

WHOLESALE TREATED WATER CONTRACT BETWEEN
CITY OF DALLAS AND CITY OF CARROLLTON

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

THIS WHOLESALE TREATED WATER CONTRACT("Contract") is made and entered into this the twenty-ninth day of June, 2013, by and between the CITY OF DALLAS, a Texas home rule municipality (hereinafter called "Dallas"), and the CITY OF CARROLLTON, TEXAS, a Texas home rule municipality (hereinafter called "Customer").

WHEREAS, Customer currently purchases wholesale treated water from Dallas, and Dallas currently delivers and sells wholesale treated water to Customer as set forth under the terms, covenants, and conditions stated in the Current Contract; and

WHEREAS, from time to time, both Dallas and Customer have the need to request the other to furnish water and/or wastewater service to each other's customers along common boundary lines wherein only one of the parties has facilities available; and

WHEREAS, the Current Contract with Dallas will expire on June 29, 2013; and

WHEREAS, Dallas and Customer desire to enter into a new wholesale treated water contract and reciprocal water and wastewater agreement; and

NOW, THEREFORE, Dallas and Customer, in consideration of the mutual terms, covenants, and conditions contained in this Contract, agree as follows:

Article 1. DEFINITIONS

1.1 Definitions. In addition to the definitions stated in the preamble hereof, the following words and phrases as used in this Contract, unless the context clearly shows otherwise, shall have the following meanings:

"Current Contract" means that certain Wholesale Treated Water Contract dated and effective June 29, 1983, by and between Dallas and Customer.

"Customer's Service Area" means the area within Customer's incorporated limits, as amended from time to time through annexation or disannexation, and any service area described in a certificate of convenience and necessity issued by the TCEQ for the provision of retail public water service, even if such service area is outside of Customer's incorporated limits, such service area on the Effective Date being as set forth in Exhibit "B," attached hereto and incorporated herein by reference.

“Delivery Facilities” means the pipes, valves, meters, and other associated equipment and appurtenances necessary to connect Dallas’ water distribution system to Customer’s water distribution system at the Delivery Points so that delivery of Treated Water from Dallas to Customer is made possible.

“Delivery Points” means those locations set forth in Exhibit “C,” attached hereto and incorporated herein by reference, or as may be added to or deleted by agreement of the parties from time to time, where Dallas’ water distribution system connects to Customer’s water system and at which delivery of Treated Water occurs to Customer.

“Demand” means the maximum rate of flow of Treated Water that may be taken by Customer from Dallas within a Water Year.

“Demand Schedule” means Customer’s written estimate of Customer’s annual requirements for delivery and use of Treated Water from Dallas.

“Director” means the Director of Dallas’ Department of Water Utilities, or the Director’s designated representative.

“Effective Date” shall mean June 29, 2013.

“Memorandum of Agreement” or “MOA” means that certain *Memorandum of Agreement for Wholesale Treated Water* effective December 17, 2009, by and among Dallas, Customer and other local governmental entities, a copy of which is attached hereto as Exhibit “A,” and incorporated herein by reference.

“TCEQ” means the Texas Commission on Environmental Quality or its successor agency.

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

“Volume” means the actual amount of Treated Water delivered to Customer’s Delivery Points on a daily basis.

“Water Year” means the period described by applicable ordinance of the City of Dallas, as may be amended from time to time, which on the Effective Date begins on June 1st of each calendar year and ends on May 31st of the immediately subsequent calendar year.

Article 2. TERM; TERMINATION OF CURRENT CONTRACT

2.1. Term. This Contract shall remain in full force and effect for a term of thirty (30) years from June 29, 2013 (“Effective Date”) unless terminated earlier as provided herein.

2.2 Termination of Current Contract. Upon the Effective Date, the Current Contract shall be null, void, and of no further legal force or effect except as to any provisions that expressly survive the termination of the Current Contract.

Article 3. WATER SALES

3.1 Sale and Delivery of Treated Water. Dallas agrees to sell and deliver to Customer, on a wholesale cost basis, Treated Water in accordance with the specifications and restrictions contained in Article 4 of this Contract and in sufficient quantities to meet Customer's Volume and Demand requirements as provided in this Contract.

3.2 Limitations on Delivery. Customer understands and acknowledges that delivery of Treated Water to meet Customer's Volume and Demand requirements is subject to and limited by available system supply and system deliverability, as reasonably determined by the Director as well as events of Force Majeure; provided, however, delivery of Treated Water to Customer shall not be unreasonably withheld.

3.3 Demand Schedule. Not later than 60 days after the Effective Date, Customer shall provide to Dallas a Demand Schedule which factors in any reasonably anticipated increases or decreases in Demand during the term of this Contract. Customer shall either reaffirm or, if necessary, revise and update the Demand Schedule not later than ninety (90) days prior to the end of the fifth, tenth, fifteenth, twentieth, and twenty-fifth anniversaries of the Effective Date of this Contract. Customer shall also either reaffirm or update the Demand Schedule not later than ninety (90) days following receipt of a written request for same from Dallas.

3.4 Customer Changes in Demand. Customer may from time to time change its Demand as set forth in the Demand Schedule subject to Section 3.7 below. Except as provided in the Special Condition contained in Exhibit "D", Customer shall be required to pay Dallas the Annual Demand Charge based on Section 3.8.

3.5 Failure to Deliver Demand – Seven Days. If Dallas fails to make available the currently established Demand for seven (7) or more consecutive days, the Demand charge for each such day shall be an amount equal to the maximum rate of delivery of Treated Water for each day in which full Demand was not met, multiplied by the current Annual Demand charge, then divided by 365, then multiplied by the number of days the Demand was not met. The Demand is calculated daily and is not an averaging of the water delivered for those affected days.

3.6 Failure to Deliver Demand – Thirty Days. If Dallas fails to make available to Customer the currently established Demand for thirty (30) or more consecutive days, the Demand charge for that Water Year shall be calculated by using the maximum rate of delivery of Treated Water to Customer for the days in which the full Demand was not met, multiplied by the current Annual Demand charge.

3.7 Notice of Demand Changes. Customer shall give reasonable notice to Dallas of anticipated changes in its Demand. Such notice shall be given not less than six (6) months in advance of the effective date of the change if the requested change, when considered with other

Dallas Wholesale Treated Customer requests, does not require the construction of additional facilities. The Director may waive the six-month notice requirement for good cause shown. If construction of additional facilities is required, enough additional advance notice shall be given as is necessary to allow for financing, design, and construction of the needed facilities.

3.8 Year on Which Annual Demand Charge is Based. Except as provided in Sections 3.5 and 3.6, Customer agrees, for each Water Year, to pay annual Demand charges based on the greater of: (a) the Demand for the current Water Year; or (b) the highest Demand established during the five (5) Water Years preceding the current Water Year.

Article 4. DELIVERY POINT, ACCESS, ETC.

4.1 Delivery Point. Dallas agrees to deliver Treated Water sold to Customer for use within Customer's designated Service Area as identified in Exhibit B, at the Delivery Point(s).

4.2 Cost of Delivery Facilities. Except as set forth in Sections 4.3, 4.4, and 4.5, the cost for design and construction of all proposed Delivery Facilities, whether designated in Exhibit C or mutually agreed upon at a later date, shall be borne by Customer. Unless otherwise mutually agreed to by Dallas and Customer, Customer shall be responsible for the design, contracting, construction, and financing of Delivery Facilities and for the acquisition of any right-of-way for delivery of Treated Water from the Dallas water system to the Delivery Points.

4.3 Oversizing of Delivery Facilities – Dallas Request. Dallas may elect to oversize a proposed Delivery Facility for the benefit of Dallas or other parties. If Dallas requires oversizing of a proposed Delivery Facility, Dallas shall be responsible for oversize costs to the extent of the documented difference in cost between the size of the Delivery Facility required for Customer's need and the size of the Delivery Facility specified by Dallas, including, but not limited to, any additional right-of-way or other temporary or permanent interests in real property that would not otherwise be required without the oversizing of the Delivery Facility.

4.4 Approval of Plans; Inspection. All designs, materials, and specifications for Delivery Facilities shall conform to Dallas' requirements. Plans for the construction of a proposed Delivery Facility shall be submitted to the Director for written approval prior to advertising for bids for such construction. Customer agrees that Dallas has the right to make periodic inspections during the construction phase of the Delivery Facilities. Final acceptance of completed Delivery Facilities is subject to the written approval of the Director. Dallas agrees that any approval or consent of Dallas or the Director required by this Section 4.4 shall not be unreasonably withheld or delayed.

4.5 Meters and Meter Vaults. Unless otherwise agreed by the parties, Dallas shall construct and maintain meter vaults, meters, and all associated facilities, and obtain electric and telephone service in connection therewith, if needed. Customer agrees to reimburse Dallas for actual design and construction costs incurred pursuant to this Section 4.5, but only to the extent such costs are attributable to services provided to Customer, excluding costs of telemetry equipment, telephone and electric service.

4.6 Conveyance of Delivery Facilities to Dallas. Customer agrees that after final inspection by the Director of completed Delivery Facilities, Customer will convey title of those Delivery Facilities and rights-of-way in conjunction therewith to Dallas. Upon conveyance of title to Delivery Facilities by appropriate instrument and acceptance by Dallas of those facilities, Dallas shall own the Delivery Facilities and be responsible for operation and maintenance thereof. In no event shall Customer be required to transfer to Dallas fee simple title to real property if an easement in that real property is sufficient to allow Dallas to operate, maintain, repair, replace, or reconstruct the Delivery Facility.

4.7 Additional Delivery Points. Customer may at any time during the term of this Contract request additional Delivery Points for delivery of Treated Water under this Contract. The additional requests may be granted with the approval of the Director and shall, when so approved in writing, be deemed to be made a part of this Contract, thereby amending Exhibit C of this Contract without need for a further written supplemental agreement or Dallas City Council approval.

4.8 Access to Dallas Facilities. Customer agrees to provide ingress and egress to Customer's property located within Customer's incorporated limits to employees, contractors, and agents of Dallas to install, operate, inspect, test, and maintain facilities and read meters owned or maintained by Dallas; provided, however, Dallas' employees, contractors, and agents shall at all times comply with Customer's policies regarding security and safety as may be adopted from time to time by Customer for the purpose of safeguarding Customer's public water system and supply.

4.9 Access to Customer Facilities. Dallas agrees to provide ingress and egress to Dallas' property located within Dallas' incorporated limits to employees, contractors, and agents of Customer to install, operate, inspect, test, and maintain facilities and read meters owned or maintained by Customer; provided, however, Customer's employees, contractors, and agents shall at all times comply with Dallas' policies regarding security and safety as may be adopted from time to time by Dallas for the purpose of safeguarding Dallas' public water system and supply.

4.10 Accuracy of Meters. It shall be the duty of each party to notify the other party as soon as reasonably possible after a party obtains information that it believes indicates that a meter used to measure the delivery of Treated Water under this Contract is registering inaccurately or malfunctioning. Each meter will be operated and maintained so as to record with commercial accuracy. Dallas will notify Customer prior to any meter tests. Either party has the right to request in writing that a meter be tested, with the other party having the right to witness the test. If Customer requires an independent testing service be used, Customer shall pay the cost of the testing service if any meter used to measure delivery under this Contract is found to be accurate. If the meter is found to be inaccurate, Dallas shall pay the cost of the testing service.

4.11 Liability; Loss of Water. All liability related to, and all accounting for loss of, all Treated Water supplied under the terms of this Contract by Dallas to Customer shall belong to Dallas up to Dallas' side of the meter, including the meter and meter vault, at each Delivery Point. Liability related to, and all accounting for loss of, all Treated Water shall pass to

Customer, after the Treated Water passes through the meter and meter vault to the Customer at each Delivery Point.

Article 5. INSPECTION OF BOOKS AND RECORDS

Dallas agrees that Customer or its employees or agents may have access to and inspect the books and records of Dallas relating to the delivery and sale of Treated Water to Customer, including, but not limited to, records relating to charges therefor paid by Customer, during reasonable business hours after reasonable prior written notice to the Director. Customer agrees that Dallas or its employees or agents may have access to and inspect the books and records of the Customer's Water Utilities relating to the receipt and resale of Treated Water to its end user customers during reasonable business hours and after reasonable prior written notice to Customer's City Manager.

Article 6. ADDITIONAL SURFACE WATER SUPPLIES

6.1 New Water Source; Reduce Demand Obligation. If Customer develops or acquires additional surface water supplies from any source other than Dallas, and Customer's reliance on such additional surface water supplies results in reduced Demand from Dallas, Dallas is released from its obligation to supply the Demand established pursuant to Section 3 of this Contract to the extent of such reduction in Customer's Demand. In this event, Dallas may adjust its supply obligation to levels commensurate with Customer's reduced Demand on Dallas.

6.2 Payment for Reduction of Demand. Except as the result of a reduction in Demand as agreed pursuant to Article 3 of this Contract, if during the term of this Contract, Customer ceases (wholly or in part) to take water from Dallas for any reason, Customer shall for five (5) years or the balance of this Contract, whichever is less, remain liable for Demand charges at the billing level in effect at the date of notification of such partial or total cessation. This obligation, once established, shall serve as liquidated damages and is intended to compensate Dallas for the expenditures incurred on Customer's behalf for the cost of installation of supply, transmission, treatment, delivery and service facilities. Provided, however, Dallas may waive Customer's obligation pursuant to this Section 6.2 in the event of nominal reductions based on Customer's plans if Dallas has received prior notice of the plans and concurred in the reduction. It is agreed by the parties that liquidated damages are a reasonable substitute for compensatory damages which are difficult or impossible to calculate herein. This obligation is intended by the parties not to be a penalty, but instead, a reasonable measure of damages.

Article 7. RATES AND PAYMENT

7.1 Setting of Charges by Dallas Ordinance. Rates charged Customer, including Demand charges established herein, shall be established by ordinance of Dallas. The capital costs contributed by the Customer for Delivery Facilities shall be excluded from the rate base.

7.2 Rate Setting Method; Notice of Change. Customer understands that the Dallas City Council has the right to change, by ordinance, the rates charged as needed to cover all reasonable, actual and expected costs. Any change of rates shall be pursuant to principles set

forth in the Memorandum of Agreement. Dallas shall give Customer a minimum of six (6) months written notice of intent to change rates. Dallas will furnish Customer a draft copy of the Cost of Service Study for Proposed Rates thirty (30) days prior to Dallas submitting a rate increase request to its City Council.

7.3 Customer Protest. Customer agrees to give Dallas a minimum of thirty (30) days' notice of its intent to protest rates, or any other condition of service, before the TCEQ or any other state agency.

7.4 Monthly Invoice. Each month during the term of this Contract, Dallas agrees to deliver to Customer a statement of charges setting forth the amount of Treated Water delivered to Customer through the Delivery Points for the period covered by the statement, the Volume charge for that month, and any past due amounts carried over from prior invoices (including accrued interest) ("the Monthly Statement"). Payment is due upon receipt of the Monthly Statement. Customer agrees to pay promptly. The Demand charge shall be billed on the Monthly Statement.

7.5 Late Payment. Customer agrees that a payment is deemed late if received by Dallas more than 30 days after the date of the Monthly Statement. Late payments shall accrue interest at the interest rate provided in Section 2-1.1 of the Dallas City Code, as amended, or as authorized by Ch. 2251 of the Texas Government Code, as amended, whichever applies. If any money due and owing by Customer to Dallas is placed with an attorney for collection, Customer agrees to pay to Dallas, in addition to all other payments provided for by this Contract, including interest, Dallas' collection expenses, including court costs and reasonable attorney's fees.

7.6 Malfunctioning Meter; Estimated Payments. In the event a meter(s) is discovered to be malfunctioning, the amount of Treated Water that has passed through the meter will be estimated for each day the meter was not functioning correctly. The last correctly measured monthly consumption will be used as a basis for computing the amount of Treated Water delivered to the Customer during the time the meter was not functioning correctly.

7.7 Disputed Charges. Dallas and Customer agree that any disputed charges on the Monthly Statement shall be protested in accordance with Tex. Govt. Code §2251.042, as amended. Customer agrees that in the event it disputes any portion of the charges on the Monthly Statement, Customer will timely pay any undisputed amount in accordance with Section 7.4.

Article 8. CURTAILMENT, WATER CONSERVATION, AND DROUGHT CONTINGENCY PLANS

8.1 Dallas Curtailment of Water During Water Shortage. During a water shortage, Customer understands and acknowledges the Treated Water being provided by Dallas under this Contract is subject to curtailment in accordance with Texas Water Code § 11.039, "Distribution of Water During Shortage," Dallas' water rights, and Dallas' Drought Contingency Plan. Customer agrees that if water supplies or services are curtailed within Dallas, Dallas may impose a like curtailment on deliveries to Customer. Customer shall cooperate by imposing conservation measures upon its sales of Treated Water to its end user customers.

8.2 Customer Water Conservation and Drought Contingency Plan. Customer agrees to institute and maintain usage practices which ensure water is used in a manner that prevents waste, conserves water resources for their most beneficial and vital uses, and protects the public health. Customer agrees to develop and implement water conservation and drought contingency plans consistent with the applicable elements of Title 30, Texas Administrative Code, Chapter 288, “Water Conservation Plans, Drought Contingency Plans, Guidelines and Requirements.” Customer agrees to furnish to Dallas electronic copies of its water conservation and drought contingency plans and associated TCEQ and TWDB implementation reports.

8.3 Receipt of Dallas Plans. Customer acknowledges that Dallas has provided a copy of its current Water Conservation Plan and Drought Contingency Plan and has advised Customer of where to locate copies of plan updates.

8.4 No Discrimination in Curtailments. To the extent Dallas imposes restrictions or grants privileges of general applicability to itself and customer cities, including rules relating to the curtailment of water delivery and availability, Dallas agrees to impose such restrictions and grant such privileges equitably and in a non-discriminatory fashion.

Article 9. RESALE, WATER RIGHTS, AND REUSE

9.1 No Resale Outside Service Area. Customer agrees not to sell Treated Water purchased from Dallas to any person or entity outside Customer’s Service Area unless Customer has received prior written approval from the Director. In granting such authorization, Dallas may establish the terms and conditions of the conveyance of such Treated Water including, but not restricted to, the setting of monetary rates for sale of such water. “Convey” means sell, trade, donate, exchange, transfer title or contract therefor.

9.2 Resale Customers to Adopt Water Conservation and Drought Contingency Plans. In consideration of the written approval of the resale of Treated Water, if so granted, Customer agrees that the wholesale water supply contract with each successive wholesale customer to whom Treated Water is resold must contain a provision requiring said customer to develop and implement a water conservation plan or water conservation measures consistent with the requirements of Section 8.2.

9.3. Rights to Water and Return Flows. Customer understands, acknowledges, and agrees that Customer shall acquire no water rights or title or right to the use, reuse, or recycling of water generated as the result of Dallas’ sale and delivery of treated water to Customer pursuant to this Contract. Dallas makes no claim and asserts no water rights related to the wastewater effluent return flows produced by Customer as a result of Customer’s water use under this Contract, it being expressly understood and agreed to that Customer is not prohibited by this Contract from treating and using such wastewater effluent return flows in accordance with applicable law and TCEQ regulations.

Article 10. RIGHTS-OF-WAY AND STREET USE

10.1 Provision of Easements. Customer agrees to furnish any easements or rights-of-way necessary within or without Customer's boundaries reasonably necessary for Dallas to deliver Treated Water to Customer as provided in Article 4, hereof, and to convey such easements or rights-of-way to Dallas as therein provided.

10.2 Use of Customer Streets, Alleys, and Easements. Subject to the prior written approval of Customer, Dallas may use Customer's streets, alleys and other public rights-of-way and public utility easements within Customer's boundaries for pipeline purposes to provide Treated Water to Customer or to other customers without charges or tolls to the extent that Customer has the legal right to make such grant. Dallas agrees to make, at Dallas' cost, the necessary repairs to restore the streets, alleys or public rights-of-way used in accordance with Customer's then existing specifications for such work. Such use and repairs shall be pursuant to the terms and conditions of the conveyance Customer duly grants for such purposes.

10.3 Use of Dallas Streets, Alleys, and Easements. Subject to the prior written approval of Dallas, Customer may use Dallas' streets, alleys and other public rights-of-way and public utility easements within Dallas' boundaries for pipeline purposes to provide Treated Water to Customer without charges or tolls to the extent that Dallas has the legal right to make such grant. Customer agrees to make at Customer's cost, the necessary repairs to restore the streets, alleys or public rights-of-way used in accordance with Dallas' then existing specifications for such work. Such use and repairs shall be pursuant to the terms and conditions of a private license duly granted by the Dallas City Council.

Article 11. CUSTOMER SYSTEM OPERATION STANDARDS

Customer agrees to operate its water distribution system subject to the following:

- A. Customer shall protect Customer's storage and distribution system from cross connections under the specifications required by health standards of the State of Texas.
- B. Customer agrees to provide air gaps for any ground storage and backflow preventers for any elevated storage.
- C. Customer agrees to provide internal storage sufficient to meet its emergency needs and to maintain a reasonable load factor for deliveries from Dallas to Customer.
- D. Customer agrees to maintain and operate its internal system in compliance with all local, state, and federal laws and regulations.

Article 12. MEMORANDUM OF AGREEMENT

The Memorandum of Agreement is incorporated herein, as if copied word for word and is made a part of this Contract. Any revision of the Memorandum of Agreement according to its

terms and not in conflict herewith shall automatically be incorporated into and become a part of this Contract.

Article 13. FORCE MAJEURE; RELEASE; INDEMNITY

13.1 Force Majeure. Neither party shall be liable to the other party for any failure, delay, or interruption in the performance of any of the terms, covenants, or conditions of this Contract due to causes beyond their respective control or because of applicable law, including, but not limited to, war, nuclear disaster, strikes, boycotts, labor disputes, embargoes, acts of God, acts of the public enemy, acts of superior governmental authority, floods, riots, rebellion, sabotage, terrorism, or any other circumstance for which a party is not legally responsible or which is not reasonably within its power to control. The affected party's obligation shall be suspended during the continuance of the inability then claimed, but for no longer period. To the extent possible, the party shall endeavor to remove or overcome the inability claimed with all reasonable dispatch.

13.2 Release for Line Damages. CUSTOMER HEREBY AGREES TO RELEASE AND HOLD DALLAS WHOLE AND HARMLESS FROM ANY CLAIMS OR DAMAGES ARISING NOW AND IN THE FUTURE: (1) TO CUSTOMER'S WATER MAINS OR WATER SYSTEM RESULTING FROM THE RATE OF FLOW OR QUANTITY OF WATER DELIVERED; AND (2) AS A RESULT OF THE CHEMICAL OR BACTERIOLOGICAL CONTENT OF WATER PROVIDED TO CUSTOMER, UNLESS THE DAMAGES RESULTING FROM THE CHEMICAL OR BACTERIOLOGICAL CONTENT OF THE WATER ARE CAUSED BY THE NEGLIGENT ACT OR OMISSION OF DALLAS, ITS OFFICERS, EMPLOYEES, AGENTS, OR CONTRACTORS.

13.3 Indemnification. TO THE EXTENT ALLOWED BY LAW, CUSTOMER AGREES TO DEFEND, INDEMNIFY AND HOLD DALLAS, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS FROM ANY LIABILITY IN CLAIMS, ADMINISTRATIVE PROCEEDINGS OR LAWSUITS FOR JUDGMENTS, PENALTIES, FINES, COSTS, EXPENSES AND ATTORNEY'S FEES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE, OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, OR FOR VIOLATIONS OF STATE OR FEDERAL LAWS OR REGULATIONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY: (A) A BREACH OF THIS CONTRACT BY CUSTOMER; (B) THE NEGLIGENT ACT OR OMISSION OF CUSTOMER IN THE PERFORMANCE OF THIS CONTRACT OR IN CUSTOMER'S DAY-TO-DAY WATER OR WASTEWATER UTILITY OPERATIONS; OR (C) THE CONDUCT OF CUSTOMER THAT CONSTITUTES A VIOLATION OF STATE OR FEDERAL LAWS OR REGULATIONS. PROVIDED, HOWEVER, THAT THE INDEMNITY STATED ABOVE SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM DALLAS' SOLE VIOLATION OF A STATE OR FEDERAL LAW OR REGULATION OR FROM THE SOLE NEGLIGENCE OF DALLAS, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, AND IN THE EVENT OF THE JOINT AND CONCURRING RESPONSIBILITY OF CUSTOMER AND DALLAS, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED

COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT WAIVING GOVERNMENTAL IMMUNITY OR ANY OTHER DEFENSES OF THE PARTIES UNDER APPLICABLE TEXAS LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES TO THIS CONTRACT AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

13.4 Equitable Remedies. Recognizing that Dallas' and Customer's undertakings as provided in this Contract are obligations, the failure in the performance of which cannot be adequately compensated in money damages, Dallas and Customer agree that, in the event of any default, the other party shall have available to it the equitable remedy of specific performance in addition to other legal or equitable remedies which may be available to such party.

Article 14. SPECIAL PROVISIONS

This Contract shall incorporate and be subject to the following additional special provisions:

- A. Provisions peculiarly applicable to the Contract with Customer as opposed to other wholesale treated water customers, which are set forth in Exhibit "D," attached hereto and incorporated herein by reference; and
- B. Conditions under which the parties may provide reciprocal water or wastewater services to customers along their common boundaries and conditions under which the parties to this Contract may provide each other with temporary water or wastewater services, which conditions and provisions are set forth in Exhibit "E," attached hereto and incorporated herein by reference.

Article 15. MISCELLANEOUS PROVISIONS

15.1. Contract Administration. This Contract shall be administered on behalf of Dallas by the Director and on behalf of Customer by its authorized official or designated representative, who shall initially be Customer's Director of Public Works.

15.2 Notice of Contract Claim. This Contract is subject to the provisions of Section 2-86 of the Dallas City Code, as amended, relating to requirements for filing a notice of a breach of contract claim against City. Section 2-86 of the Dallas City Code, as amended, is expressly incorporated by reference and made a part of this Contract as if written word for word in this Contract. Customer shall comply with the requirements of this ordinance as a precondition of any claim relating to this Contract, in addition to all other requirements in this Contract related to claims and notice of claims.

15.3 Venue. The obligations of the parties to this Contract shall be performable in Dallas County, Texas, and if legal action is necessary in connection with or to enforce rights under this Contract, exclusive venue shall lie in Dallas County, Texas.

15.4 Governing Law. This Contract shall be governed by and construed in accordance with the laws and court decisions of the State of Texas, without regard to conflict of law or choice of law principles of any other state.

15.5 Legal Construction. In case any one or more of the provisions contained in this Contract 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 of this Contract, and this Contract shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Contract.

15.6 Counterparts. This Contract may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument. If this Contract is executed in counterparts, then it shall become fully executed only as of the execution of the last such counterpart called for by the terms of this Contract to be executed.

15.7 Captions. The captions to the various clauses of this Contract are for informational purposes only and shall not alter the substance of the terms and conditions of this Contract.

15.8 Successors and Assigns. This Contract shall be binding upon and inure to the benefit of the parties and their respective successors and, except as may otherwise be provided in this Contract, their assigns.

15.9 Notices. Except as otherwise provided in Section 15.2, any notice, payment, statement, or Demand required or permitted to be given under this Contract by either party to the other may be effected by personal delivery in writing or by mail, postage prepaid. Mailed notices shall be addressed to the parties at the addresses appearing below, but each party may change its address by written notice in accordance with this section. Mailed notices shall be deemed communicated as of three (3) days after mailing.

If to DALLAS:

City of Dallas
Director of Water Utilities
1500 Marilla Street– 4/A/North
Dallas, Texas 75201

If to CUSTOMER:

City of Carrollton
Attn: City Manager
Carrollton City Hall
P. O. Box 110535
Carrollton, Texas 75011

15.10 Conflict of Interest. The following section of the Charter of the City of Dallas shall be one of the conditions, and a part of, the consideration of this Contract, to wit:

“CHAPTER XXII. Sec. 11. FINANCIAL INTEREST OF EMPLOYEE
OR OFFICER PROHIBITED --

(a) No officer or employee shall have any financial interest, direct or indirect, in any contract with the City or be financially interested, directly or indirectly, in the sale to the City of any land, materials, supplies or services,

except on behalf of the City as an officer or employee. Any violation of this section shall constitute malfeasance in office, and any officer or employee guilty thereof shall thereby forfeit the officer's or employee's office or position with the City. Any violation of this section, with knowledge, express or implied, of the person or corporation contracting with the City shall render the contract involved voidable by the City Manager or the City Council.

(b) The alleged violations of this section shall be matters to be determined either by the Trial Board in the case of employees who have the right to appeal to the Trial Board, and by the City Council in the case of other employees.

(c) The prohibitions of this section shall not apply to the participation by City employees in federally-funded housing programs, to the extent permitted by applicable federal or state law.”

For purposes of this Section 15.10, the word “City” means “City of Dallas.”

15.11 Gift to Public Servant. This Contract shall be subject to the following additional provisions:

A. Dallas may terminate this Contract immediately if Customer has offered, or agreed to confer any benefit upon a Dallas employee or official that the Dallas employee or official is prohibited by law from accepting.

B. For purposes of this section, “benefit” means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

C Notwithstanding any other legal remedies, Dallas may require Customer to remove any officer or employee of Customer from the administration of this Contract or any role in the performance of this Contract who has violated the restrictions of this section or any similar state or federal law, and obtain reimbursement for any expenditures made as a result of the improper offer, agreement to confer, or conferring of a benefit to a Dallas employee or official.

15.12 Applicable Laws and Regulations. This Contract is made subject to, and Dallas and Customer agree to comply with, all applicable laws of the State of Texas, applicable rules, regulations and orders of the TCEQ and Texas Water Development Board (TWDB) (or any successor entities thereto), Federal Law (including but not limited to environmental and water quality laws, rules, orders, and regulations), and the Charter and other ordinances of the City of Dallas and the City of Carrollton, as same may hereafter be amended. This Contract's effectiveness is dependent upon Dallas' and Customer's compliance with Title 30, Texas Administrative Code, Section 295.101 and Title 30, Texas Administrative Code, Chapter 297, Subchapter J (relating to water supply contracts and amendments), as amended. This Contract

may be subject to review and approval by TCEQ or TWDB. In the event of any final judgment finding any violation of the laws, rules, regulations, or orders by Customer described above, Customer shall be strictly liable for any damages caused to the property of Dallas as a result of such violation.

15.13 Authorization to Act. By their signature below, the representatives of Dallas and Customer state that they are authorized to enter into this Contract. Dallas and Customer shall each provide documentation that this Contract has been authorized by its respective governing body.

15.14 Entire Agreement; No Oral Modifications. This Contract (with all referenced Exhibits, attachments, and provisions incorporated by reference) embodies the entire agreement of both parties, superseding all oral or written previous and contemporary agreements between the parties relating to matters set forth in this Contract. Except as otherwise provided elsewhere in this Contract, this Contract cannot be modified without written supplemental agreement executed by both parties.

EXECUTED this the ___ day of _____, 2013, by the City of Dallas, signing by and through its City Manager, duly authorized to execute same by Resolution No.13-_____, adopted by the City Council on _____, 2013, and by Customer, acting through its duly authorized officials.

APPROVED AS TO FORM:
THOMAS P. PERKINS, JR.
City Attorney

CITY OF DALLAS
MARY K. SUHM
City Manager

BY _____
Assistant City Attorney


Submitted to City Attorney

BY _____
Assistant City Manager

ATTEST:

CUSTOMER:
CITY OF CARROLLTON

BY _____
Ashley Mitchell, City Secretary

BY _____
Leonard Martin, City Manager

APPROVED AS TO FORM:

BY _____
Clayton Hutchins, City Attorney

Exhibit A

MEMORANDUM OF AGREEMENT

Exhibit B

DESCRIPTION AND MAP OF CUSTOMER'S SERVICE AREA

(SEE ATTACHED MAP)

Exhibit B

Carrollton Water Utility Service Areas

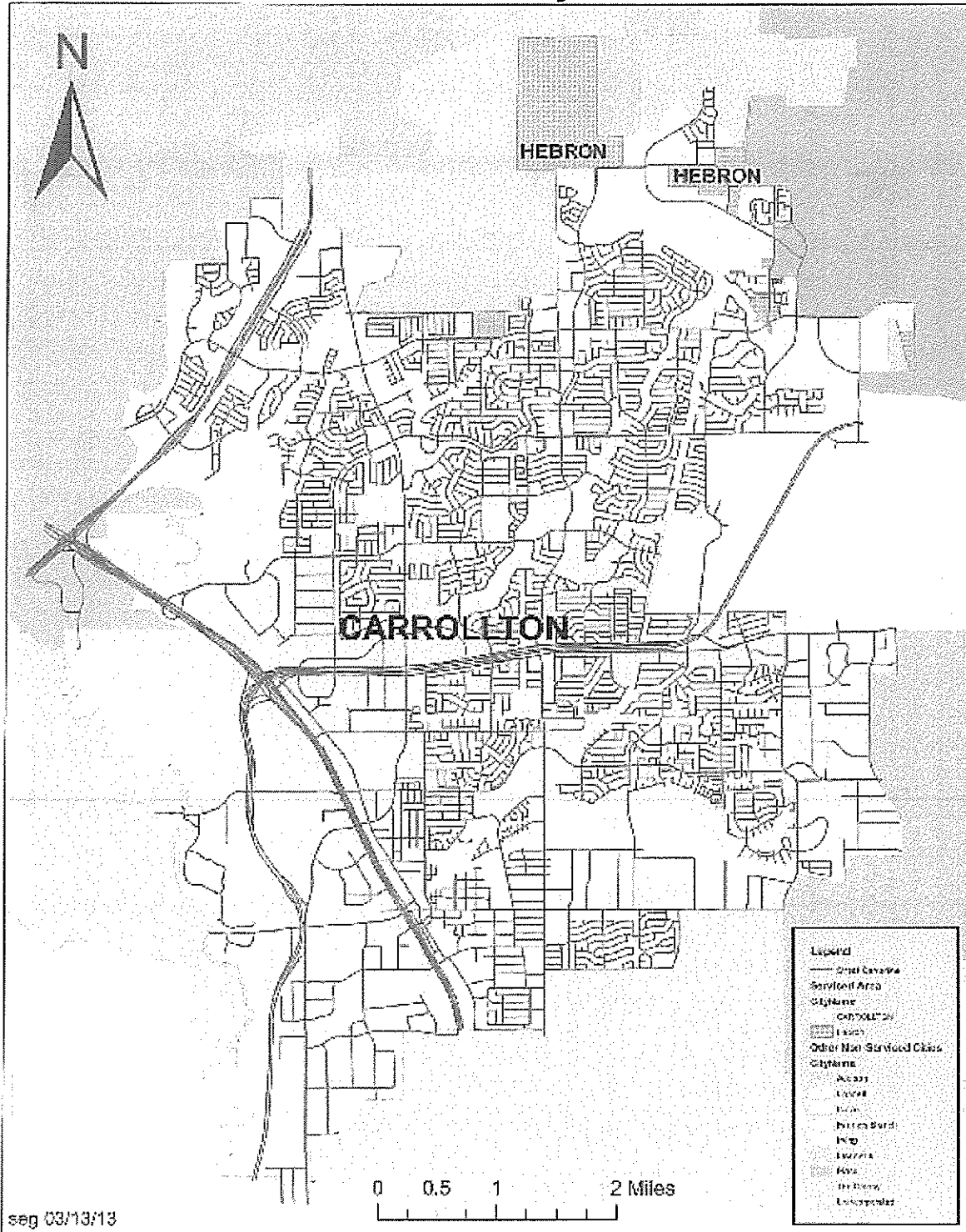


Exhibit D

SPECIAL CONTRACT CONDITIONS/AGREEMENTS

(1) Customer Demand Charge for Period from June 1, 2013 through September 30, 2013. Customer agrees to pay Dallas Demand charges based on 43 MGD through September 30, 2013.

(2) Customer Demand Charge Beginning October 1, 2013. In consideration of Customer's request in the negotiation of this Contract, on October 1, 2013, Dallas agrees to charge and Customer agrees to pay the new Demand charge based on 41 MGD on October 1, 2013. **In consideration of Dallas' agreement to reduce Customer's existing Demand in the negotiation of this Contract, Customer agrees that it shall not increase its Demand or revise its Demand schedule for two years following October 1, 2013. Customer acknowledges that Dallas shall not be obligated to provide increased Demand requirements for the same subsequent two years following October 1, 2013.**

Exhibit E

RECIPROCAL WATER AND/OR WASTEWATER SERVICE AGREEMENT

1. RECIPROCAL WATER AND/OR WASTEWATER SERVICE AGREEMENT FOR SINGLE FAMILY RESIDENCES OR DUPLEXES – WHEN SERVICING CITY HAS MAINS IN PLACE

The City of Dallas, Texas, hereinafter called “Dallas” and the City of Carrollton, Texas, hereinafter called “Customer”, hereby mutually agree, that when mains of the servicing city are currently in place, to provide water and/or wastewater service to customers along the public streets, roadways, alleys and easements forming a common city limit boundary of Dallas and Customer upon written request of either city to the other, provided that neither city will be required to provide such service to customers of the other city if doing so would result in a need for substantial construction or diminution of the level of service being provided to other customers of said city.

The class of service contemplated by this Paragraph 1 anticipates a temporary connection until such time as the city requesting service will have water and/or wastewater mains available. This category of service requires consideration on an individual case basis. Determination will be rendered upon written request being made by the city in which the potential customer is located.

Nothing contained in this Agreement shall require that either city will be compelled to accept a customer classed under this Paragraph 1 after a determination by the servicing city that service is not economical or otherwise not in the best interest of the servicing city.

- A. Service will be provided to single family residences or duplexes situated on no more than one acre of land located immediately adjacent to the common boundary.
- B. The city providing the water and/or wastewater service contemplated under this Paragraph shall charge the customer so served the same rates and associated charges as charged customers whose property lies within its own areas and boundaries and who are in the same category of service.
- C. The customer being served will be required to pay all applicable fees related to the services provided including a connection service charge to the city furnishing service. The connection service charge shall be the then current amount established by the servicing city’s ordinances. If a service charge is not specified by the current ordinances for the size or type service to be provided, the service charge shall be the servicing city’s actual cost for rendering the service.

Exhibit E

2. RECIPROCAL WATER AND/OR WASTEWATER SERVICE AGREEMENT FOR: (1) SINGLE FAMILY RESIDENCES OR DUPLEXES WHERE MAINS ARE NOT IN PLACE, (2) COMMERCIAL AND INDUSTRIAL COMPLEXES, (3) RESIDENTIAL SUBDIVISIONS, APARTMENTS OR TOWNHOUSES AND OTHER MULTI-DEWLLING RESIDENTIAL UNITS.

Dallas and Customer hereby mutually agree to provide temporary water or wastewater service, or both, to customers along the public streets, roadways, alleys and easements forming a common city limit boundary of Dallas and Customer upon written request of either city to the other, provided that neither city will be required to provide such service to customers of the other city if doing so would result in a need for substantial construction or diminution of the level of service being provided to other customers of said city.

The class of service contemplated by this Paragraph 2 anticipates a temporary connection until such time as the city requesting service will have water and/or wastewater mains available. This category of service requires consideration on an individual case basis. Determination will be rendered upon written request being made by the city in which the potential customer is located. Nothing contained in this Agreement shall require that either city will be compelled to accept a customer classed under this Paragraph 2 after a determination by the servicing city that service is not economical or otherwise not in the best interest of the servicing city.

A. Service will be provided to the following type customers whose properties are located immediately adjacent to or in reasonable proximity of the common boundary:

- (1) Single family residences or duplexes where mains are not in place.
- (2) Individual commercial and industrial properties containing no more than 200,000 square feet of building floor space, provided that commercial or industrial facilities in excess of 200,000 square feet consuming only nominal amounts of water or contributing only nominal amounts of wastewater may be considered as an exception to this provision.
- (3) Specific residential subdivisions consisting of no more than 20 single family units and apartment complexes, townhouses or other types of multiple dwelling units consisting of no more than 35 single family units in the immediate area for which service is being requested.

B. The city providing the water and/or wastewater service contemplated under this Paragraph shall charge the customer served the same rates and associated charges as charged customers whose property lies within its own areas and boundaries and who are in the same category of service.

C. As a precondition of receiving service, the customer being served may also be required to pay all or part of the costs determined to be necessary to extend service and to pay the normal service charges for the type service being offered. Applicability of costs of

Exhibit E

extending service shall be determined by the officials designated in Paragraph 4.B. of this Agreement. Normal service costs will be determined as contemplated by Paragraph 1.C. All construction work shall meet the specifications of the city within whose boundaries the facilities are constructed.

3. TEMPORARY RECIPROCAL SERVICES PROVIDED (1) DIRECTLY TO BORDERING CITIES AND (2) TO COMMERCIAL, INDUSTRIAL OR OTHER COMPLEXES NOT CONTEMPLATED BY PARAGRAPH 2.

When services are requested and it is determined by the city from which service is requested that the service is appropriate and can be offered without diminution of the level of service being provided to other customers of the servicing city, Dallas and Customer hereby mutually agree to provide temporary water and/or wastewater service on a reciprocal basis when (1) the service to be furnished is to be provided directly to the reciprocating city as the customer or, (2) the service to be furnished is for a commercial, industrial, or other customer not meeting the criteria for service consideration in Paragraph 2.

The class of service contemplated by this Paragraph 3 shall be offered at the option of the servicing city. Determination of service feasibility will be rendered upon written request being made by the city requiring service. Nothing contained in this Agreement shall require that either city will be compelled to offer service after a determination by the servicing city that service is not economical or otherwise not in the best interest of the servicing city.

The city providing the water or wastewater service contemplated under this Paragraph shall charge the customer served the same rate and associated charges as charged customers whose property lies within its own areas and boundaries.

The city requesting the service shall pay full cost of any extension, facilities or improvements required to make the service available. The amount of the charges shall be determined by the officials designated in Paragraph 4.B. of this Agreement. All construction work shall meet the specifications of the city within whose boundaries the facilities are constructed.

4. GENERAL TERMS AND CONDITIONS

Service will be provided from mains in the public streets, roadways, alleys and easements existing along the common boundaries of Dallas and Customer under the following terms and conditions, which shall apply equally to either city:

- A. Neither party to this Agreement is obligated to provide water or wastewater service to the other party, and each party has the right to refuse to provide water or wastewater service, under this Agreement, to the other party.
- B. The city requiring services shall initiate the request for reciprocal services by forwarding a written request for service. The request shall be accompanied by a map which identifies the location of the proposed properties. Approval of requests for service shall be in writing and will be forwarded or approved by the following:

Exhibit E

If for Dallas:

Dallas Water Utilities
Director of Utilities
1500 Marilla Street – 4/A/N
Dallas, Texas 75201

If for Customer:

City of Carrollton
Attn: City Manager
Carrollton City Hall
P. O. Box 110535
Carrollton, Texas 75011

- C. Meter boxes, service lines, laterals and other facilities necessary to provide service shall, upon installation, become the property of the city furnishing service if accepted or agreed to by said city.
- D. The customer to be served will sign a contract with the city furnishing service, agreeing to abide by all the ordinances of that city which relate to the furnishing of said service.
- E. The city requesting service under this Agreement hereby grants to the city providing such service authorization to go upon the public streets, roadways, alleys and easements of the former city for the purpose of installing, maintaining and removing such facilities as are necessary to provide service.

Customer agrees that, with prior written approval of Customer, Dallas may use streets, alleys and public rights-of-way within Customer's boundaries for the purposes detailed in this Agreement to provide retail water and wastewater service to Customer or to other customers without charges or tolls, provided that Dallas makes the necessary repairs to restore the streets, alleys or public rights-of-way used to their original condition. Such use and repairs shall be pursuant to the terms and conditions of the conveyance or license Customer duly grants for such purposes.

Dallas agrees that, with prior written approval of Dallas, Customer may use streets, alleys and public rights-of-way within Dallas' boundaries for the purposes detailed in this Agreement to provide retail water and wastewater service to Customer or to other customers without charges or tolls, provided that Customer makes the necessary repairs to restore the streets, alleys or public rights-of-way used to their original condition. Such use and repairs shall be pursuant to the terms and conditions of a license duly granted by the Dallas City Council.

- F. If at any time the city requesting service under this Agreement shall construct a main capable of providing water and/or wastewater service to any customer being served under the terms of this Agreement, then upon request, the city so providing the service shall terminate same, reserving the right to remove its meters and materials from the property previously served; provided, the customer shall have a reasonable time, not to exceed one month, to connect to the new service.
- G. In the cases where a customer receives water service from one city and wastewater service from the other, the city furnishing water service will provide the other city with

Exhibit E

monthly meter readings and water consumption information on such customers and will permit appropriate employees of the city furnishing wastewater service to read and examine the meters serving such customers to determine the accuracy of readings so furnished and to permit appropriate employees of the city furnishing wastewater service to examine water consumption records of such customers, provided that no meter shall be removed or adjusted except by the city furnishing water service.

5. CLAIMS OF LIABILITY

It is further mutually agreed by Dallas and Customer that insofar as the services contemplated hereunder are performed by either city within the jurisdiction of the other city and to that extent only, Dallas and Customer hereby mutually agree that they will release, hold harmless and defend the other city from all claims of liability which result from damage to property (real or personal) or persons arising directly or indirectly from the performance of the services provided for under this Agreement.

6. TERMINATION OR MODIFICATION

This Agreement is to remain in force for the term of the Contract to which it is attached.