

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

**CITY OF COPPELL
UNTREATED WATER PURCHASE CONTRACT FOR IRRIGATION**

WHEREAS, The Neighborhoods of Cypress Waters Association, Inc. (hereinafter called “Purchaser”) a Texas nonprofit corporation, desires to purchase from the City of Coppell, Texas (hereinafter called “Coppell”), untreated water for irrigation of the property adjacent and surrounding Northlake which is located in Dallas County.

WHEREAS, said water would be taken from diversion points located in Northlake in amounts hereinafter specified; and

WHEREAS, water diverted by Purchaser shall be supplied to and stored in Northlake through that one certain “Untreated Water Purchase Contract” (the “Coppell Purchase Contract”) dated September 20, 2018, by and between Coppell (as purchaser) and City of Dallas (“DWU”) (as seller), authorizing Coppell’s diversion of water from the Dallas Elm Fork Trinity River Water Supplies conveyed down the Elm Fork of the Trinity River, and diverted from the river into Northlake under the Coppell Purchase Contract in accordance with DWU’s operational guidelines, Exhibit B; and

WHEREAS, Coppell, pursuant to Certificate of Adjudication 08-2365 (the “Certificate of Adjudication”), is entitled to appropriate up to 1000 acre feet of water of Northlake annually; and Coppell has contractually procured an additional 250-acre feet of untreated water. A true and correct copy of the Certificate of Adjudication and all effective amendments is attached to this Contract; and

WHEREAS, the water so diverted may be used for irrigation purposes under said Certificate pursuant to the Pumping and Metering equipment installed and maintained by Purchaser, Exhibit B; and

WHEREAS, the parties desire to enter into this Untreated Water Purchase Contract ("Contract") allowing Purchaser to purchase untreated water at a rate as established herein, equal to the rate established periodically as provided in Section 5 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 appropriate state agencies and Coppell; and

WHEREAS, on April 9, 2019, the City Council of Coppell found that this Contract was in the public interest in facilitating Coppell’s performance under that one certain Amended and Restated Northlake Agreement dated August 2, 2013, by and among Coppell, Cypress Waters Land A, Ltd., Cypress Waters Land B, Ltd., and Cypress Waters Land C, Ltd. (which partnerships

are affiliated with Purchaser through the ownership of certain land within the jurisdiction and management authority of Purchaser,

WHEREAS, the parties understand and acknowledge that this Contract shall be subject to applicable regulations and procedures administered by the City of Dallas, TCEQ, TWDB, and Coppell governing the appropriation, diversion, and use of untreated water.

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

1. CONTRACT ADMINISTRATION.

This Contract shall be administered on behalf of Coppell by its Public Works Department, or the Director's, and on behalf of Purchaser by authorized official or designated representative.

2. AVAILABILITY AND DIVERSION POINT.

A. Coppell agrees to sell untreated water to Purchaser for irrigation uses only, as outlined below, subject to accessibility from DWU under the Coppell Purchase Contract. 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, subject to subsection 2B, below.

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 TCEQ 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. Coppell agrees to cooperate reasonably in Purchaser's application(s); if any, to TCEQ for an amendment to the Certificate of Adjudication to facilitate Purchaser's irrigation activity or for any other purpose contemplated hereunder.

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 under the applicable Certificate of Adjudication; a copy of the warranties, operational manuals, any operational protocols used by the Purchaser shall be provided to Coppell.

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 of the following calendar year.

4. 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 | Maximum Usage |
|--|---|
| 10 ac-ft per Water Year (3,258,509 gallons) | 1,250 ac-ft per Water Year (407,313,750 gallons) |

5. RATES.

Purchaser shall pay Coppell for untreated water taken under this Contract, at the current regular rate for untreated water sales as specified by Coppell Purchase Contract. Additionally, Coppell may also charge a seven thousand five-hundred dollars (\$7500.00) annual administrative fee, to be adjusted every five years based on the five-year change in CPI, to offset the administrative obligation to perform under this agreement, and shall pay all other applicable charges for untreated water as adopted from time to time by the City of Coppell or City of Dallas as part of each entity rate making authority.

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 Coppell reserves the right 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 Coppell to solicit the Director's approval of any new or repaired meter.

C. Purchaser shall provide Coppell 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.

Coppell and Purchaser agree to abide by the Dallas 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. Coppell and Purchaser further agree that such Operational Guidelines may be hereafter revised from time to time by Dallas, as approved under the Coppell Purchase Contract. Further, the City of Coppell may adopt reasonable operational guidelines consistent with this Agreement to govern the diversion of untreated water from Northlake in accordance with applicable permits, the Certificate of Adjudication, and applicable law, and Purchaser shall abide by the same as part of this Agreement.

8. METERING AND PUMPING FACILITIES.

A. Purchaser shall be required to provide, operate and maintenance 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 reasonable satisfaction of Coppell.

B. Water provided under this Contract will be taken at the Northlake diversion point and conveyed to the water irrigation supply via water lines constructed by Purchaser conforming with all applicable laws, ordinances, rules, and regulations.

C. Coppell shall review and approve the diversion pump station, water line system 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 any inflows and to prevent impoundment of state or surface water that is not authorized by this Contract or under State law.

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 Coppell, to test such meters annually and shall invite representatives of Coppell 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 Coppel's 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 Coppel and 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 Coppel 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 Coppel's municipal purposes. No restrictions will be imposed on Purchaser unless Coppel has suffered restrictions on City withdrawals under the Coppel Purchase Contract. In the event withdrawals are restricted, untreated water shall be allocated to Purchaser on a *pro rata* basis with Purchaser's maximum withdrawal reduced by [1250/3100ths of the curtailed water volume]. 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. Coppel will invoice Purchaser for the minimum quantity of water and administrative fee specified in Section 4. 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 metered consumption, billings shall be calculated on actual metered quantities taken by Purchaser on a monthly basis. Monthly billings shall be provided to the Purchaser. Payment, when required, is due thirty (30) days after the invoice date.

B. Purchaser agrees to pay Coppel for the minimum quantity and administrative fee 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. If any money due and owing by Purchaser to Coppell is placed with an attorney for collection, Purchaser shall pay to Coppell, in addition to all other payments provided for by this Contract, including interest, Coppell's 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, unless sooner terminated by mutual agreement in writing.

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 Coppell 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. Coppell, 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, or by reason of Purchaser's default under any other provision of this Contract, at least thirty (30) days prior to the proposed effective date of termination, in order for Purchaser to tender payment or performance and thereby cure a default as to non-payment under this Contract.

B. Coppell 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 Coppell and Coppell's written consent. In addition, if the Contract is terminated under this Subsection, Coppell shall be entitled to payment for the maximum quantity of water for that Water Year in which the default under this subsection occurs. Purchaser's use of purchased untreated water for irrigation of project areas located within the Cypress Waters development shall not be construed as resale, regardless of the recipient of such irrigation services.

C. Subject to the default notice procedure provided in Subsection A, Coppell 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, shall have the right to terminate this Contract if Coppell fails to comply with the terms of this Contract.

E. In addition to the foregoing, Coppell 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, Coppell, 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 Coppell. 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 Coppell 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. COPPELL 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.

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.

17. ASSIGNMENT.

Except for an assignment to a successor service or property owner's association which succeeds to the common area maintenance duties of The Neighborhoods of Cypress Waters Association, Inc., Purchaser shall not sell, assign, transfer or convey its interest in this Contract, in whole or in part, without the prior written consent of Coppell, which shall not be unreasonably withheld.

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 Coppell or 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. Coppell acknowledges that fertilization, chemical treatments, and other landscape maintenance techniques allowed by applicable environmental laws shall not be deemed to be "treatment" of runoff.

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. Coppell is responsible for the acquisition of the appropriate water right permit from the TCEQ and any additional permits or approvals required for Coppell's performance of its obligations hereunder 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. The cost associated with Coppell's required water purchases under the Coppell Purchase Contract shall be added as an administrative cost to the extent permitted in Section 5 of this Agreement. Should Purchaser obtain a water right permit for future groundwater use and water supply well(s), Purchaser shall provide Coppell with a copy of said permit.

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

E. 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 not divert water under this contract and may only utilize the water purchased in accordance with this Agreement. Purchaser agrees to comply with any existing permit issued 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 Coppell, the amount of the tax, assessment, or charge shall be borne by Purchaser, in addition to all other charges, and whenever Coppell is required to pay, collect, or remit any tax, assessment, or charge on water received by Purchaser, then Purchaser shall promptly pay or reimburse Coppell for the tax, assessment or charge in the manner directed by Dallas under its contract with Coppell.

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 COPPELL:

Mike Land, City Manager
City of Coppell
255 Parkway
Coppell, Texas 75019

TO PURCHASER:

The Neighborhoods of Cypress Waters
Association, Inc.

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

22. VENUE.

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

23. 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.

24. 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 Coppel 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.

25. 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.

26. 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.

27. 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 Coppel, including but not limited to Coppel’s interest in Northlake water, as a result of such violation or violations.

28. NO THIRD-PARTY BENEFICIARIES.

Coppel 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 Coppel and Purchaser.

29. 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.

30. 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.

31. AUTHORIZATION TO ACT.

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

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

EXECUTED as of the ____ day of _____, 2019.

APPROVED AS TO FORM:

Robert E. Hager
City Attorney

BY: _____
City Attorney

ATTEST:

BY _____

CITY OF COPPELL

Mike Land
City Manager

BY: _____
City Manager

PURCHASER:

The Neighborhoods of Cypress Waters
Association, Inc.

BY _____

EXHIBIT A

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

Pumping Equipment Description

The Cypress Waters non-portable irrigation pump station is equipped with two 100 HP vertical turbine pumps capable of pumping 1,200 gpm each. The pump station is also equipped with one 20 HP submersible pump capable of pumping 200 gpm. The total pumping capacity is 2,600 gpm.

Metering Equipment Description.

The Cypress Waters non-potable irrigation pump station is equipped with a 10-inch mag meter on the discharge line.

Point of Diversion Location:

The Cypress Waters non-portable irrigation pump station and intake structure are located on the west side of Harpers Lane north of Byron Bay Street.

EXHIBIT B

OPERATIONAL GUIDELINE

Coppell 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.

DEFINITIONS

1. M.S.L. means Mean Sea Level, elevation above or below sea level.
2. OPTIMIZED RELEASES means that amount of water available for release from the Elm Fork of the Trinity River within a 24-hour period, based on a recommendation of the U. S. Army Corp of Engineers, that will maintain a target elevation of 416.63 at the Frasier Dam.
3. FRASIER DAM means the dam located ½ mile North of Highway 114, and the last point on the Elm Fork of the Trinity River that Dallas monitors. This dam creates a forebay area for Dallas' Bachman Water Treatment Plant, Dallas' current last point of water usage from the Elm Fork of the Trinity River. The top of the dam is 417.63 feet M.S.L.

GUIDELINES

1. 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.

Under most conditions, permission to activate river pumps will not require 24 hours notice if the Trinity River level at Frazier Dam is 407.5 M.S.L. or higher.

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.

2. If Purchaser is requested by Dallas to activate its river pumps and Purchaser is able to do so, this usage will be billed at Dallas' regular rate. Dallas will contact Purchaser's Control Room with the length of time that Dallas would like for the river pumps to operate. At the end of that period of pumping, Dallas will contact Purchaser if additional pumping is desired.

EXHIBIT C
WATER RIGHT PERMIT

N.L.S.E.S

C

CERTIFICATE OF ADJUDICATION

CERTIFICATE OF ADJUDICATION: 08-2365 OWNER: Dallas Power and Light Company
1506 Commerce Street
Dallas, TX 75201 DEED X

COUNTY: Dallas PRIORITY DATE: September 24, 1956

WATERCOURSE: South Fork of Grapevine Creek, tributary of Grapevine Creek, tributary of Elm Fork Trinity River, tributary of the Trinity River BASIN: Trinity River A 5347 S. 10

WHEREAS, by final decree of the 160th Judicial District Court of Dallas County, in Cause No. 81-6589-H, In Re: The Adjudication of Water Rights in the Upper Trinity River Segment of the Trinity River Basin, dated October 29, 1981, a right was recognized under Permit 1864 authorizing Dallas Power and Light Company to appropriate waters of the State of Texas as set forth below;

NOW, THEREFORE, this certificate of adjudication to appropriate waters of the State of Texas in the Trinity River Basin is issued to Dallas Power and Light Company, subject to the following terms and conditions:

1. IMPOUNDMENT
Owner is authorized to maintain an existing dam and reservoir, known as North Lake, on the South Fork of Grapevine Creek and impound therein at elevation 510 feet above mean sea level, not to exceed 17,100 acre-feet of water consisting of 1000 acre-feet of storm and flood waters of South Fork of Grapevine Creek in addition to those waters purchased pursuant to a contract with the city of Dallas. The dam is located in the G. Hendricks Survey, Abstract 630, Dallas County, Texas.
2. USE
Owner is authorized to divert, circulate and recirculate through the steam electric generation station, and to consumptively use from the aforesaid reservoir not to exceed 1000 acre-feet of the storm and flood waters for industrial purposes.
3. DIVERSION
A. Location:
At the perimeter of the aforesaid reservoir.
B. Maximum Rate: unspecified.
4. PRIORITY
The time priority of owner's right is September 24, 1956.
5. SPECIAL CONDITIONS
A. Owner shall maintain a suitable outlet in the dam authorized herein to allow the free passage of water that owner is not entitled to divert or impound.
B. Owner is authorized to impound and store for industrial purposes in the aforesaid reservoir such water as is purchased pursuant to a contract with the city of Dallas to supplement the authorized supply from the South Fork of Grapevine Creek, and to consumptively use the purchased water for industrial purposes as necessary.

The locations of pertinent features related to this certificate are shown on Page 14 of the Upper Trinity River Segment Certificates of

LPL 2466
43161 0669

Certificate of Adjudication 08-2365

Adjudication Maps, copies of which are located in the offices of the Texas Department of Water Resources and the office of the County Clerk.

This certificate of adjudication is issued subject to all terms, conditions and provisions in the final decree of the 160th Judicial District Court of Dallas County, Texas, in Cause No. 81-6589-H, In Re: The Adjudication of Water Rights in the Upper Trinity River Segment of the Trinity River Basin, dated October 29, 1981, and supersedes all rights of the owner asserted in that cause.

This certificate of adjudication is issued subject to senior and superior water rights in the Trinity River Basin.

This certificate of adjudication is issued subject to the Rules of the Texas Department of Water Resources and its continuing right of supervision of State water resources consistent with the public policy of the State as set forth in the Texas Water Code.


TEXAS WATER COMMISSION


Felix McDonald, Chairman

DATE ISSUED:

JUL 22 1982

ATTEST:


Mary Ann Heffner, Chief Clerk



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83161 0670

EXHIBIT D

SPECIAL CONDITIONS

Conditions for Purchaser's Utilization of Diversion Point

1. Coppel shall apply for a temporary water right to divert water out of Northlake for irrigation use. Coppel will give Dallas the opportunity to review the temporary water right application and provide proof that TCEQ received same application.
2. Once the temporary water right is granted by TCEQ, Coppel shall provide Dallas a copy of the temporary water right permit for Dallas' records.
3. Coppel has to amended the Northlake permit to change ownership from the previous owner to Purchaser, to change the designated use to irrigation, to reflect the current impoundment conditions, and to update the diversion rate and location.
4. Coppel must receive the amended permit prior to expiration of the temporary water right.
5. 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. *[Drafting note: does Coppel require the referenced records? This covenant provides for delivery to City of Dallas, only]*