TO SELL TO *GARLAND* UNDER THIS AGREEMENT IS NON-POTABLE, RAW, AND UNTREATED. *GARLAND* HAS SATISFIED ITSELF THAT SUCH RAW WATER IS SUITABLE FOR ITS NEEDS AND ACKNOWLEDGES AND AGREES THAT *DISTRICT* SHALL NOT BE OBLIGATED TO TREAT IN ANY MANNER ANY RAW WATER MADE AVAILABLE BY *DISTRICT* AND RECEIVED BY THE DISTRICT UNDER THIS AGREEMENT. *DISTRICT* EXPRESSLY DISCLAIMS ANY WARRANTY AS TO THE QUALITY OF THE RAW WATER OR SUITABILITY OF THE RAW WATER FOR ITS INTENDED PURPOSE. *DISTRICT* EXPRESSLY DISCLAIMS THE WARRANTIES OF MERCHANTABILITY AND FITNESS. *GARLAND* ACKNOWLEDGES THAT NO WARRANTIES, EXPRESS OR IMPLIED, EXIST REGARDING THE RAW WATER TO BE PURCHASED FROM *DISTRICT*, AND AGREES THAT ANY VARIATION IN THE QUALITY OR CHARACTERISTICS OF THE RAW WATER OFFERED FOR SALE AS PROVIDED BY THIS AGREEMENT SHALL NOT ENTITLE *GARLAND* TO AVOID OR LIMIT ITS OBLIGATION TO MAKE PAYMENTS AS PROVIDED BY THIS AGREEMENT. THERE ARE NO WARRANTIES THAT EXTEND BEYOND THE DESCRIPTION CONTAINED IN THIS AGREEMENT. *GARLAND* ASSUMES FULL RESPONSIBILITY WITH RESPECT TO THE TREATMENT OF THE WATER PRIOR TO ITS DISTRIBUTION FOR HUMAN CONSUMPTION OR ANY OTHER USES.
- b. It is mutually agreed that no detrimental effects are anticipated from the discharge or uses of said raw water to Lavon Lake or *District*, but *Garland* does agree:
 - (i) to maintain water quality standards and temperatures of discharge within limits as established by the Environmental Protection Agency, the Texas Commission on Environmental Quality (“*TCEQ*”), and any agency having applicable jurisdiction;
 - (ii) that should a study of the effects of the *Plant* on the treatability of water in Lavon Lake be deemed necessary by *District*, *Garland* shall pay 50% of the cost of such study; and

- (iii) that said payments to *District* under this Agreement do not provide for any changes to the water quality of Lavon Lake or detrimental effects that increase the cost for processing potable drinking water by *District*.

- 2.03 **Point of Delivery.** The point of delivery of raw industrial water shall be at the raw water intake structure constructed by *Garland* as stated in Section 4.06 hereof, captioned “Special Conditions.” The diversion point is located at a point S 84° W, 4,055 feet from the NW corner of Maria Ignacio Giminez Survey, A-338, Collin County, Texas.
- 2.04 **Subordination of Water.** *Garland* hereby recognizes that as of the Effective Date, the *District* has infrastructure in place at Lavon Lake for the diversion of raw water pursuant to Certificate of Adjudication No. 08-2410, as amended. *Garland* agrees that *Garland*’s rights under this Agreement are subordinate to the *District*’s rights to raw water. Any new agreement to supply water for industrial use from Lavon Lake entered into by *District* after the Effective Date shall be subordinate to the rights of *Garland* under this Agreement.

III.

GARLAND’S RIGHT TO DIVERT AND USE WATER

- 3.01 **Right to Divert.** In consideration of *Garland*’s payment to *District* of the *Diverted Water Fee* referenced in Section 4.02 below, *Garland* shall have the right, but not the obligation, to divert for its use or for use in the *Plant* all or any portion of the *Reserved Water*. Any *Reserved Water* so diverted by *Garland* shall be referred to as “*Diverted Water*.”
- 3.02 **No Duty to Divert Water.** No provision of this Agreement shall require *Garland* to divert any *Reserved Water*, or to pay *District* the *Diverted Water Fee*, unless *Garland* actually diverts water from Lavon Lake. In addition, no provision in this Agreement shall be construed to limit the right of *Garland* to divert water hereunder or deliver water for its use or for use in the *Plant* from other sources available to it, even if it means that, from time to time, *Garland* may divert water for its own use or for use in the *Plant* from sources other than the *Reserved Water*.
- 3.03 **Low Lake Level Requirements.** By their execution of this Agreement, the *Parties* acknowledge that *Garland*’s rights to divert historical and future raw water volumes from Lavon Lake are limited to times when the mean sea level elevation of Lavon Lake is within limits pursuant to the *District*’s latest storage space agreements with the United States of America. The *District* does not guarantee lake levels will be sufficient for *Garland* to access water nor is it responsible for siltation or other factors that may impact *Garland*’s ability to physically access or use water from Lavon Lake.
- 3.04 **Title to Water and Reuse.**
- a. Title to all *Reserved Water* shall remain with the *District* until its actual diversion by *Garland* from Lavon Lake.
 - b. To the extent authorized by law, *Garland* and *District* 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*.
 - c. To the extent that any *Diverted Water* is subsequently reused, as between the *Parties*, title to such water shall remain with *Garland* until such time as such water is discharged to Lavon Lake.

The *District* shall have the first right to appropriate and reuse any water discharged from the *Plant* or otherwise returned into Lavon Lake.

- 3.05 **Limitation on Service.** *Garland* agrees that it shall not provide *Diverted Water* directly from the *Plant* to any water customer of *Garland* as of the Effective Date, without the express written consent of the *District* nor shall *Garland* provide any portion of *Reserved Water* or *Diverted Water* to any third party without the express written consent from the *District*.
- 3.06 **Industrial Use.** *Garland* may only use water reserved and/or diverted pursuant to this Agreement for purposes of industrial use, and *Garland* acknowledges and agrees that water reserved and/or diverted under this Agreement may not be used for any other purposes.

IV. CONSIDERATION

For and in consideration of this Agreement, the options herein set forth, and the duties of the *Parties* for the reservation, diversion and use of raw water, the *Parties* agree to the following rates and payments:

- 4.01 **Payment for Reserved Water.** Following the Effective Date, *Garland* shall pay monthly to the *District* the sum of \$0.0569 per thousand gallons of *Reserved Water* (the "*Reserved Water Fee*"). Thereafter, the *Reserved Water Fee* shall be adjusted pursuant to the provisions of Section 4.03, below.
- 4.02 **Payment for Diverted Water.** Following the Effective Date, *Garland* shall pay to *District* on a monthly basis, as applicable, the sum of \$0.0569 per thousand gallons ("*Diverted Water Fee*") for *Diverted Water* from time to time actually diverted by *Garland* for the *Plant*. Thereafter, the *Diverted Water Fee* shall be adjusted pursuant to the provisions of Section 4.03, below. In calculating the volume of water diverted by *Garland* that shall be subject to the *Diverted Water Fee* and therefore subject to *Garland's* obligation to pay hereunder, the *Parties* agree that such volume shall be computed on a monthly basis pursuant to Section 5.01 herein.
- 4.03 **Fee Adjustments.** The *Reserved Water Fee* and the *Diverted Water Fee* shall be adjusted annually following the Effective Date on the first day of August in each year during the *Primary Term* and during the *Renewal Term* if this Agreement is extended pursuant to the provisions of Section 1.03 above, based upon the then most recently published change in the Consumer Price Index as provided below. Adjustments in fees shall be effective for the ensuing annual period beginning the first day of August. For purposes hereof, the "*Consumer Price Index*" shall be the "Consumer Price Index - All Urban Consumers (Dallas-Fort Worth-Arlington, TX for All Items, 1982-1984=100)" as published by the U.S. Department of Labor, Bureau of Labor Statistics. Adjustments to the amount charged and payable for the *Reserved Water Fee* and the *Diverted Water Fee* shall be made effective on the first day of August in the years scheduled for adjustment. On the adjustment dates the amount of the *Reserved Water Fee* and *Diverted Water Fee* shall be recalculated to an amount equal to the product of (a) \$0.0569, and (b) a fraction, the numerator of which is the *Consumer Price Index* in the most recently published change in the *Consumer Price Index* in March of the previous adjustment year, and the denominator of which is 187.8 (being consistent with the adjustment methodology in the *Reuse Contract*, as may be amended or superseded). In the event that the Consumer Price Index for

All Urban Consumers in Dallas-Fort Worth-Arlington, TX ceases to be published, then the *Parties* shall cooperate in selecting a substituted index that is derived by using the same or substantially similar data and methodologies or an index serving a similar purpose.

In any and all events, if the *Reuse Contract* rates are lower or higher than the rates charged to *Garland* under this provision, then *Garland's* price shall be adjusted to conform to that of the *Reuse Contract*.

- 4.04 **Billings and Payments.** *District* shall bill *Garland* monthly for: (a) the volume of *Reserved Water* specified in Section 2.01, at the *Reserved Water Fee* rate set forth in Section 4.01 or 4.03 above, as applicable, and (b) the volume of *Diverted Water*, if any, that is actually diverted by *Garland* at the point of delivery specified in Section 2.04 during the billing period, at the *Diverted Water Fee* rate set forth in Section 4.02 or 4.03 above, as applicable. The volume of *Reserved Water* and *Diverted Water* billed shall be based on measurement described in Sections 5.01 and 5.02 below. *Garland* shall remit payment of billed amounts to *District* within thirty (30) days following the date of invoice. The first such billing shall be delivered to *Garland* by *District* within thirty (30) days following the Effective Date.
- 4.05 **Unit of Measurement.** The unit of measurement for raw water made available by *District* and diverted by *Garland* under this Agreement shall be 1,000 gallons of water, U.S. Standard Liquid Measure.
- 4.06 **Special Conditions.** *Garland* shall construct, maintain and operate the required intake and discharge facilities at Lavon Lake at its sole expense, said intake and discharge facilities to be of such design and at such location as *Garland's* engineer shall determine, subject, however, to the prior approval of TCEQ and the *District's* engineer as to sound engineering practice and further subject to the approval of the Contracting Office of the United States. Approval of said Contracting Office is required by Article I of the *District's* contract with the United States, dated March 16, 1954. The present intake and discharge facilities now in use have been approved by all necessary parties. If any change is proposed to be made to said facilities by *Garland*, then upon notice by *Garland* to the *District*, accompanied by plans and specifications showing location and design of the proposed raw water intake structure changes, the *District* shall, within 90 days, initiate appropriate applications to TCEQ seeking approval thereof and any necessary amendments to Certificate of Adjudication No. 08-2410, as amended, occasioned thereby, and to the Contracting Officer of the United States Government for their approval, and thereupon the *District* will diligently pursue the matter of obtaining the sought for action by said governmental agencies.

V. MEASUREMENT

- 5.01 **Measurement of Diverted Water by Garland.** *Garland* shall measure and account to *District*, on a monthly billing cycle, for the volume of *Diverted Water* (1) actually diverted by *Garland* for its use at the *Plant* at meters installed by *Garland* at the diversion facilities at Lavon Lake, and (2) actually consumed by use in the *Plant* condenser circulating processes, calculated according to the following, or as determined in the future pursuant to Section 5.03 herein:

$$0.331 \times (\text{KWH gross generated}) = \text{gallons consumed.}$$

Such accounting shall set forth the total volume of **Diverted Water** by **Garland** for its use or for use at the **Plant**. All raw industrial water taken from Lavon Lake under this Agreement which is used for purposes other than condenser circulating water shall be measured by meters. To that end, **Garland** shall furnish, install, operate, and maintain at its own expense the necessary equipment and devices of standard type for measuring properly the quantity of **Diverted Water** diverted under this Agreement. Such meter or meters and other equipment so installed shall remain the property of **Garland**. **District** shall have access to such metering equipment at all reasonable times, but the reading, calibration, and adjustment thereof shall be performed only by the employees or agents of **Garland**. For the purpose of this Agreement, the original record or reading of **Garland's** meter or meters shall be located at **Garland's** office in which the records of the employees or agents of **Garland** who take the reading are or may be transcribed. Upon written request of **District**, **Garland** will send a copy of such original record or reading or permit the **District** to have access to the same in the office of **Garland** during reasonable business hours. **Garland** will provide the **District** with flow diagrams of the **Plant's** water use process and will provide notice to the **District** of any revisions to such diagrams.

- 5.02 **Meter Calibration**. Not more than once in each calendar year, on a date as near the end of such calendar year as practical, **Garland** shall calibrate its meter(s) if requested in writing by **District** to do so, in the presence of a representative of **District**, upon at least seventy-two (72) hours prior written notice to the **District**. **District** shall be afforded the opportunity to observe any adjustments which are made to the meter(s) in case any adjustment shall be necessary, and if check meters hereinafter provided for have been installed, the same shall also be calibrated by **Garland** in the presence of a representative of **District** and the **Parties** shall jointly observe any adjustments to the meter in case any adjustment is necessary. If **District** requests **Garland** to calibrate meters and despite written notice of the time and date when any such calibration is to be made, **District** is not present at the time and date set, the calibration may proceed and adjustment may be made in the absence of any representative of **District**.

If at any time, **Garland** observes a variation between the primary meter or meters and any of the check meters, **Garland** will promptly notify **District**. The **Parties** shall cooperate to procure an immediate calibration test and joint observation of any adjustment of the meters to a state of accuracy. **Garland** shall give **District** at least seventy-two (72) hours written notice of the time of all tests of meters so that **District** may conveniently have a representative present.

If upon any test, the percentage of inaccuracy of any metering equipment is found to be in excess of two percent (2%) registration thereof shall be corrected for a period extending back to the time when such inaccuracy began, if such time is ascertainable, and if such time is not ascertainable, then for a period extending back one-half (1/2) of the time elapsed since the last date of calibration, but in no event further back than a period of six (6) months. If, for any reason, any meters are out of repair so that the amount of water discharged or diverted cannot be ascertained or computed from the reading thereof, the water so discharged or diverted through the period such meters are out of service or out of repair shall be estimated and agreed upon by the **Parties**. For such purpose, the best data available shall be deemed to be the registration of any check meter or meters (if the same have been installed) that are accurately registering. Otherwise, the amount of water discharged or diverted during such period may be estimated (i) by correcting the error if the percentage of the error is ascertainable by

calibration tests or mathematical calculation, or (ii) estimating the quantity of water discharged or diverted during the preceding periods under similar conditions when the meter or meters were registering accurately. In no event shall a **Party** be entitled to adjust the computation of metered readings for a period exceeding six (6) months.

- 5.03 **Changes to Measurement of Water Consumed in Condenser Circulating Processes.** The formula for calculation of water actually consumed in Section 5.01 is based on existing equipment installed at the **Plant** at the time of the **Agreement**. Any future changes to equipment or processes, whether implemented all at one time or in phases, that impact unit rates of water consumed in condenser circulating processes shall be evaluated by **Garland** and **Garland's Plant** contractor for any necessary resulting changes to the consumed water calculation formula in Section 5.01. Changes to the consumed water calculation formula shall be in accordance with manufacturer recommendations or with a mutually accepted arrangement by **Parties**. **Garland** shall provide written notice to **District** of any changes to the consumed water calculation formula.

VI.

GENERAL CONDITIONS

- 6.01 **Force Majeure.** If by reason of **Force Majeure** any **Party** hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement, other than the obligation of **Garland** to make the payments required by it under this Agreement, then if such **Party** shall give notice and full particulars of such event of **Force Majeure** in writing to the **Party** within a reasonable time after occurrence of the event or cause relied on, the obligation of the **Party** to provide such notice, so far as it is affected by such **Force Majeure**, shall be suspended during the continuance of the inability then claimed, but for no longer period, and any such **Party** shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "**Force Majeure**" as employed herein shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemy, orders of any kind of the Government of the United States or the State of Texas, including governmental agencies and courts, or any Civil or military authority, insurrection, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, acts of terrorism, breakage or accidents to machinery, pipelines or canals, partial or entire failure of water supply, or on account of any other causes not reasonably within the control of the **Party** claiming such inability, unless such causes or failures are attributable to the gross negligence of the **Party** seeking excuse for lack of performance.
- 6.02 **Compliance with Regulatory Bodies, Law, and Permit/Contract Requirements.** 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, but nothing contained herein shall be construed as a waiver of any right to question or contest any such law, ordinance, order, rule, or regulation in any forum, having jurisdiction. In addition, this Agreement is expressly subject to the terms and conditions in Certificate of Adjudication No. 08-2410 as amended and the **District's** contracts with the United States, Contract No. DA-41-443-eng-3413 and Contract No. DACW63-67-C-0116.
- 6.03 **Other TCEQ Requirements.** Pursuant to 30 Tex. Admin. Code § 295.101(b)(5), the effectiveness of this Agreement is dependent upon **District's** compliance with 30 Tex. Admin. Code Chapters 295 and 297, including the continued effectiveness of Certificate of Adjudication No. 08-2410 as amended

and as same may be amended in the future. Promptly following the Effective Date, **District** will file a copy of this Agreement with **TCEQ**, in accordance with 30 Tex. Admin. Code § 297.101.

- 6.04 **Notice.** Any notice to be given hereunder by either **Party** to the other shall be in writing and shall be effected by certified mail, return-receipt requested.

Notice to the **District** shall be addressed to:

Executive Director
North Texas Municipal Water District
505 East Brown Street
P.O. Box 2408
Wylie, Texas 75098

Notice to **Garland** shall be addressed to:

City Manager
City of Garland
200 N. Fifth Street
P.O. Box 469002
Garland, Texas 75046-9002

Each **Party** may change the address for notice to it by giving written notice of such change at the last address designated in accordance with this paragraph.

- 6.05 **Venue.** Venue for any action arising hereunder at the request of **Garland** shall be in Collin County, Texas. Venue for any action arising hereunder at the request of the **District** shall be in Dallas County, Texas.
- 6.06 **Amendment.** No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the **Parties** to this Agreement.
- 6.07 **Severability.** Unless expressly provided herein, in the event one or more provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
- 6.08 **Assignment.** This Agreement shall not be assignable, in whole or in part, by either **Party** without first obtaining the written consent of the other, which consent may not unreasonably be withheld, conditioned, or delayed.
- 6.09 **Integration.** This Agreement constitutes the entire agreement between **Garland** and **District** related to matter hereto. This Agreement supersedes all prior negotiations, representations or agreements, written or oral. This Agreement may be amended only as stipulated herein.

- 6.10 **Remedies.** To the extent authorized by law, each *Party* shall have all rights and remedies available in law and in equity without limitation, including, but not limited to, specific performance.
- 6.11 **Authority to Execute.** The *Parties* acknowledge by their execution of this Agreement that such execution is evidenced and has been authorized by their governing bodies' adoption of appropriate resolutions or ordinances or other written action. Each *Party* represents and warrants to the other *Party* that the person signing this Agreement on its behalf has full and complete authority to enter into this Agreement as an act binding upon his or her principal.
- 6.12 **Parties Bound.** This Agreement shall be binding upon and inure to the benefit of the *Parties* hereto, legal representatives, successors, and assigns, unless otherwise prohibited by this Agreement.
- 6.13 **Headings.** Headings of the several sections this Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any term or provision of this Agreement.
- 6.14 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which counterparts, when so executed and delivered, shall be deemed to be an original and all of which counterparts, taken together, shall constitute one and the same agreement.
- 6.15 **Maintenance.** *Garland* will maintain the facilities and landscape the area which it acquires for its *Plant* purposes at Lavon Lake so as to enhance. *Garland* shall further ensure that no activities at the site of the *Plant* have any negative effect on the water quality of Lavon Lake, such as through stormwater runoff, and that its activities at the *Plant* comply with the Lavon Lake Watershed Protection Plan.
- 6.16 **Water Conservation and Rationing.** For water purchased under this Agreement, *Garland* agrees to adopt, implement, and enforce any and all ordinances and policies related to water conservation and drought management as required by the Texas Water Code, rules of TCEQ and/or as may be adopted by the Board of Directors of the *District* related to industrial use. The *District's* obligations pursuant to this Agreement shall be subject to *Garland* preparing and implementing a water conservation plan or water conservation measures for industrial water purchased and/or diverted pursuant to this Agreement. This provision applies exclusively to water obtained under this Agreement and should not be construed to apply to water obtained under other agreements between the Parties. The Parties further acknowledge and agree that any water rationing or curtailment implemented by the *District* and affecting the water delivered pursuant to this Agreement shall be done in accordance with Texas Water Code Section 11.039.

[Signature pages to follow.]

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.

DISTRICT:

NORTH TEXAS MUNICIPAL WATER DISTRICT

By: _____

Richard Peasley, President

Date: _____

ATTEST:

David Hollifield
Secretary

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on this ____ day of _____, 2024 by Richard Peasley, President of the Board of Directors of North Texas Municipal Water District, on behalf of said District.

Notary Public, State of Texas

GARLAND:

CITY OF GARLAND

By: _____

Scott LeMay, Mayor

Date: _____

ATTEST:

René Dowl, City Secretary

STATE OF TEXAS §

§

COUNTY OF COLLIN §

This instrument was acknowledged before me on this ____ day of _____, 2024 by Scott LeMay, Mayor of the City of Garland, on behalf of said City.

Notary Public, State of Texas