

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

**CITY OF COPPELL
UNTREATED WATER PURCHASE CONTRACT**

WHEREAS, the City of Coppell, (hereinafter called “Purchaser”), a Texas municipal corporation legally authorized to do business in the State of Texas, desires to purchase from the City of Dallas (hereinafter called “Dallas”) untreated water to maintain the surface elevation of North Lake and for irrigation of the property surrounding North Lake which is located in Dallas County.

WHEREAS, said water would be taken from diversion points located on the Elm Fork of the Trinity River in amounts hereinafter specified; and

WHEREAS, Dallas, pursuant to Certificates of Adjudication Nos.08-2455 (Lake Ray Roberts), 08-2456 (Lake Lewisville), 08-2457 (Elm Fork of the Trinity River – Run of River), and 08-2458 (Lake Grapevine) and Permit No. 5414 (Elm Fork Trinity River – High Flow), as amended (hereinafter called “Dallas Elm Fork Trinity River Water Supplies”), is entitled to appropriate the water of the Elm Fork of the Trinity River; and

WHEREAS, the diversion and use of the water by Purchaser from the Dallas Elm Fork Trinity River Water Supplies affect the water rights of Dallas in the Elm Fork Trinity River; and

WHEREAS, water diverted by Purchaser shall be considered released or diverted from the Dallas Elm Fork Trinity River Water Supplies and conveyed down the Elm Fork of the Trinity River to the diversion point; and

WHEREAS, Purchaser, has acquired North Lake from and Certificate of Adjudication 08-2365, was assigned to Purchaser in the “Bill of Sale, Assignment and Assumption” by Luminant Generation Company, LLC; and

WHEREAS, the Texas Commission on Environmental Quality (“TCEQ”) has issued a Temporary Water Permit for a 12-month period beginning July 2018 for a maximum amount of 10 acre feet that may be diverted anywhere along the perimeter of North Lake; and

WHEREAS, Purchaser will request an amendment to Certificate of Adjudication 08-2365 to reflect the modifications made to North Lake’s impoundment and to change the North Lake purpose of use from industrial to irrigation purposes; and

WHEREAS, the parties desire to enter into this Untreated Water Purchase Contract ("Contract") allowing Purchaser to purchase untreated water at the Dallas ordinance rate in effect on the execution date of this Contract, and as may thereafter be changed from time to time in the manner set out herein below, in accordance with applicable regulations and procedures established by the TCEQ and the Texas Water Development Board (“TWDB”); and,

WHEREAS, the effectiveness of this contract is dependent upon compliance with the applicable rules of the TCEQ and the TWDB.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions given by each party, Dallas and Purchaser agree as follows:

1. CONTRACT ADMINISTRATION.

This Contract shall be administered on behalf of Dallas by its Director of Water Utilities, or the Director's designated representative (hereinafter called "Director"), and on behalf of Purchaser by its Public Works Director or other authorized official or designated representative.

2. AVAILABILITY AND DIVERSION POINT.

A. Dallas agrees to sell untreated water to Purchaser for irrigation uses, subject to the conditions in Exhibit D, which is attached to and made a part of this Contract, and as outlined below, when available, and when not otherwise needed by Dallas for storage, diversion or use for authorized purposes in the Dallas Elm Fork Trinity River Water Supplies. The sale of untreated water to meet the requirements of Purchaser is subject to and limited by the available system supply (as determined by the Director). Sales of untreated water, however, shall not be unreasonably withheld. Purchaser shall divert water only at diversion points as described in Exhibit A, attached hereto and fully incorporated herein for all purposes as if copied word for word.

B. Purchaser may, in the future, request additional diversion points and/or quantities of water under this Contract. Such additional requests may be granted with the approval of the Director and when so approved, shall be deemed to be made a part of this Contract, thereby amending Section 4 and/or Exhibit A of this Contract.

C. Exhibit A satisfies the requirement in current TCEQ rule contained in 30 Texas Administrative Code, Section 295.101(b) for inclusion of a vicinity map in the water purchase contract.

3. WATER YEAR.

The term "Water Year" means the period described by applicable ordinance of the City of Dallas, as may be amended from time to time. Currently, the Water Year begins on June 1 and ends on May 31.

4. AVERAGE/MINIMUM/MAXIMUM PURCHASE.

Purchaser agrees to pay, as billed, for the minimum quantity of water as stated below, notwithstanding that a lesser amount may actually be taken. Should greater amounts than the minimum be taken, payment shall be as indicated in Section 10 of this Contract. Purchaser shall not, in any Water Year, take more than the maximum quantity of water stated below. Any quantity taken above the maximum quantity shall be considered an unauthorized diversion by the Purchaser, and the Contract is subject to termination under Section 14.C; however, Purchaser shall remain liable for the charges for the quantity taken in excess of the maximum allowed quantity.

Minimum Usage Ac-Ft (Gallons)	Average Usage Ac-Ft (Gallons)	Maximum Usage Ac-Ft (Gallons)
10 ac-ft (3,258,510 gallons)	2,500 ac-ft (814,627,500 gallons)	3,100 ac-ft (1,010,138,100 gallons)

5. RATES.

Purchaser shall pay Dallas for untreated water taken under this Contract at the current regular rate for untreated water sales as specified by Dallas ordinance, as same may be amended from time to time, and shall pay all other applicable charges for untreated water as may be adopted from time to time by ordinance of the Dallas City Council.

6. MEASUREMENT OF CONSUMPTION.

A. Adequate metering facilities, as approved by the Director, will be provided by the Purchaser at the diversion point(s). Payments are due monthly, in accordance with the provisions of Sections 10 and 11, for all metered consumption. The Director shall have the right to test the meter and to bill on estimated quantities if the meter is found to be inaccurate. If the meter is discovered to be malfunctioning, the amount of water that has passed through such meter will be estimated for each day that the meter has not been functioning correctly. The last correctly measured monthly consumption will be used as a basis for calculating the amount of water taken during the time such meter has not been functioning correctly. Purchaser shall maintain daily pumping logs to provide an alternate manner for estimating billings. Purchaser has a maximum of sixty (60) days to have any faulty meter repaired or replaced. Upon completion, Purchaser is required to contact the Director for approval of any new or repaired meter.

A. Purchaser shall provide Dallas with monthly reports describing the amount of monthly usage of water. The reports shall be in a form prescribed by the Director.

7. OPERATIONAL GUIDELINES.

Dallas and Purchaser agree to abide by the Operational Guidelines in Exhibit B, attached to and made a part of this Contract, for the purpose of aiding in the administration of this Contract. Dallas and Purchaser further agree that such Operational Guidelines may be hereafter revised from time to time by Dallas, as approved by the Director.

8. METERING AND PUMPING FACILITIES.

A. Purchaser shall be required to provide pumping and metering equipment and facilities as outlined in Exhibit A. Ownership and maintenance responsibility for the meters, pumps and facilities housing meters and pumps shall be with Purchaser. Purchaser shall maintain meters, pumps and motors and facilities to the satisfaction of the Director.

B. Water provided under this Contract will be taken at the Elm Fork diversion point and conveyed to the North Lake water supply via an existing 42-inch water line that was

constructed by Dallas Power and Light Company in the 1950s as part of the North Lake power generation station. Purchaser acknowledges that it has acquired the right to the diversion facilities and pipeline as constructed by Dallas Power and Light Company. Water will also be diverted from the perimeter of North Lake as outlined in Exhibit A.

C. Dallas has reviewed the existing Elm Fork diversion pump station and facilities as identified in Exhibit A, and such diversion works and facilities are authorized. Plans and specifications for proposed or additional intake facilities, pumping facilities, and metering equipment and facilities shall be submitted to the Director by Purchaser for written approval prior to purchase or letting of contracts.

D. Purchaser shall maintain a means to release or pass all inflows downstream and to prevent impoundment of state or surface water that is not authorized by this Contract.

E. Purchaser shall furnish, install, operate, and maintain measuring equipment to quantify the amount of water diverted and used by Purchaser under this Contract. All measuring equipment (meters and devices) must be of standard types for measuring within generally accepted standards of accuracy as established by the American Water Works Association. Purchaser shall employ a professional meter testing firm, acceptable to Dallas, to test such meters annually and shall invite representatives of Dallas to observe such tests.

F. Upon termination of this Contract, Purchaser shall, at Purchaser's expense, remove any and all diversion facilities and restore diversion points to pre-Contract conditions.

9. WATER CONSERVATION AND DROUGHT CONTINGENCY PLANS AND CURTAILMENT.

A. Purchaser shall institute landscape irrigation 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. Purchaser must comply with Dallas' water conservation and drought contingency plan measures and implement a water conservation plan or water conservation measures using the applicable elements of TCEQ regulations in 30 Texas Administrative Code Chapter 288, as amended, and titled, "Water Conservation Plans, Drought Contingency Plans, Guidelines and Requirements." Purchaser must adopt water conservation and drought management strategies at least as strict as those strategies of Dallas. Purchaser acknowledges that Dallas has provided a copy of its current Water Conservation Plan and Drought Contingency Plan and has advised Purchaser regarding the location of updates of those plans.

B. Purchaser agrees that during periods of water shortages Dallas may, in accordance with its drought contingency plan as approved by the TCEQ, reasonably restrict Purchaser's withdrawals of untreated water when such water is needed for Dallas' municipal purposes. No restrictions will be imposed on Purchaser unless Dallas has imposed restrictions on withdrawals as to all similarly situated users. In the event withdrawals are restricted, untreated water shall be allocated to Purchaser on a pro rata basis. Written notice of temporary curtailment will be provided to the Purchaser. If a curtailment is imposed or sales discontinued for a period exceeding fifteen (15) days in any given Water Year, the minimum quantity to be purchased under this Contract will

be prorated downward in proportion to the duration of the curtailment or discontinued service, unless at the time Purchaser has actually taken the minimum quantity specified in this Contract.

10. PAYMENT.

A. Dallas will invoice Purchaser for the minimum quantity of water specified in Section 4 at the beginning of each Water Year. Purchaser shall pay for such minimum quantity of water by the invoice due date. Actual consumption shall be offset against the minimum quantity payment advance. When the advance payment has been offset by actual consumption, billings shall be calculated on actual quantities taken by Purchaser on a monthly basis. Monthly billings shall be provided to the Purchaser. Payment, when required, is due by the invoice date.

B. Purchaser agrees to pay Dallas for the minimum quantity specified in Section 4, whether or not Purchaser has actually taken the minimum quantity by the end of the Water Year. Purchaser shall also be responsible for the payment of all water taken above the minimum quantity at the rates specified in Section 5 of this Contract.

C. In addition to the remedies set forth in Section 14 of this Contract, Purchaser shall also be responsible for the payment of all water taken above the maximum quantity at the rates specified in Section 5 of this Contract.

11. DEFAULT IN PAYMENTS.

All amounts due and owing to Dallas by Purchaser shall, if not paid when due, accrue interest in accordance with the provisions of Section 2-1.1(b) of the Dallas City Code, as amended. If any money due and owing by Purchaser to Dallas is placed with an attorney for collection, Purchaser shall pay to Dallas, in addition to all other payments provided for by this Contract, including interest, Dallas' collection expenses, including court costs and attorneys' fees.

12. TERM.

A. The term of this Contract shall commence as of the date of its execution and shall remain in effect for a term of thirty (30) years.

B. If Purchaser desires to extend the original term of the contract, Purchaser shall request, in writing, such extension at least 90 days in advance of the scheduled expiration date.

13. INSPECTION AND METER READING.

Authorized Dallas employees shall have the right of reasonable ingress and egress on Purchaser's property and facilities during business hours to observe pumping operations, review pumping records, read meters, and to verify that untreated water is being used for the purposes and in the manner prescribed in this Contract.

14. DEFAULT – TERMINATION.

A. Dallas, acting through the Director, shall have the right to terminate this Contract upon non-payment of the charges set out in this Contract for any period exceeding sixty (60) days. Dallas, however, shall provide notice of intent to terminate under this Subsection at least ten (10) days prior to the proposed effective date of termination, in order for Purchaser to tender payment and thereby cure a default as to non-payment under this Contract.

B. Dallas, acting through the Director, shall have the right to terminate this Contract if it is found that pumping logs and the Accounting Plan are not adequately maintained, that the meter is being bypassed, or that any water pumped by Purchaser is being resold or used for unauthorized purposes without notice to Dallas and Dallas' written consent. In addition, if the Contract is terminated under this Subsection, Dallas shall be entitled to payment for the maximum quantity of water for that Water Year in which the default under this subsection occurs.

C. Dallas, acting through the Director, shall have the right to terminate this Contract if Purchaser knowingly takes untreated water in excess of the maximum amount prescribed for the Water Year in question. If the Contract is terminated under this Subsection, Dallas shall be entitled to payment for the maximum quantity of water for that Water Year in which the default occurred, PLUS payment for the diverted untreated water in excess of the maximum amount prescribed for that Water Year.

D. Purchaser, acting through its City Manager, shall have the right to terminate this Contract if Dallas fails to comply with the terms of this Contract.

E. In addition to the foregoing, Dallas, acting through the Director, may terminate this Contract for noncompliance with any other contractual condition upon thirty (30) days advance written notice to Purchaser of its intent to terminate; provided, however, that if Purchaser cures the condition of contractual noncompliance within the thirty-day period, Dallas, acting through the Director and at the Director's sole option, may continue this Contract.

F. After the first full Water Year of performance, this Contract may be terminated by Purchaser upon thirty (30) days written notification to Dallas. In addition, after the first full Water Year of performance, this Contract may be terminated by Dallas upon thirty (30) days written notification to Purchaser.

G. The remedies set forth in this section shall not be considered exclusive, and Dallas retains all other rights and remedies available at law and in equity in the event of any breach by Purchaser of any of the terms or provisions of this Contract.

15. NO REPRESENTATIONS OR WARRANTIES; FORCE MAJEURE.

A. PURCHASER AGREES TO TAKE WATER DELIVERED BY DALLAS "AS IS." DALLAS MAKES NO REPRESENTATIONS OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE CHARACTER, QUALITY OR AVAILABILITY OF THE WATER TO BE TAKEN AND PURCHASER AGREES TO ASSUME ALL SUCH RISKS,

ACCEPTING SAID WATER, IF AVAILABLE, IN THE SAME STATE AS IT IS PUMPED OR RELEASED FROM THE DESIGNATED DIVERSION POINT(S). DALLAS ALSO DOES NOT MAKE ANY REPRESENTATION THAT THE WATER WILL BE SUITABLE FOR THE PURPOSES FOR WHICH PURCHASER DESIRES TO USE IT.

B. DALLAS SHALL NOT BE LIABLE IN ANY EVENT FOR THE INABILITY OF DALLAS TO PERFORM ANY OBLIGATION UNDER THIS CONTRACT FOR REASONS BEYOND ITS CONTROL, INCLUDING BUT NOT LIMITED TO ACTS OF GOD OR NATURAL DISASTER, WAR, DROUGHT, TERRORISM, FIRE, PUBLIC UTILITY POWER OUTAGE, OR THE RULES, REGULATIONS, OR ORDERS OF COURTS OR OF GOVERNMENTAL AGENCIES.

16. RIGHTS AND TITLE; NO RESALE.

A. Purchaser agrees that it shall acquire no rights or title to the use or reuse of water other than those rights explicitly set forth in this Contract.

B. Purchaser agrees not to sell water purchased from Dallas unless Purchaser has received prior written approval from the Director. In granting such authorization, Dallas may establish the terms and conditions of the conveyance of such water including, but not limited to, the setting of monetary rates for the sale of such water. "Convey" means sell, trade, donate, exchange, transfer title to, or contract therefore.

C. In consideration of the written approval of the resale of water, if so granted, Purchaser agrees that the contract with each successive customer to whom 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 9 of this Contract.

17. ASSIGNMENT.

Purchaser shall not sell, assign, transfer or convey its interest in this Contract, in whole or in part, without the prior written consent of the Director.

18. PROTECTION OF WATERSHED.

Purchaser agrees that water diverted under the Contract shall not be treated or altered by chemical or other means so as to be harmful to the Dallas water supply in the event of runoff, overflow or other release. Any chemical treatment of the water by the Purchaser shall be approved in advance by Dallas, which approval shall not be unreasonably withheld.

19. EASEMENTS, PERMITS AND FEES.

A. In agreeing to accept delivery of water under this Contract, Purchaser warrants and represents that Purchaser's diversion and use of water is in compliance with all applicable laws and regulations, including, but not limited to, all applicable laws of the State of Texas, applicable

rules, regulations, permits and orders of TCEQ and TWDB, Federal law (including but not limited to environmental and water quality laws, rules, orders, and regulations), and the Charter and ordinances of the City of Dallas, as same may hereafter be amended. This Contract's effectiveness is dependent upon Dallas and Purchaser's compliance with 30 Texas Administrative Code, Section 295.101 and 30 Texas Administrative Code, Chapter 297, Subchapter J (relating to Water Supply Contracts and Amendments), as amended.

B. Purchaser shall obtain any easements or rights-of-way necessary for any water lines or facilities that may be required to implement the terms and conditions of this Contract.

C. Purchaser is responsible for the acquisition of the appropriate water right permit from the TCEQ and any additional permits and for the payment of any regulatory or other fees required in connection with this Contract, including, but not limited to, permits, licenses, approvals or regulatory or other fees that may be required by TCEQ or TWDB. Should Purchaser be required to obtain a water right permit, Purchaser shall provide Dallas with a copy of said permit and Dallas, upon receipt, is authorized to include the permit as a part of Exhibit C of this Contract.

D. In the event Purchaser is required to obtain any water right permit, amendment or other approval from the State of Texas, Purchaser shall include in all applications for permits or approvals, a request that all permits and approvals issued contain a reference to this Contract and that Purchaser's permit to impound or divert untreated water is contingent upon the continued effectiveness of Purchaser's Contract with Dallas.

E. Purchaser agrees to coordinate permit submittals with Dallas if both Purchaser and Dallas are required to obtain permits or amendments to permits.

F. Purchaser shall not commence construction of impoundments or diversion facilities prior to obtaining all permits and approvals required from the State of Texas. Purchaser shall divert water under this contract only pursuant to such permit, or amendment to any existing permit that TCEQ or TWDB may issue to Purchaser relating to the diversion of water, applicable regulations of TCEQ and TWDB, and the terms of this Contract.

20. OTHER CHARGES.

In the event any sales or use taxes, assessments or charges of any similar nature are imposed on diverting, storing, delivering, gathering, impounding, taking, selling, using, or consuming the water received by Purchaser from Dallas, the amount of the tax, assessment, or charge shall be borne by Purchaser, in addition to all other charges, and whenever Dallas is required to pay, collect, or remit any tax, assessment, or charge on water received by Purchaser, then Purchaser shall promptly pay or reimburse Dallas for the tax, assessment or charge in the manner directed by Dallas.

21. NOTICES.

Any notice, payment, statement, or demand required to be given under this Contract shall be deemed to have been sufficiently given to either party for all purposes hereof if mailed by postage prepaid, addressed as follows:

TO DALLAS:

Director
Dallas Water Utilities
Dallas City Hall
1500 Marilla – Room 4/a/North
Dallas, Texas 75201

TO PURCHASER:

Public Works Director
City of Coppell
255 Parkway
Coppell, Texas 75019

Or to such other respective address as the parties may designate from time to time in writing in accordance with this notice provision.

22. 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 Dallas. Section 2-86 of the Dallas City Code, as amended, is expressly incorporated by reference and made a part of this Contract for all purposes as if written word for word in this Contract. Purchaser 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.

23. 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.”

24. GIFT TO PUBLIC SERVANT.

Dallas may terminate this Contract immediately if Purchaser 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.

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.

Notwithstanding any other legal remedies, Dallas may request Purchaser to remove any officer or employee of Purchaser 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.

25. VENUE.

The parties agree that this Contract shall be enforceable and exclusive venue shall be in Dallas County, Texas.

26. GOVERNING LAW.

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

27. SEVERABILITY; LEGAL CONSTRUCTION.

A. 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 thereof and this Contract shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Contract.

B. The parties acknowledge that this Contract is an “arm’s length” agreement, entered into by Dallas and Purchaser freely, without duress, coercion or any undue influence. No presumption will apply in favor of either party in the interpretation of this Contract or in the resolution of any ambiguity of any provision of this Contract.

28. 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.

29. 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.

30. APPLICABLE LAWS.

This Contract may be subject to review and approval by TCEQ or TWDB. Purchaser shall comply with all terms, conditions and provisions of the term permit to be obtained from the State of Texas, as amended, so long as same may remain in effect. In the event of any final judgment finding any violation or violations of the laws, rules, regulations, or orders described above, Purchaser shall be strictly liable for any damages caused to the property of Dallas, including but not limited to Dallas' interest in Elm Fork of the Trinity River water, as a result of such violation or violations.

31. NO THIRD PARTY BENEFICIARIES.

Dallas and Purchaser enter into this Contract solely for the benefit of themselves and agree that nothing in this Contract shall be construed to confer any right, privilege or benefit on any person or entity other than Dallas and Purchaser.

32. SUCCESSORS AND ASSIGNS.

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

33. ENTIRE AGREEMENT; NO ORAL MODIFICATIONS.

This Contract 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.

34. AUTHORIZATION TO ACT.

By their signatures below, the representatives of Dallas and Purchaser state that they are authorized to enter into this Contract. Dallas and Purchaser will each provide documentation that this Contract has been authorized by its respective governing body.

EXECUTED as of the ____ day of _____, 2018, on behalf of Dallas by its City Manager, duly authorized by Resolution No. _____, adopted on the ____ day of _____, 2018 and approved as to form by its City Attorney; and on behalf of Purchaser by its duly authorized officials.

APPROVED AS TO FORM:
LARRY E. CASTO
City Attorney

CITY OF DALLAS
T. C. BROADNAX
City Manager

BY: _____
Assistant City Attorney

BY: _____
Assistant City Manager

ATTEST:

PURCHASER:
CITY OF COPPELL

BY _____

BY _____
Michael Land, City Manager

EXHIBIT A

DESCRIPTION OF PUMPING AND METERING EQUIPMENT AND FACILITIES AND LOCATION OF DIVERSION POINTS

Description of Pumping and Metering Equipment:

Portable, engine-driven temporary pumps (trash pumps) will be utilized on an as-needed basis to pump water from the intake channel of the former power plant raw water pump station. Water will be pumped into North lake via the existing 42" concrete cylinder pipe. The pumping system will be equipped with a flow-totalizing water meter compatible with the pump discharge size and flow rate (12-in discharge; 5 MGD flow). Multiple pumps may be used with a total discharge rate not to exceed 5 MGD. Changes to the size and flow rate of the pump(s) shall be reported to Dallas and may result in medication to the Operational Guidelines in Exhibit B.

Description of Facilities:

The raw water pump station of the former power plant and its associated pipeline and outfall structure constitute the facilities associated with this water supply contract. The pump station is located approximately 200-ft north of Sandy Lake Road on the west bank of the Elm Fork of the Trinity River. Water will be pumped into North Lake via the existing 42" concrete cylinder pipe. The discharge will enter the lake near the old lake filling structure below the normal water surface pool elevation of 485-ft MSL.

Location of Diversion Points:

The diversion point is the pump station intake channel located approximately 200-ft north of Sandy Lake Road and Carrollton Dam on the west bank of the Elm Fork of the Trinity River.

Future Facilities

Should additional pumping equipment, metering equipment, facilities, delivery points and/or water quantity modifications be agreed upon in the future, this Exhibit will be revised to recognize these changes. Revisions to Exhibit A and B in order to add, delete, or modify pumping equipment, metering equipment and facilities and delivery points do not require city council approval.

EXHIBIT B

OPERATIONAL GUIDELINES

Dallas will render the sale of untreated water to Purchaser under the terms and conditions provided by the Contract and as outlined in the Operational Guidelines below.

Purchaser shall contact the DWU System Operator at (214) 670-8065, a 24-hour number, to request the total amount of water to be taken from the Elm Fork of the Trinity River in a 24 hour period and to provide the number of days that the request will cover. Purchaser shall make request by 7:00 a.m., 24 hours prior to the start of pumping. Changes in the request, such as an extension or earlier end date, must be made by 7:00 a.m., 24 hours prior to the change. This request for advance notice is to facilitate Dallas' coordination of lake water releases.

When lake levels become critical due to drought conditions or unforeseen circumstances, Dallas reserves the right to deny, restrict and/or discontinue requests. This right is conveyed with the understanding that such restriction for releases to Purchaser shall be reasonable in relation to Dallas' water supply.

The DWU System Operator will advise Purchaser's Control Room at (972) 462-5150, a 24-hour number, with a six (6) hour advance notice, if possible, if there is a need to curtail and/or discontinue a previously-approved request.

EXHIBIT C

CITY OF COPPELL WATER RIGHT PERMIT

EXHIBIT D

SPECIAL CONDITIONS

Conditions for Purchaser's Utilization of Diversion Point

1. Purchaser is required to provide its Surface Water Rights Change of Ownership application filed with the TCEQ on June 12, 2018 and Purchaser shall provide Dallas a copy of the Change of Ownership for Certificate of Adjudication 08-2365 upon issuance by the TCEQ.
2. Purchaser is required to amend Certificate of Adjudication 08-2365, for North Lake to change ownership from the previous owner to Purchaser, to change the designated use to irrigation, to reflect the modifications made to the impoundment, and to update the diversion rate and location.
3. Purchaser must receive the amendment to Certificate of Adjudication 08-2365 prior to expiration of the Temporary Water Use Permit, Tracking No. 0578-18-0001. Purchaser shall provide Dallas a copy of the amendment to Certificate of Adjudication 08-2365 upon issuance by the TCEQ that will replace the Temporary Water Use Permit, Tracking No. 0578-18-0001 in Exhibit C herein.
4. Purchaser shall maintain a daily pumping log that includes the dates water was diverted from the raw water supply, meter reads, and the total amount of gallons diverted for each of those days. The log must be provided to DWU Wholesale Division on a monthly basis or as requested by Dallas. Director may terminate this contract in Director's sole discretion if Purchaser fails to properly maintain the daily pumping log.