

**AMENDMENT TO AMENDED AND RESTATED
WHOLESALE WATER CONTRACT**

STATE OF TEXAS §

COUNTY OF KAUFMAN §

This Amendment to the Amended and Restated Wholesale Water Contract (“Amendment”) is made and entered into by and between the City of Forney, Texas, a municipal corporation in Kaufman County, Texas acting under the laws of the State of Texas (hereinafter called the “City”), and Kaufman County Fresh Water Supply District No. 1-A, a political subdivision of the State of Texas (hereinafter called “Customer”):

WHEREAS, Customer and the City entered into an Amended and Restated Wholesale Water Contract dated December 7, 2017 (“Contract”), whereby the City restated its agreement to provide specified quantities of potable water to Customer at a wholesale rate; and

WHEREAS, Customer desires to provide water utilities and service to two tracts of property outside of Customer’s district boundaries and current service area, known as Walden Pond and shown in Exhibit “A” attached hereto (the “External Property”), which External Property is divided into an eastern tract (“Walden Pond East”) and western tract (“Walden Pond West”); and

WHEREAS, no person or entity currently holds the water certificate for convenience and necessity (“CCN”) over Walden Pond East; and

WHEREAS, the Owner of Walden Pond West is currently seeking decertification of the CCN covering Walden Pond West; and

WHEREAS, the owners and developers of the External Property desire retail water service from the Customer; and

WHEREAS, Customer will have sufficient contracted wholesale water capacity upon the City’s completion of the Phase 2 improvements to its Pump Station #2 to provide water service for full the development of the External Property; and

WHEREAS, the City agrees to provide potable water to Customer in quantities agreed to under the Contract and this Amendment to allow Customer to provide retail water service outside of Customer’s district boundaries if Customer may lawfully serve such areas; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties agree that the City and Customer hereby amend the Contract as follows:

1. The parties hereto find the above recitals to be true and correct and the same are incorporated herein for all purposes.
2. Section 1 of the Contract is hereby amended to read as follows:

(a) “Annual Minimum (Inside) means the minimum amount of potable water delivered to Customer for use inside its district boundaries (as separately metered) for which Customer must compensate the City for during the Annual Payment Period,

and each year thereafter, regardless of whether Customer actually takes such quantity of water.

(a-1) "Annual Minimum (External Property) means the minimum amount of potable water delivered to Customer for use inside the External Property (as separately metered) for which Customer must compensate the City for during the Annual Payment Period, and each year thereafter, regardless of whether Customer actually takes such quantity of water.

(j-1) "Point of Delivery (Walden)" means the location of the meter (near the property line between the Windmill Farms Development and Walden Pond Development);

3. Section 7 of the Contract is hereby amended to add the following paragraph after the first paragraph:

Customer shall also furnish, and install at its own expense at, or near, the Point of Delivery (Walden) the necessary rate of flow equipment of a standard type approved by the City for separately properly measuring the quantity of potable water delivered under this Contract to customers outside Customer's district boundaries and such billing meter and other equipment so installed shall become the property of the City. Customer shall have access to such metering equipment at all reasonable times, but the reading, calibration, and adjustment thereof shall be accomplished only by the employees or agents of the City. For the purpose of this Contract, the original record or reading of the meter shall be the journal or other record book, including electronic databases, maintained by the City in its office in which the records of the employees or agents of the City who take the reading may be transcribed. Upon written request of the Customer, the City will provide a copy of such journal or record book or permit Customer to access it in the office of the City during reasonable business hours.

4. Section 9(a), 9(b), 9(e), and 9(g) of the Contract is hereby amended in its entirety to read as follows:

Section 9. PRICE AND TERMS. The service to be performed under this Contract by the City consists of the readiness of the City to deliver to Customer upon its demand, water in accordance with the conditions, limitations and provisions of this Contract.

In return for such service, Customer agrees to compensate the City by payment of certain minimum annual sums of money, for each of which said sums the City agrees, if required by Customer, to deliver all, or so much thereof as Customer may desire, of a certain corresponding volume of water, as follows:

(a) Customer will compensate the City for potable water delivered to Customer for use inside its district boundaries at a rate of Sixty One Cents (\$0.61) above the rate charged the City by NTMWD per one thousand (1,000) gallons ("Water Rate") as such Water Rate may be changed from time to time, for an initial Annual Minimum (Inside) of _____ gallons of water (a Daily Average of _____ gallons per day), regardless of whether said quantity is actually taken by Customer, and any water delivered for use inside its district boundaries in excess of the amount allowed for the Annual Minimum (Inside) will also be purchased at the Water Rate. The

Annual Minimum (Inside) Customer will be required to purchase at the above Water Rate shall be calculated annually for each ensuing year and such minimum amount shall not be less than the highest total amount taken by Customer during any previous year or _____ gallons, whichever is greater.

(a-1) Customer will compensate the City for potable water delivered to Customer for use outside its district boundaries at a rate of sixty-three percent (63%) above the rate charged the City by NTMWD per one thousand (1,000) gallons ("External Water Rate") as such External Water Rate may be changed from time to time, for an initial Annual Minimum (External Property) of -0- gallons of water (a Daily Average of -0- gallons per day), regardless of whether said quantity is actually taken by Customer, and any water delivered for use inside its district boundaries in excess of the amount allowed for the Annual Minimum (External Property) will also be purchased at the Water Rate. The Annual Minimum (External Property) Customer will be required to purchase at the above Water Rate shall be calculated annually for each ensuing year and such minimum amount shall not be less than the highest total amount taken by Customer during any previous year.

(b) The rate charged the Customer shall be determined by a cost of service study using the Cash Needs Basis for water rates per standard American Water Works Association methodology. The City may adjust the rate if a study performed on behalf of the City, based upon industry-accepted principles and standards, demonstrates a need to increase the City's wholesale water rates. The City shall, upon request, allow Customer to review the study and shall provide sufficient notice to Customer of any increase to allow Customer to provide notice to its own customers and, if needed, amend any applicable agreements or rate orders to provide for payment of such increased rate. Nothing in this Contract or Amendment shall be construed to prohibit or limit Customer's rights under Subchapter J, Chapter 24, Title 16 of the Texas Administrative Code or Chapter 12 of the Texas Water Code, or any recodification of such regulations and statutes.

(e) The Annual Minimum (Inside) and Annual Minimum (External Property) as set forth in Section 9 hereof shall be reviewed at the end of the first Annual Payment Period, and each year thereafter, and shall be re-determined by the City at that time. Customer's minimum "take or pay" quantity is subject to adjustment based on like adjustments granted to City of its minimum "take or pay" quantity by the NTMWD.

(g) It is further agreed that, in addition to the amounts required to be paid by Customer herein, if during any Water Year Customer uses System treated water in excess of the Annual Minimum (Inside) or Annual Minimum (External Property) for the Annual Payment Period that commenced during such Water Year, then Customer shall pay for excess water in accordance with the provisions of Section 9(a). Excess water charges shall be billed by the City to Customer as soon as practicable after the end of such Water Year and shall be paid to the City as soon as practicable thereafter, and in all events prior to the beginning of the next Annual Payment Period.

5. Section 15 of the Contract is hereby amended in its entirety to read as follows:

Section 15. LIMITATION ON RESALE. *Customer agrees that it will not, during the term of this Contract, resell any of the treated water it purchases from the City hereunder to any wholesale or other customer other than retail customers within Customer's lawful service area, without prior written consent by the City. Customer may sell treated water to retail customers within the External Property if Customer may lawfully provide service to the properties.*

6. Except as expressly modified by this Amendment to the Contract, all terms and provisions of the Contract are hereby ratified and confirmed and shall remain in full force and effect.

7. The undersigned represent and affirm that they have authority to execute this Amendment on behalf of the respective parties hereto.

8. This Amendment shall be effective from and after the date of the last party to execute this Amendment.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by its duly authorized representatives in multiple copies, each of equal dignity, on the date or dates indicated below.

CITY OF FORNEY, TEXAS

By: _____
Mary Penn, Mayor

Date: _____, 2019

ATTEST:

APPROVED AS TO FORM:

Dorothy Brooks, City Secretary

Jon Thatcher, City Attorney

[SEAL]

**KAUFMAN COUNTY FRESH WATER
SUPPLY DISTRICT NO. 1A**

By: _____
_____, President

Date: _____, 2019

ATTEST:

_____, Secretary

[SEAL]