

**WHOLESALE TREATED WATER CONTRACT BETWEEN**  
**CITY OF DALLAS AND**  
**THE CITY OF COPPELL**

STATE OF TEXAS           §  
  §  
COUNTY OF DALLAS       §

THIS WHOLESALE TREATED WATER CONTRACT (“Contract”) is made and entered into this the \_\_\_\_ day of \_\_\_\_\_, 2017, by and between the CITY OF DALLAS, a Texas home rule municipality (hereinafter called “Dallas”), and the CITY OF COPPELL, 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, the Current Contract with Dallas will expire on November 18, 2017; and

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

“Convey” means sell, trade, donate, exchange, transfer title or contract therefor.

“Current Contract” means that certain Wholesale Treated Water Contract dated and effective November 18, 1987 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 now or hereafter 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 November 18, 2017.

“Memorandum of Agreement” or “MOA” means that certain *Memorandum of Agreement for Wholesale Treated Water* effective June 21, 2010, 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 Water Systems, as amended from time to time.

“TWDB” means the Texas Water Development Board.

“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 1<sup>st</sup> of each calendar year and ends on May 31<sup>st</sup> 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 November 18, 2017 (“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 or reduced.

**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 POINTS AND METERING FACILITIES**

**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 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. If Customer decides on its own, and not at Dallas' request, to oversize delivery facilities, Dallas shall have the right to use any unused portion of the share of the capacity allocated to Customer for the Customer or other Dallas customers.

**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.** 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.

**4.9 Access to Customer 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.

**4.10 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. Dallas shall routinely, but not less than at least once annually, verify the accuracy of delivery meters and inform the Customer of the results. 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 a 4.25% interest rate or as provided in Section 2-1.1 of the Dallas City Code, as amended, or as authorized by Ch. 2251, Subchapter B 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 or other method mutually agreed between Dallas and Customer in writing by the Director and Customer.

**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 acknowledges that if water supplies or services are curtailed within Dallas, that provision of the Texas Water Code authorizes Dallas to impose a like curtailment on deliveries to Customer. Customer shall cooperate by imposing conservation or other lawful 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 reduces the consumption of water, prevents or reduces the loss of water, avoids the waste of water, improves the efficiency in the use of water, increases the recycling and reuse of water and prevents the pollution of water, so that a water supply is made available for future or alternative uses. 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.

**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, using or selling 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.** Under normal operations, 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. Under emergency conditions, Dallas may gain immediate access, without prior written approval of Customer, for emergency repairs. Dallas will notify Customer as soon as possible following the emergency. 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.** Under normal operations, 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. Under emergency conditions, Customer may gain immediate access, without written approval of Dallas, for emergency repairs. Customer will notify Dallas as soon as possible following the emergency. 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 BY DALLAS; 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.

#### **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 City Manager.

**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 Coppell  
Attn: City Manager  
P.O. Box 9478  
Coppell, Texas 75019

**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 state law or local ordinance 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, or local ordinance, 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 Dallas/Fort Worth International Airport Board, 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.

**[Remainder of this page intentionally left. Signatures appear on the following page.]**

**EXECUTED** this the \_\_\_\_ day of \_\_\_\_\_, 2017, by the City of Dallas, signing by and through its City Manager, duly authorized to execute same by Resolution No.17-\_\_\_\_\_, adopted by the City Council on \_\_\_\_\_, 2017, and by Customer, acting through its duly authorized officials.

**APPROVED AS TO FORM:**

**CITY OF DALLAS**

**LARRY E. CASTO**  
City Attorney

**T.C. BROADNAX**  
City Manager

BY \_\_\_\_\_  
Assistant City Attorney

BY \_\_\_\_\_  
Assistant City Manager

**ATTEST:**

**CUSTOMER:**  
**CITY OF COPPELL**

BY \_\_\_\_\_  
Town Secretary

BY \_\_\_\_\_  
Mayor

**APPROVED AS TO FORM:**

BY \_\_\_\_\_  
City Attorney

## EXHIBIT A

### MEMORANDUM OF AGREEMENT

**Memorandum of Agreement (MOA)  
for  
Wholesale Treated Water**

Preamble: The 1979 MOA settled a rate dispute lawsuit between Dallas and its Wholesale Treated Water Customers regarding the wholesale treated water rate-setting methodology ("rate-setting methodology"), and as such has served the rate-setting methodology process well over the past 30 years. This amended agreement recognizes that changes to the rate-setting methodology have occurred over this timeframe, and incorporates consensus changes between Dallas and its Wholesale Treated Water Customers, and as such will serve to govern the rate-setting methodology for the next 30 years.

1. Purpose: Dallas is a regional water provider currently providing treated water service to Wholesale Treated Water Customers located within Dallas' established service area in North Central Texas. The purpose of this agreement is to establish the rate-setting methodology and formalize the mutual expectations of Dallas and its Wholesale Treated Water Customers with respect to rate-setting methodology. This rate-setting methodology will provide the basis for determining wholesale treated water rates after its effective date.
2. Applicability: This agreement is subject to all applicable orders, laws and regulations of the City of Dallas, State of Texas and the United States. If any state or federal governmental agency having jurisdiction disapproves any material part of this agreement during the term, the agreement is subject to cancellation by any party and renegotiation by Dallas and its Wholesale Treated Water Customers.
3. Water System Policy: Dallas operates a water system to provide a regulatory compliant, safe and reliable water supply, adequate for the current water use and future growth of Dallas and its Wholesale Treated Water Customers, and to avoid subsidization of any class of customers.
4. Definitions: A glossary which defines applicable cost of service terms is located in Appendix A of this MOA. Cost of service terms may be added, or the definition of an existing term amended, from time to time, without the necessity of amending this MOA. Additions and amendments will be reflected in the appendices attached to the annual cost of service studies.
5. Responsibilities:
  - a. Dallas is responsible for planning, financing, constructing, operating and maintaining the water supply system to the extent permitted by available water revenues, for developing cost of service information to support wholesale rate changes, and for informing Wholesale Treated Water Customers of wholesale rate changes and other pertinent utility information.



- b. Wholesale Treated Water Customers are responsible for keeping Dallas informed concerning their projected water supply needs and operating requirements for planning, managing and maintaining their retail systems to promote water conservation and efficient system operation, and for paying adequate rates to Dallas to cover the costs incurred by Dallas in providing service to them.

6. Rate-Setting Methodology for Wholesale Treated Water:

- a. Revenue requirements are to be determined on a utility basis, at original cost, including construction work in progress.
- b. Dallas is to receive a rate of return on rate base equal to embedded interest rate on water revenue bonds, commercial paper and other debt instruments plus 1.5 percent, which is agreed to be an adequate return to cover its costs and risks and as compensation for ownership and management responsibilities.
- c. All existing and future water supplies and associated facilities are to be included in a common water rate base. Wholesale Treated Water Customers, as a class, shall pay their proportionate share of costs for water supply, including that portion held for future use. For the 2010 cost of service study, wholesale treated water customers shall be allocated a percentage of total reservoir costs based on a 10-year future use percentage calculated using a 24-year linear regression. This percentage shall be increased or decreased in direct proportion to future changes in actual usage in conjunction with the cost of service studies. (Dallas will pay the balance of water supply costs which are not allocated to Wholesale Treated Water Customers under the cost of service allocation.) Allocation of costs other than water supply costs, including but not limited to operations and maintenance costs, shall be based on current use.
- d. Direct reuse of treated wastewater effluent is an Inside Dallas only cost and will be allocated to Inside Dallas customers only. Indirect reuse of treated wastewater effluent for lake augmentation will be included as a cost and as a benefit common-to-all.
- e. There will be a two part wholesale treated water rate (volume and demand), with allocation of costs in rate design so as to encourage conservation and efficient operation of the water systems of Dallas and its Wholesale Treated Water Customers.
- f. At the end of ten years from the Effective Date of the MOA, and each ten years thereafter, the City of Dallas or a majority of the Wholesale Treated Water Customers who are parties to this agreement may request a review of the above rate-setting methodology; and if so, the methodology shall be subject to renegotiation.

7. Wholesale Treated Water Rates: After the effective date of this MOA, Dallas will prepare a cost of service study to support wholesale treated water rates and allocations, and will submit it to the Wholesale Treated Water Customers to review and accept prior to submission to the Dallas City Council. Except as noted herein, the cost of service rate-setting principles will adhere to the 2009 cost of service study, including changes that have been identified and implemented since that date.
8. Effective Date: This MOA is effective as of December 17, 2009.
9. Term: The term of this MOA is thirty (30) years from its effective date, or until December 16, 2039, and for such additional periods as the parties may mutually agree upon.
10. Approved changes: Changes in the rate-setting methodology or other conditions may be made by mutual agreement of all parties at any time.
11. Individual contracts: This MOA is considered a replacement of and supersedes the 1979 MOA and shall automatically be incorporated and become a part of all existing wholesale treated water contracts without any further action or approval on the part of the City or of the Wholesale Treated Water Customers. Rate-setting methodology for individual contracts for wholesale treated water service between Dallas and its Wholesale Treated Water Customers will be consistent with this MOA. Dallas and its Wholesale Treated Water Customers will honor their existing water service contracts until such time as the contracts are amended or superseded by a new contract. Contracts for new Wholesale Treated Water Customers will be consistent with this MOA.
12. Recognition of MOA Participants: The MOA renegotiation process took place over many months during 2009 and 2010 and involved a number of meetings to discuss possible changes, revisions, and alternatives to the existing MOA. To that end, the City of Dallas would like to thank the individuals listed below for their outstanding input and contributions in the MOA update and renegotiation process, without whose help this revised document would not have been possible. Participants are listed in attached Appendix B.
13. Authorization to Act: By their signatures below, the representatives of Dallas and the Wholesale Treated Water Customers state that they are authorized to enter into this MOA. Dallas and the Wholesale Treated Water Customers will each provide documentation that this MOA has been authorized by its respective governing body.
14. Counterparts: This MOA may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

EXECUTED as of the 1<sup>st</sup> day of June, 2010, on behalf of Dallas by its City Manager, duly authorized by Resolution No. 10-1231, adopted on the 12<sup>th</sup> day of May, 2010 and approved as to form by its City Attorney.

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

**CITY OF DALLAS**  
**MARY K. SUHM**  
City Manager

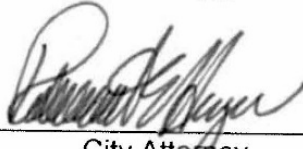
BY   
Assistant City Attorney  
Submitted to City Attorney

BY   
Assistant City Manager

EXECUTED as of the 13<sup>th</sup> day of July, 2010, on behalf of the City of Coppell, Texas, by its City Manager, duly authorized by Resolution No. 2010-0713.1 adopted on the 13<sup>th</sup> day of July, 2010 and approved as to form by its Attorney.

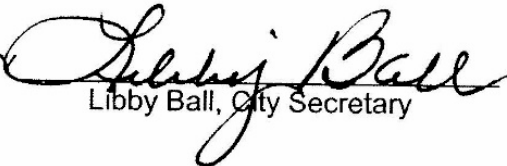
AGREED AS TO FORM:

CITY OF COPPELL, TEXAS

BY   
City Attorney

BY   
Clay Phillips, City Manager

ATTEST:

BY   
Libby Ball, City Secretary

## **APPENDIX A GLOSSARY OF TERMS**

**Allocation** - The apportioning of the common-to-all cost of service.

**Common-To-All** - Facilities, and their associated cost, that are dedicated to providing treated water service to both Dallas and Wholesale Treated Water Customers.

**Construction Work in Progress (CWIP)** - The utility's investment in facilities under construction but not yet dedicated to service.

**Demand Costs** - Costs associated with providing facilities to meet peak rates of use, or demand, placed on the system by the customers.

**Depreciation** - The wearing out or loss in service value of property used in utility operations.

**Depreciation Rate** - The rate of loss in service value, based on the expected service life of property.

**Depreciation Reserve** - The accumulated amount of the loss in service value of property.

**Direct Reuse** – The use of treated wastewater effluent from Dallas' wastewater treatment plants for non-drinking water purposes within the boundaries of the City of Dallas.

**Embedded Interest Rate** - Annual interest expense expressed as a percentage of average debt.

**Indirect Reuse** – The use of treated wastewater effluent from Dallas' wastewater treatment plants for raw water supply augmentation purposes.

**Inside Dallas** - The group of retail treated water service customers, comprised of residential, commercial and industrial customers served by Dallas Water Utilities.

**Interest Expense** - Payment made for the use of borrowed funds.

**Materials & Supplies** – Assets in inventory which are required to meet current obligations and service responsibilities of the utility.

**Maximum Day Demand** - The maximum demand placed on the system over a 24-hour period.

**Maximum Hour Demand** - The maximum demand placed on the system over a 60-minute period on the system's maximum day.

**MGD** - Million gallons per day flow rate.

**Operating Expenses** - Operation and maintenance charges incurred in operating a utility.

**APPENDIX A  
GLOSSARY OF TERMS  
(PAGE 2 OF 2)**

**Original Cost** - The amount of investment in facilities when first put into service.

**Rate Base** - Total investment dedicated to providing utility service.

**Rate of Return** - The percentage of return authorized to be earned on an investment (e.g. a rate base).

**Reservoir Capacity** - The amount of water available from a reservoir.

**Reservoir Costs** - Costs incurred in acquiring and maintaining an untreated water supply system.

**ROFC** - Rate of flow controller. A device limiting instantaneous flow rate to a specific amount. Instantaneous flow rate for rate setting purposes is a per day setting.

**Standby Service** - Connection to wholesale treated water customer which is not normally used, excluding bypass lines which are required by Dallas Water Utilities as a part of an active metering facility.

**Test Period (or Test Year)** - Selected to be representative of the period of time over which the new rates are expected to be in effect.

**Treated Water** - Raw water that has passed the purification process.

**Unaccounted for Water** - Water produced but not billed to customers that result from metering inaccuracies, system leakage, and miscellaneous unmetered uses.

**Volume Costs** - Costs that tend to vary directly with the amount of water produced and sold.

**Water Supplies and Associated Facilities** – Dallas' water supply system, including, but not limited to, all reservoirs, indirect reuse water, and all system infrastructure.

**Wholesale Cost of Service** - The sum total of: (1) operating expense, (2) depreciation expense, and (3) return on investment. Depreciation expense and rate of return are on the original cost of investment less accumulated depreciation, capitalized interest and contributed capital.

**Wholesale Treated Water Customers** – The group of water customers of the City of Dallas which currently have a wholesale treated water contract with Dallas.

**Working Capital** - Assets (funds) which are required to meet current obligations and service responsibilities of the utility.

## APPENDIX B

### MOA WORKING GROUP

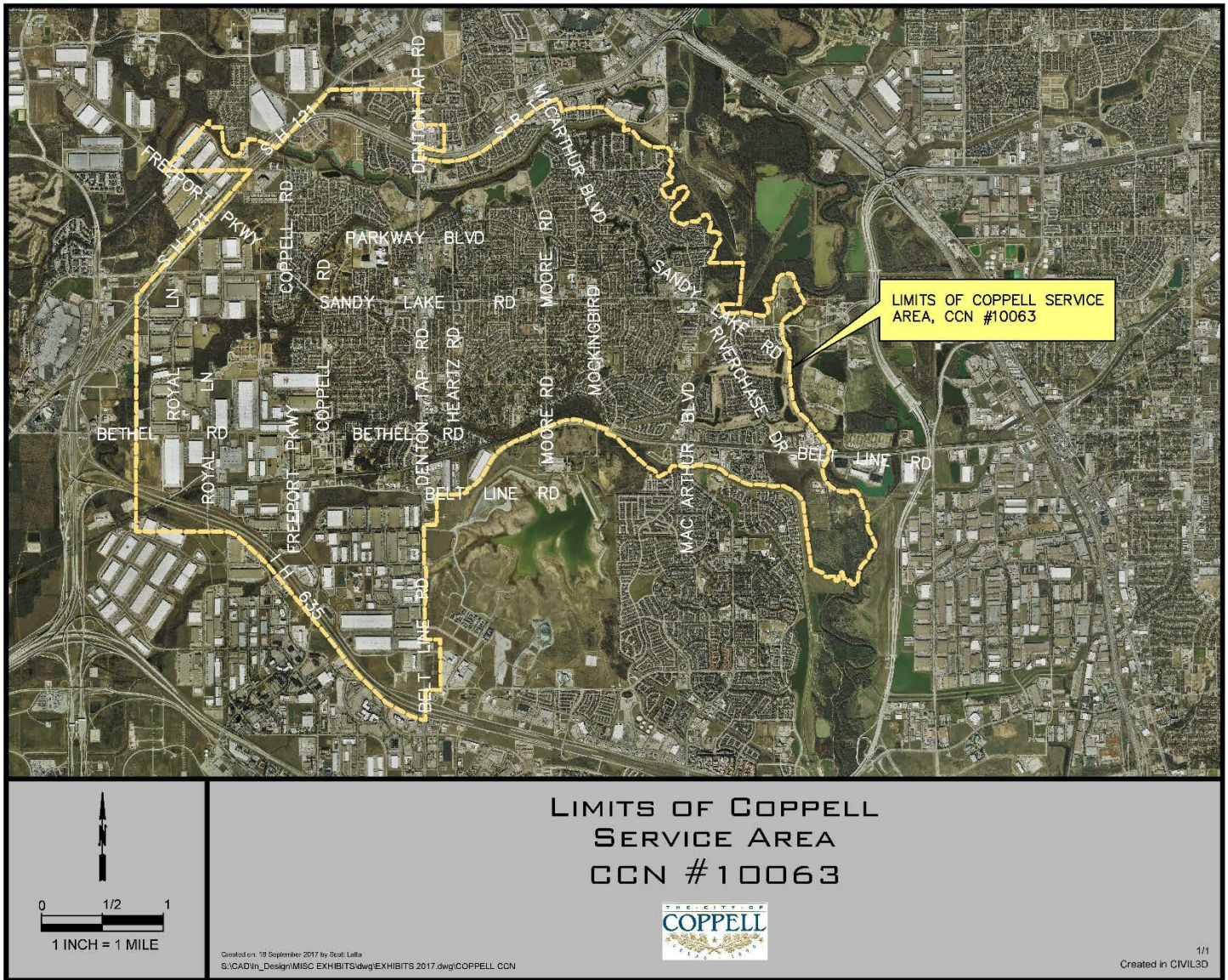
<b>Addison:</b>	Randy Moravec Lauren Clark
<b>Carrollton:</b>	Bob Scott Lori Iwanicki David Gaines
<b>Cedar Hill:</b>	Ruth Antebi-Guten
<b>The Colony:</b>	Tod Maurina
<b>Coppell:</b>	Chad Beach Kim Tiehen
<b>Dallas Fort Worth Airport:</b>	Jerry Dennis
<b>Dallas County W.C.&amp;I.D. #6:</b>	Robert Rodriguez Red Taylor William Freeman
<b>Denton:</b>	Tim Fisher
<b>DeSoto:</b>	Isom Cameron Tom Johnson
<b>Duncanville:</b>	Frank Trando Richard Summerlin Dennis Schwartz
<b>Farmers Branch:</b>	Charles Cox Mark Pavageaux
<b>Flower Mound:</b>	Chuck Springer Kenneth Parr
<b>Glenn Heights:</b>	Judy Bell
<b>Grand Prairie:</b>	Ron McCuller Doug Cuny
<b>Grapevine:</b>	Ramana Chinnakotla Kent Conkle
<b>Irving:</b>	Aimee Kaslik David Cardenas
<b>Lewisville:</b>	Carole Bassinger

<b>Red Oak:</b>	Charles Brewer
<b>Richardson:</b>	Kent Pfeil Keith Dagen
<b>University Park:</b>	Kent Austin
<b>Upper Trinity Regional Water District:</b>	Tom Taylor Larry Patterson
<b>Dallas:</b>	Jo M. (Jody) Puckett Bobby Praytor Charles Stringer Terry Lowery Denis Qualls Jacqueline Culton Tonia Barrix Melissa Paschall-Thompson Erica Robinson Maria Salazar
Page 31 of 31	



## EXHIBIT B

### DESCRIPTION AND MAP OF CUSTOMER'S SERVICE AREA



## **EXHIBIT C**

### **DELIVERY POINTS OF ENTRY AND METERING FACILITIES**

Description: Wholesale Treated Water is currently provided to Customer at the following delivery point.

#### **DELIVERY POINT 1:      COPPELL METERING STATION**

Location: The metering station is located 125 Kimbel Kourt about 250 feet north of the intersection of Kimbel Kourt with Sandy Lake Road. Specifically, it is located on the property of the Coppell Village Parkway Pump Station located at 1101 Village Parkway.

Metering Facilities: The metering station is equipped with a 24" Venturi meter and rate of flow control valve and associated equipment, including telemetry equipment connected to Dallas' control station. The maximum delivery capacity of the 24" Venturi meter is estimated at 28 MGD.

The metering station is also equipped with a 12" turbine bypass meter. The maximum design flow through this meter is estimated at 13 MGD.

The metering vault is owned, operated, and maintained by Dallas. Dallas owns the 36" water main leading up to the rate of flow controller and the valves on Dallas' system side of the metering station, and Dallas owns the short section of mains and valves on the discharge side of the metering station. Customer's ownership begins after the first set of valves on the discharge side of the metering station.

Pipeline Capacity: Customer has purchased the right to use 9/80<sup>th</sup> from Dallas and 20/80<sup>th</sup> from the City of Irving in the DFW main. Customer has a total capacity right of 29 MGD of the 80 million gallons per day (MGD) within the DFW Main. These capacity rights, and their purchases, are further described in Exhibit D.

#### **INTERCONNECT 1:      CYPRESS WATERS EMERGENCY INTERCONNECT**

Location: The metering station is located at 101 Saintsbury Street, Dallas, Texas near the intersection of Saintsbury Street and S. Beltline Road.

Metering Facilities: The meter vault is equipped with an 8" Metron Enduro 2800D meter. The maximum design flow through this meter is estimated at 4.0 MGD.

The metering vault is owned, operated, and maintained by Coppell. Dallas owns the water main and valves on Dallas' system side of the metering station.

This meter is used to provide reciprocal water between Dallas and Coppell.

**Future Facilities:** Should additional delivery points be agreed upon in the future, this Exhibit C will be revised to recognize these facilities. Revisions to this Exhibit C in order to add, delete, or modify delivery points or metering facilities can be authorized by the DWU Director and do not require Dallas City Council approval.

**EXHIBIT C MAP TO BE INSERTED HERE**

## **EXHIBIT D**

### **SPECIAL CONTRACT CONDITIONS/AGREEMENTS**

Customer and Dallas agree that this Exhibit D, containing conditions and clarifications to the respective Sections of this Contract as numbered below, are a part of this Contract and should be considered as such for purposes of administration and interpretation.

1. This Contract continues to recognize Dallas' obligation under Contract No. 71-40-S, dated May 17, 1972 between the City of Dallas and the City of Irving regarding construction of the DFW Main from the Elm Fork WTP to Irving's Hackberry Junction delivery point for additional treated water service to Irving, and for water service to DFW Airport as well as others. This Contract also continues to recognize Dallas' obligation under Contract No. 71-45-S, dated June 5, 1972, between the City of Dallas, the City of Fort Worth, and the DFW Airport Board for construction for the DFW Main to supply water to DFW and Irving. In addition, this Contract recognizes agreements made under the 1994 Contract, dated October 6, 1994, among the Cities of Irving, Lewisville, and Coppell, for construction of Dallas Water Supply Line No. 3.
2. The 1972 and 1994 Contracts specified agreement by Dallas to make available, if requested by the Customer, treated water supply in an amount up to 29/80ths of the actual capacity of the 80 MGD pipeline (approximately 29 MGD). However, Dallas' current obligation, expressed in Exhibit C, "DELIVERY POINTS OF ENTRY AND METERING FACILITIES", is to provide adequate supplies of water to meet the current and future needs of customer cities. Thus, the approximate 29 MGD is not to be considered as a limitation.

Should Customer's future demand exceed 29 MGD, Dallas agrees to supply Customer's demand, subject to available system supply and system deliverability, at delivery point as agreed by Customer and Dallas.

3. This Contract replaces the Current Contract, dated November 18, 1987, as amended by Supplemental Agreement No. 1 dated June 12, 1992, No. 2 dated November 9, 1994, and No. 3 dated August 13, 2012.

If additional special conditions or agreements pertaining to this Contract are required in the future, Exhibit D will be amended. Amendments to this Exhibit D that do not materially affect the terms of the Contract can be authorized by the DWU Director and do not require Dallas City Council approval.

## **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 Coppell, Texas, hereinafter called "Customer," hereby mutually agree to the following, based on the status of Dallas' mains as of the time of execution of this Reciprocal Water and/or Wastewater Service Agreement, hereinafter called "Agreement": Upon written request of either Dallas or Customer, the city requested to do so shall provide water and/or wastewater service to customers along the public streets, roadways, alleys and easements that form the common city limit boundary of Dallas and Customer, 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 servicing city's actual cost of rendering the service.



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 type 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 rated 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 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 nor does wastewater service to the other party, and each party have 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 services shall be in writing and will be forwarded or approved by the following:

If for Dallas:

Dallas Water Utilities  
Director  
1500 Marilla Street -Room 4/A/N  
Dallas, Texas 75201

If for Customer:

City of Coppell  
Attn: City Manager  
P.O. Box 9478  
Coppell, TX 75019

- 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 services; 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 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, to the extent permitted by law, 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.

## **EXHIBIT F**

### **INTERIM CONSTRUCTION WATER SERVICE AND INTERIM WASTEWATER SERVICE FOR THE CYPRESS WATERS DEVELOPMENT PROJECT**

#### **INTERIM WATER SERVICES**

**COPPELL** currently has an existing 12” water line located in Belt Line Road between IH-635 (LBJ Freeway) and Wrangler Drive, which is generally along the western boundary of the Cypress Waters proposed development. This line connects to a **COPPELL** 16” water line located in Dividend Drive at Belt Line Road. An analysis of that water network, prepared for **COPPELL** by Freese and Nichols, Inc, and documented in a report dated December 31, 2008, with addendum dated February 13, 2009 and April 5, 2011, states that **COPPELL** currently has the ability to provide at least 0.75 MGD peak hour flow to Cypress Waters for elevations of up to 550 feet while maintaining pressures of 40 psi and fire flows up to 1,560 gpm. Therefore, it is agreed that:

**DALLAS** may make a connection to the existing 12” or 16” water line (the “**Line**”) as a source for interim construction water and fire protection during the **First Phase** construction on the Cypress Waters property, more particularly described on Exhibit F-1 attached hereto, subject to the following conditions:

- 1) Detailed construction plans for any connections to the **COPPELL** water network shall be provided and approved by **COPPELL**.
- 2) All work within **COPPELL** shall comply with **COPPELL** construction standards.
- 3) All permitting and fee requirements of **COPPELL** shall be followed by **DALLAS**.
- 4) Appropriate metering facilities for the connection of the interim service shall be provided. The metering facilities shall be conveyed to **COPPELL**.
- 5) The water provided under this Exhibit F shall be considered **DALLAS** water and the volumes measured through the meter will be deducted from the amounts of **DALLAS** water sold to **COPPELL**. The billings to **COPPELL** for treated water will be commensurately reduced.

To compensate **COPPELL** for the use of their mains and for pumpage to convey the water to this area of **DALLAS**, **DALLAS** agrees to pay **COPPELL** a wheeling charge. The current wheeling charge is \$0.152 per one thousand gallons. Such charge shall be subject to review every 5 years and adjusted per the consumer price index ("CPI"). The term "CPI" as referenced herein shall mean the annual average Consumer Price Index issued by the Bureau of Labor Statistics covering all Urban Consumers for the Dallas, Fort Worth, Texas region, or if this index ceases to be published, then a comparable index.

- 6) The construction water service provided in this Exhibit is initially to be provided during the construction of the **First Phase** only. Prior to a Certificate of Occupancy (CO) being issued by **DALLAS** for any dwelling unit within the Cypress Waters Development, an on-site **DALLAS** water supply, separate from **COPPELL**, must be provided by **DALLAS**. The addition of an operational on-site **DALLAS** water supply relieves **COPPELL** of the responsibility to continue to provide water service during construction of the **First Phase**. Except as provided in Paragraph (7) below, Coppel will not be obligated to supply water to any occupied structure or to any uncompleted portions of the **First Phase** after issuance of the first CO for any dwelling unit in the **First Phase**. It is the express intent of the Parties that the issuance of a CO for a construction trailer or pump station shall not release **COPPELL** of the responsibility to continue to provide interim construction water service until such time as a CO is issued for the first dwelling unit in the **First Phase**.
- 7) Upon issuance of a CO for a dwelling unit in the **First Phase** or completion of construction of the **First Phase**, whichever occurs first, the water main connection from the Cypress Waters project to the **Line** shall remain as an inter-local connection between **COPPELL** and **DALLAS** for emergency use. For purposes of this Exhibit, emergency use means a catastrophic failure of the **DALLAS** or **COPPELL** water systems where the impact could be minimized by "opening the valve" to allow water to flow between the two cities. At all other times, the valve will be closed such that no water can flow between the two cities. Catastrophic failure does not mean the required water line to be provided by **DALLAS** to serve

the property is incomplete at the time the first CO for a dwelling unit is issued for any completed portion of the **First Phase**. In the event that prior to issuance of a CO by **DALLAS** for a dwelling unit within the **First Phase COPPELL** reasonably determines that the available capacity in the **Line** is required for one or more new major commercial developments within **COPPELL**, then **COPPELL** shall have the right, upon not less than six months prior written notice to **DALLAS**, to require **DALLAS** to cease using the **Line** for interim construction water and to obtain such construction water from other sources.

- 8) Notwithstanding the foregoing, **COPPELL** agrees to keep **DALLAS** reasonably apprised of any such potential new major commercial developments which may require such capacity and to provide **DALLAS** with as much advance notice thereof as is reasonably possible (but in no event less than six (6) months prior written notice as aforesaid). **COPPELL** will cooperate reasonably with **DALLAS** regarding any future interlocal emergency connections that may be needed north of the lake following completion of additional project infrastructure design.

## **INTERIM WASTEWATER SERVICES**

As documented by Freese and Nichols, Inc. in the above referenced report and addendums, **COPPELL** currently has a 15” wastewater line in Belt Line Road at Lakeshore Drive, which flows north to connect to a 30” wastewater line in Denton Tap Road north of the Cotton Belt Railroad. That 30” wastewater line flows east to a connection to the Trinity River Authority (TRA) system along Belt Line Road east of MacArthur Drive. The 15” wastewater line in Belt Line Road at Lakeshore Drive currently has an available peak wet weather capacity of 1.8 MGD, and the 30” wastewater line has an available peak wet weather capacity of 2.5 MGD. The priority use for both of these lines is to accommodate growth and development in **COPPELL**, however, the current available capacity may be used by **DALLAS**, on an interim basis, to accommodate wastewater flows from initial phases of Cypress Waters development, subject to the following conditions:

- 1) Detailed construction plans for any connections to the **COPPELL** wastewater system must be provided to and approved by **COPPELL**.
- 2) All work within **COPPELL** shall comply with **COPPELL** construction standards.
- 3) All permitting and fee requirements of **COPPELL** shall be followed by **DALLAS**.
- 4) Appropriate metering facilities shall be provided by **DALLAS**. The metering facilities shall remain the property of **DALLAS**.
- 5) **COPPELL** shall charge **DALLAS** the same wastewater rate and associated charges as charged customers whose property lies within its own areas and boundaries and who are in the same category of service.
- 6) When the peak wet weather wastewater flow into the **COPPELL** wastewater system from Cypress Waters equals or exceeds 1.35 MGD, or when notified by **COPPELL**, **DALLAS** will begin planning and design for a permanent **DALLAS** wastewater system which will connect on-site lift station(s) and force main(s) to the above described 30” **COPPELL** wastewater line, at a mutually agreed upon location.
- 7) When the peak wet weather wastewater flow into the **COPPELL** wastewater system from Cypress Waters equals or exceeds 1.68 MGD, or when notified by **COPPELL**, **DALLAS** will begin construction of a permanent **DALLAS**

wastewater system which will connect on-site lift station(s) and force main(s) to the above described 30" **COPPELL** wastewater line. Once construction of such connection to the above described 30" **COPPELL** wastewater line is complete, the wastewater connection to the above described 15" **COPPELL** wastewater line in Belt Line Road shall be removed by **DALLAS** in accordance with **COPPELL** Standard Construction Details.

- 8) When the peak wet weather measured flow in the above described 30" **COPPELL** wastewater line reaches 80% of its capacity, or when notified by **COPPELL**, **DALLAS** will begin planning and design of an extension of the **DALLAS** wastewater system of force mains and gravity lines, including the potential rehabilitation of an existing 33" line along Belt Line Road, to a point of delivery of **DALLAS** wastewater flows to a TRA point of delivery near Bush Turnpike and Belt Line Road. Construction of this line and/or improvement will be initiated so as to complete construction prior to the flow in the **COPPELL** 30" line reaching wet weather peak capacity.
- 9) Once the wastewater planning, design, and construction measures contemplated by Paragraphs 6 through 8 above have been completed and either (i) when the peak wet weather measured flow in the above described 30" **COPPELL** wastewater line reaches 100% of its capacity, or (ii) when notified by **COPPELL**, **DALLAS** shall:
  - (a) not issue any new building permits for structures which require sanitary wastewater service through the **COPPELL** wastewater system; and
  - (b) within six (6) months have alternate wastewater service for Cypress Waters and discontinue discharging into the **COPPELL** wastewater system.
- 10) One point of entry into the **COPPELL** wastewater system from **DALLAS** is authorized by this Exhibit. Any additional points of entry will require approval by **COPPELL**, acting through its director of public works or other duly authorized representative.

## EXHIBIT F-1

