

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE AN INTERLOCAL AGREEMENT WITH THE CITY OF CRANDALL TO PROVIDE WHOLESALE WASTEWATER SERVICE TO CRANDALL THROUGH THE LOWER EAST FORK WASTEWATER INTERCEPTOR SYSTEM (LEFIS), ALSO KNOWN AS MUSTANG CREEK INTERCEPTOR; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to the Interlocal Cooperation Act, Texas Government Code, Chapter 791, as amended (the “**Act**”), cities, counties, special districts, and other legally constituted political subdivisions of the State of Texas are authorized to enter into interlocal contracts and agreements with each other regarding governmental functions and services as set forth in the Act; and

WHEREAS, the City of Crandall (“**Crandall**”) has requested that the City of Mesquite (“**Mesquite**”) provide wholesale wastewater services in a not to exceed amount of 500,000 gallons a day to supplement Crandall’s current municipal wastewater system; and

WHEREAS, the service would be provided through Mesquite’s participation in the North Texas Municipal Water District’s (“**NTMWD**”) Lower East Fork Wastewater Interceptor System (“**LEFIS**”) which serves Mesquite and the City of Seagoville (“**Seagoville**”) in both Dallas and Kaufman counties pursuant to a contract between Mesquite, Seagoville, and NTMWD (the “**LEFIS CONTRACT**”); and

WHEREAS, the provision of wholesale wastewater service by Mesquite to Crandall will require the construction of improvements by NTMWD to the LEFIS, the construction of improvements to connect the Crandall wastewater system to the LEFIS, and the amendment of the LEFIS Contract; and

WHEREAS, Mesquite and Crandall desire to execute an interlocal agreement to set forth the terms and conditions pursuant to which Mesquite shall provide wholesale wastewater services to Crandall pursuant to Mesquite’s participation in the LEFIS in the form attached hereto as Exhibit 1 and incorporated herein by reference (the “**Interlocal Agreement**”); and

WHEREAS, the Crandall City Council approved the Interlocal Agreement at their regularly scheduled meeting on March 4, 2024; and

WHEREAS, conditions precedent to Mesquite providing wholesale wastewater service to Crandall include, among others, (a) amendment of the LEFIS Contract increasing the service area for which Mesquite accepts wastewater and authorizing Mesquite to provide wholesale wastewater service to Crandall, and (b) Crandall’s reimbursement of all costs and expenses incurred by Mesquite; and

WHEREAS, this amendment will then be presented to both the Seagoville and Mesquite City Councils, and the NTMWD Board of Directors for consideration; and

WHEREAS, the Mesquite City Council hereby finds that the City’s participation in the Interlocal Agreement with Crandall is in the interests of the City and its citizens.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. The facts and recitations contained in the preamble of this resolution are hereby found and declared to be true and correct and are incorporated and adopted as part of this resolution for all purposes.

SECTION 2. The City Council hereby authorizes the City Manager to execute the Interlocal Agreement with the City of Crandall, attached hereto as Exhibit 1 and incorporated herein by reference and made a part hereof, and to administer the Interlocal Agreement on behalf of the City including, without limitation, the City Manager shall have the authority to: (i) provide any notices per the Interlocal Agreement; (ii) approve or deny any matter in the Interlocal Agreement that requires the consent of the City with the exception of any assignment of the Interlocal Agreement that requires the consent of the City pursuant to the terms of the Interlocal Agreement which shall require City Council approval; (iii) approve or deny the waiver of performance of any covenant, duty, agreement, term or condition of the Interlocal Agreement; (iv) exercise any rights and remedies available to the City under the Interlocal Agreement; and (v) execute any notices, amendments, approvals, consents, denials, and waivers authorized by this Section 2 provided, however, notwithstanding anything contained herein to the contrary, the authority of the City Manager pursuant to this Section 2 shall not include the authority to take any action that cannot be delegated by the City Council or that is within the City Council’s legislative functions.

SECTION 2. This resolution shall be in effect immediately upon its adoption.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 1st day of April 2024.

Daniel Alemán, Jr.
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

Sonja Land
City Secretary

David L. Paschall
City Attorney

EXHIBIT 1

WHOLESALE WASTEWATER SERVICES AGREEMENT

BETWEEN

THE CITY OF MESQUITE

AND

THE CITY OF CRANDALL

**WHOLESALE WASTEWATER SERVICES AGREEMENT
(Mesquite of Crandall)**

This WHOLESALE WASTEWATER SERVICES AGREEMENT (this “Agreement”) is made and entered into by and between the CITY OF MESQUITE, a Texas home rule municipality (“Mesquite”) and the CITY OF CRANDALL., a Texas Type-A general law municipality (“Crandall”). In this Agreement, Mesquite and Crandall are individually referred to as a “Party” and collectively referred to as the “Parties.”

RECITALS

1. Mesquite is the owner of a municipal wastewater system (the “Mesquite System”) that it operates to provide retail and wholesale wastewater services to its customers;
2. Mesquite, the City of Seagoville (“Seagoville”) and North Texas Municipal Water District (“NTMWD”) have entered into that certain “Lower East Fork Wastewater Interceptor System Contract” effective June 21, 2005 (the “LEFIS Contract”) setting forth the terms and conditions pursuant to which NTMWD agreed to construct, improve, operate and maintain a regional wastewater interceptor system (the “Interceptor System”, as defined in the LEFIS Contract) in order to receive and transport wastewater from Mesquite and Seagoville for subsequent treatment and disposal by NTMWD’s Regional Wastewater System (as defined in the LEFIS Contract);
3. Crandall is the owner of a municipal wastewater system (the “Crandall System”) that it operates to provide retail wastewater services to its customers;
4. The current capacity of the Crandall System is limited, and Crandall desires to obtain wholesale wastewater transportation, treatment and disposal services from Mesquite through Mesquite’s participation in the NTMWD Interceptor System;
5. The provision of wholesale wastewater service by Mesquite to Crandall will require the construction of improvements by NTMWD to the Interceptor System (the “LEFIS Improvements”), the construction of improvements to connect the Crandall System to the Interceptor System, and the amendment of the LEFIS Contract; and
6. Mesquite and Crandall now desire to execute this Agreement to set forth the terms and conditions pursuant to which Mesquite shall provide wholesale wastewater services to Crandall pursuant to Mesquite’s participation in the LEFIS System.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, Mesquite and Crandall agree as follows.

**ARTICLE I
DEFINITIONS**

Section 1.01 Definition of Terms. In addition to the terms otherwise defined in the above recitals or the provisions of this Agreement, the terms used in this Agreement will have the meanings set forth below:

“Agreement” means this Wholesale Wastewater Service Agreement.

“Crandall” means the City of Crandall.

“Crandall Connection Facilities” means the wastewater facilities to be constructed by or on behalf of Crandall in accordance with the terms of this Agreement for purposes of connecting the Crandall System to the

Interceptor System at the Point of Entry. The Crandall Connection Facilities are generally described in **Exhibit “A”** and shall include the Metering Facilities. For the avoidance of doubt, the Parties agree that the Crandall Connection Facilities shall include the wastewater transmission facilities located on the “downstream” side of the Metering Facilities that extend to the Point of Entry into the Interceptor System.

“Conveyance Date” means the date on which the Metering Facilities are conveyed by Crandall to Mesquite in accordance with Section 3.02(g) below.

“Crandall System” means the municipal wastewater collection, treatment and disposal facilities of Crandall, including all improvements to be constructed for collection and transportation of Wastewater from Crandall’s retail customers to the Point of Entry. The Crandall System shall include the Crandall Connection Facilities upon completion of construction, with the exception of the Metering Facilities.

“Effective Date” means the date this Agreement has been executed by both Crandall and Mesquite.

“Emergency” means a sudden, unexpected happening; an unforeseen occurrence or condition; exigency; pressing necessity; or a relatively permanent condition or insufficiency of service or of facilities resulting from causes outside of the reasonable control of Mesquite. The term includes Force Majeure and acts of third parties that cause the Mesquite System to be unable to provide the Wholesale Wastewater Service agreed to be provided herein.

“Environmental Protection Agency” or “EPA” means the United States Environmental Protection Agency.

“Force Majeure” means acts of God, strikes, lockouts, or other industrial disturbances; acts of the public enemy; orders of any kind of any governmental entity other than Mesquite or any civil or military authority; acts, orders or delays of any regulatory authorities with jurisdiction over the parties; insurrections; riots; acts of terrorism; epidemics; pandemics; landslides; lightning; earthquakes; fires; hurricanes; floods; washouts; droughts; restraint of government and people; civil disturbances; explosions; breakage or accidents to machinery, pipelines or canals; or any other conditions which are not within the control of a Party.

“GPD” means gallons per day, as measured at the Master Meter during any 24 hour period.

“Infiltration” means water that enters the Crandall System through defects such as cracks or breaks in the piping, manholes or other appurtenances.

“Inflow” means water that enters Crandall System through direct sources such as drain spouts, manholes, clean-outs, or other appurtenances.

“Interceptor System” means the Lower East Fork Wastewater Interceptor System owned and operated by NTMWD and utilized for the collection and transportation of Wastewater from the Mesquite System pursuant to the LEFIS Contract.

“LEFIS Contract” means that certain “Lower East Fork Wastewater Interceptor System Contract” effective June 21, 2005, entered into by NTMWD, Mesquite and Seagoville, as amended from time to time.

“LEFIS Improvement Costs” means all costs and expenses associated with the LEFIS Improvements that are billed by NTMWD to Mesquite under the LEFIS Contract.

“LEFIS Improvements” means all improvements constructed by NTMWD to the Interceptor System which are necessitated by, or required by NTMWD for, the provision of Wholesale Wastewater Service to Crandall (as determined by NTMWD), the costs of which are charged by NTMWD to Mesquite under the LEFIS Contract, as amended. Upon completion of construction and acceptance by NTMWD, the LEFIS Improvements shall become part of the Interceptor System owned and operated by NTMWD.

“Mesquite” means the City of Mesquite.

“Mesquite System” means all of the facilities of Mesquite that are used for the collection, transportation, treatment, or disposal of Wastewater.

“Metering Facilities” means all metering and telemetering equipment required to measure Wholesale Wastewater Service provided by Mesquite pursuant to this Agreement to be located at the Point of Entry. Upon completion of construction, the Metering Facilities shall be conveyed by Crandall to Mesquite.

“Minimum Monthly Volume” shall be 15,000,000 gallons per monthly billing period for Wastewater Services furnished by Mesquite to Crandall under this Agreement.

“NTMWD” means North Texas Municipal Water District.

“NTMWD System” means the wastewater collection, treatment and disposal facilities owned and operated by NTMWD, including the Interceptor System.

“Permits” means any and all permits held by NTMWD applicable to the treatment and disposal of Wastewater from the Interceptor System.

“Plant” means the wastewater treatment plant or plants owned by NTMWD that is or are a part of the NTMWD System.

“Point of Entry” means the location at which all Wastewater will pass from the Crandall System into the Interceptor System, which shall be the location generally identified in Exhibit “A.”

“Prohibited Wastes” means those substances and waste prohibited from being discharged into the Interceptor System under the LEFIS Contract or by the Permits.

“Seagoville” means the City of Seagoville.

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

“Volume Charge” means the monthly charge assessed by Mesquite to Crandall for the provision of Wholesale Wastewater Service under this Agreement, calculated by multiplying: (1) the bulk rate per 1,000 gallons that Mesquite is charged for wholesale wastewater service from NTMWD, plus the Volumetric Surcharge; by (2) the greater of the following: (X) the actual number of 1,000 gallons of Wastewater delivered by Crandall into the Interceptor System as measured by the Master Meter at the Point of Entry during a monthly billing period; or (Y) the Minimum Monthly Volume. It is the intent of the Parties that Crandall shall always pay the same effective volumetric rate applicable to Mesquite for wholesale wastewater service from NTMWD plus the Volumetric Surcharge.

“Volumetric Surcharge” means the surcharge to be paid by Crandall to Mesquite for purposes of calculating the Volume Charge. The Volumetric Surcharge shall be equal to forty percent (40%) of the bulk rate per 1,000 gallons of Wastewater that Mesquite is charged from NTMWD for wholesale wastewater service.

“Waste or Wastewater” means liquid or water-borne pollutants, contaminants, solid and hazardous waste, hazardous substances, including, without limitation, sewage, domestic and industrial waste, whether separate or commingled.

“Wholesale Service Area” means the territory more particularly described or depicted in Exhibit “B” attached hereto.

“Wholesale Service Commitment” means the agreed upon 500,000 gallons per day, as measured on an average daily basis over any 365-day period, of Wholesale Wastewater Service to be made available by Mesquite to Crandall under this Agreement for the Wholesale Service Area.

“Wholesale Wastewater Service” means the reception, transportation, treatment and disposal of Wastewater to be provided by Mesquite to Crandall under this Agreement pursuant to Mesquite’s participation in the LEFIS System under the LEFIS Contract.

Section 1.02 Captions. The captions appearing at the first of each numbered section or paragraph in this Agreement are inserted and included solely for convenience and shall never be considered or given any effect in construing this Agreement.

ARTICLE II
PROVISION OF WHOLESALE WASTEWATER SERVICE

Section 2.01 Conditions Precedent for Wholesale Wastewater Service. The provision of Wholesale Wastewater Service to Crandall is subject to the following conditions precedent:

- 1) Execution of an amendment to the LEFIS Contract by NTMWD, Mesquite and Seagoville authorizing Mesquite to provide Wholesale Wastewater Service to Crandall;
- 2) The LEFIS Improvements have been completed by NTMWD, are operational and have been accepted by NTMWD;
- 3) Crandall has reimbursed all costs and expenses paid by Mesquite to NTMWD for the LEFIS Improvements which are necessitated by, or required by NTMWD for, the provision of Wholesale Wastewater Service to Crandall (as determined by NTMWD);
- 4) The Crandall Connection Facilities have been completed by Crandall, are operational, and have been accepted by Crandall;
- 5) The Metering Facilities have been approved by Mesquite and NTMWD, and have been conveyed by Crandall to Mesquite;
- 6) Crandall has paid all costs and expenses for which it is responsible under this Agreement; and
- 7) Crandall is otherwise in good standing under this Agreement.

Section 2.02 Wholesale Wastewater Service; Levels.

(a) Subject to the terms and conditions of this Agreement and the requirements of applicable law, Mesquite agrees to provide Wholesale Wastewater Service to Crandall for the Wholesale Service Area in a quantity not to exceed the Wholesale Service Commitment.

(b) Crandall may request from time to time that Mesquite increase the Wholesale Service Commitment. Upon receipt of such request, the Parties shall negotiate in good faith the terms for additional Wholesale Wastewater Service, and while Mesquite shall be under no obligation to furnish the additional Wholesale Wastewater Service except as it otherwise agrees, it shall not unreasonably withhold approval of an increase in Wholesale Wastewater Service. Mesquite acknowledges that any increase in the Wholesale Service Commitment shall require the written consent of NTMWD and Seagoville, and Mesquite may condition approval of any increase in the Wholesale Service Commitment upon the receipt of payment from Crandall of all costs and expenses associated therewith, including costs of any improvements to the Interceptor System required by NTMWD.

(c) Quality of Wastewater; Prohibited Waste. Only Wastewater that is in compliance with the requirements of the LEFIS Contract may be delivered by Crandall to the Point of Entry. Crandall will prohibit the discharge of Prohibited Waste into the Crandall System and will enact all rules and regulations reasonably necessary to regulate the quality and strength of the Wastewater it collects for discharge into the Interceptor

System to maintain compliance with the requirements of the LEFIS Contract. Crandall agrees that it shall adopt and enforce any pretreatment requirements for its retail customers as may be necessary to ensure the quality of Wastewater Crandall delivers to the Point of Entry meets the requirements of this Section.

Section 2.03 Title to and Responsibility for Wastewater. Title to and control of Wastewater prior to delivery to the Point of Entry will be with Crandall. Additionally, Crandall will be solely responsible for conveying Wastewater collected by Crandall to the Point of Entry. Liability to third persons or entities (including but not limited to TCEQ) arising from the receipt, collection, transportation, delivery and disposal of Wastewater under this Agreement will remain with Crandall on its side of and up to delivery to the Point of Entry.

Section 2.04 Inspection of Crandall System and Testing of Wastewater. Mesquite and NTMWD may, at reasonable intervals and at Crandall's expense, (i) inspect and test the Crandall System, including testing of Wastewater flows, to ensure Crandall's compliance with the terms of this Agreement, and (ii) collect samples of Wastewater at the Point of Entry and cause the samples to be analyzed utilizing American Public Health Association and the Environmental Protection Agency's then-standard methods or other appropriate methods to determine if the Wastewater is of the quality required by this Agreement. If any analysis determines that any Wastewater is not of the required quality, Crandall will determine the cause of the non-compliance, notify any responsible customer, and to require the customer to either cease discharging that Wastewater or to pretreat such Wastewater so that the required quality is achieved before it is discharged.

Section 2.05 Wholesale Service Commitment Not Transferable. Mesquite's commitment to provide Wholesale Wastewater Service is solely to Crandall and solely for the Wholesale Service Area. Crandall may not assign or transfer in whole or in part its right to receive Wholesale Wastewater Service without Mesquite's prior written approval.

Section 2.06 Crandall Responsible for Retail Connections. Crandall will be solely responsible for providing retail wastewater service within the Wholesale Service Area. Crandall shall not provide wastewater services received under this Agreement to any entity, private or public, other than Crandall's retail customers located within the Wholesale Service Area. Crandall will be solely responsible for ensuring compliance by its retail customers with the applicable terms of this Agreement, compliance with State and federal laws and regulations, and for the proper and lawful application of Crandall's policies and regulations governing connection to the Crandall System.

Section 2.07 Curtailement of Service. The Parties agree that, if wholesale wastewater service is curtailed by NTMWD, Mesquite may impose a like curtailement, with notice to Crandall, on Wholesale Wastewater Service delivered to Crandall under this Agreement.

Section 2.08 Cooperation During Maintenance or Emergency. Crandall will reasonably cooperate with Mesquite and NTMWD during periods of Emergency or required maintenance. If necessary, upon prior notice, Crandall will operate and maintain Crandall System at its expense in a manner reasonably necessary for the safe and efficient completion of repairs or the replacement of facilities, the restoration of service, and the protection of the public health, safety, and welfare.

Section 2.09 Crandall Prevention of Infiltration and Inflow. It will be Crandall's responsibility to undertake such measures as are reasonably necessary or prudent to minimize Infiltration and Inflow to the Crandall System including, without limitation, the prohibition of the discharge of drainage water and stormwater run-off into the Crandall System.

ARTICLE III **DESIGN AND CONSTRUCTION OF FACILITIES**

Section 3.01 LEFIS ImprovementsNTMWD shall design, construct and install the LEFIS Improvements in accordance with the terms and conditions of the LEFIS Contract, as amended.

(b) Crandall acknowledges that NTMWD shall invoice Mesquite for the LEFIS Improvement Costs. Subject to reimbursement of its costs from Crandall, Mesquite shall pay each invoice for payment of the LEFIS Improvement Costs from NTMWD. Mesquite shall periodically send a written invoice to Crandall for reimbursement of the LEFIS Improvement Costs, which invoice shall include a copy of the invoice(s) for payment by NTMWD to Mesquite. Crandall agrees to pay each invoice for payment in full within thirty (30) days after receipt from Mesquite. Any amounts due to Mesquite that are not paid within 30 days of receipt will accrue interest as allowed and otherwise required pursuant to the provisions of the Texas Prompt Payment Act, Chapter 2251 of the Texas Government Code, until paid. Failure of Crandall to timely reimburse Mesquite in full for any LEFIS Improvement Costs shall be a material breach of this Agreement.

Section 3.02 Crandall Connection Facilities Design and Engineering of Crandall Connection Facilities.

(a) General.

1) The Connection Facilities must be designed by a Texas Licensed Professional Engineer in accordance with the requirements of the Texas Commission on Environmental Quality and any regulatory authority with jurisdiction. Crandall agrees that it shall comply with any requirements of NTMWD associated with the Crandall Connection Facilities including, without limitation, requirements relating to the design of improvements at the Point of Entry.

2) Crandall shall submit all final plans and specifications for the Metering Facilities to Mesquite for review and approval prior to commencement of construction. To the extent that NTMWD seeks to review and approve the plans and specifications, Crandall shall submit the plans and specifications to NTMWD for its review and approval.

(b) Crandall's Payment for Construction and Installation of the Crandall Connection Facilities.

1) Crandall agrees to pay for, or cause to be paid, the costs of design and construction of the Crandall Connection Facilities including, without limitation, the costs of governmental approvals, certificates, permits, easements, rights-of-way, and sites required as part of the Crandall Connection Facilities as those costs become due.

2) Neither Mesquite nor NTMWD will be liable to any contractor, engineer, attorney, materialman or other party employed or contracted with by Crandall in connection with the construction of the Crandall Connection Facilities.

(c) Construction of Crandall Connection Facilities.

1) Crandall shall not commence construction of any of the Crandall Connection Facilities prior to receipt of all regulatory approvals, nor without prior written authorization from Mesquite and NTMWD.

2) Crandall agrees to provide not less than ten (10) days' prior written notice to Mesquite and NTMWD of the date on which construction is scheduled to begin on the Crandall Connection Facilities and prior to commencement of construction of the Metering Facilities.

3) The Crandall Connection Facilities shall be constructed in a good and workmanlike manner and that all material used in such construction shall be free from defects and fit for its intended purpose.

4) Crandall shall construct the Crandall Connection Facilities in compliance with any and all applicable local, state, and federal regulations.

5) Mesquite and NTMWD will have the right to inspect and approve the construction of the Crandall Connection Facilities as a condition of commencement of Wholesale Wastewater Service, which approval shall not be unreasonably withheld.

(d) Metering Facilities.

1) Mesquite and NTMWD will have the right to inspect and approve the construction of the Metering Facilities and other Point of Entry improvements.

2) Upon completion of the Metering Facilities, Crandall shall provide Mesquite with a certificate of completion from the project engineers certifying that the Metering Facilities have been completed substantially in accordance with the approved specifications. Crandall will respond to and repair any outstanding items identified in writing by Mesquite or NTMWD. Mesquite shall provide written confirmation of satisfactory completion of the Metering Facilities. Mesquite's letter to Crandall confirming that all outstanding project items have been completed shall be the "Completion Date." From and after the Completion Date, the Metering Facilities shall be owned and operated by Mesquite, subject Crandall's warranty obligations.

(e) Crandall Warranties, and Bonds

1) Duty to Repair and Warranty. Except as otherwise specified, Crandall agrees to repair all defects in materials, equipment or workmanship associated with the Metering Facilities appearing within two (2) years from the Completion Date to comply with the approved specifications for the Metering Facilities. Upon receipt of written notice from Mesquite of the discovery of any defects, Crandall shall promptly and at its own cost remedy the defects and replace any property damaged therefrom, or may cause the contractor or bonding company to do so. In case of an Emergency where delay would cause serious risk of loss or damage to Mesquite or its customers, or if Crandall, after notice, fails to proceed promptly toward such remedy within 30 days or within another period of time which has been agreed to in writing, Mesquite may have defects in the Metering Facilities corrected in compliance with the terms of this warranty and guarantee, and Crandall shall be liable for all expenses incurred by Mesquite in so doing.

2) Assignment of Warranty Obligations. In addition to Crandall's duty to repair, as set forth above, Crandall expressly assumes all warranty obligations under the approved plans and specifications for specific components, materials, equipment or workmanship of the Metering Facilities. Crandall may satisfy its duty to repair and warranty by obtaining and assigning to Mesquite, by written instrument in a form approved by counsel for the Mesquite, a complying warranty from a manufacturer, supplier, or contractor providing the warranty for two years from the Completion Date. Where an assigned warranty is tendered and accepted by Mesquite that does not fully comply with the requirements of the approved specifications, Crandall agrees that it shall remain liable to Mesquite on all elements of the required warranty that are not provided by the assigned warranty.

(f) Insurance.

1) The contract for construction of the Crandall Connection Facilities shall require the construction contractor to provide and maintain the types and minimum coverages of insurance specified below from the time Crandall issues a notice to proceed for construction of the Crandall Connection Facilities and extending until the Completion Date.

2) The Contractor shall be required to present Crandall with a current insurance certificate showing the required coverages before any workers or materials are brought to the construction site for the Connection Facilities. Mesquite and Crandall, their employees, officers, and their professional consultants, legal representatives and agents will be named as an additional insured on such insurance certificate. The insurance coverages shall include, and the certificates

shall reflect, carrier's written endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty days prior written notice has been given to Crandall. Crandall shall also meet all insurance requirements of NTMWD.

3) If the Contractor engages subcontractors for construction, the Contractor shall either provide coverage for subcontractors in the Contractor's insurance policies or require each subcontractor to secure insurance of the same types and with the same coverage limits as Contractor's.

4) Prior to commencing construction of any Crandall Connection Facilities, the Contractor must furnish certificates of insurance and policies, including all endorsements, on forms acceptable to Crandall and Mesquite, confirming the following insurance coverage in at least the amounts set forth below and, except with respect to Worker's Compensation insurance, naming Crandall and Mesquite as additional insureds (by endorsement) entitled to the full benefit of coverage:

i.	Workers' Compensation/ Employer's Liability	Statutory amounts as prescribed by law
ii.	Commercial General Liability (occurrence basis), which policy must be on a current edition of ISO form CG 00 01 12 07 or equivalent, must not include an endorsement excluding the sole negligence of the District from the definition of "insured contract", but must include coverage for products/completed operations in the amount of:	\$1,000,000 (per occurrence) \$2,000,000 (aggregate) \$1,000,000 (products / completed operations aggregate)
iii.	Vehicle Liability (occurrence basis), which policy must include liability arising out of operation of owned, hired, and non-owned vehicles	\$1,000,000 (each accident)
iv.	Excess/Umbrella Liability	\$1,000,000 (per occurrence)
v.	Errors and Omissions/Professional Liability Insurance for all architects, engineers and environmental consultants and for the Contractor and its subcontractor(s) to the extent the Contractor or any subcontractor provides design services. If the insurance is written on a claims-made basis, the retroactive date of the coverage and any renewal policy shall be prior to the commencement of services. Such insurance must be maintained for a minimum of two years after the Completion Date.	\$2,000,000 per claim

Except as otherwise provided with respect to the Errors and Omissions/Professional Liability Insurance, all of the above-listed insurance must be maintained in force until the

Completion Date and must be written by insurance companies authorized to sell insurance where work is being performed and have an A.M. Best's rating of **A- VII** or better. All insurance policies must provide that they may not be cancelled or modified without 30 days' prior written notice to Crandall and Mesquite and that they are primary and noncontributory over any insurance that may be carried by Crandall and Mesquite.

(g) Conveyance of Facilities and Associated Property

1) After the Completion Date, Crandall agrees to provide a bill of sale or other conveyance instrument reasonably satisfactory to Mesquite to evidence conveyance of the Metering Facilities to Mesquite upon request of Mesquite. After conveyance, Mesquite shall be responsible for the ownership, operation, maintenance and repair of the Metering Facilities (subject to Crandall's warranty obligations).

2) Crandall will be responsible for ownership, operation and maintenance of the Crandall Connection Facilities (excluding the Metering Facilities). Crandall acknowledges that its operation and maintenance obligations shall specifically include the wastewater transmission facilities located on the "downstream" side of the Metering Facilities that extend to the Point of Entry into the Interceptor System.

ARTICLE IV
RATES AND CHARGES

Section 4.01 Wholesale Wastewater Rates, Fees and Charges. Crandall shall pay Mesquite for the Wholesale Wastewater Service provided under this Agreement by payment of the Volume Charge in accordance with the terms of this Article IV.

Section 4.02 Volume Charge.

(a) Mesquite will measure the quantity of Wholesale Wastewater Service monthly based on monthly readings of the Metering Facilities. The total of these amounts multiplied by the Volume Charge will be used by Mesquite to compute the monthly bill for Wholesale Wastewater Service; provided, however, in the event that the quantity of Wastewater measured during any monthly period is less than the Minimum Monthly Volume, than Crandall's monthly bill for Wholesale Wastewater Service shall be equal to the Minimum Monthly Volume multiplied by the Volume Charge.

Section 4.03 Amendment of Wholesale Rate. The Volume Charge shall automatically adjust to reflect any change in the bulk rate per 1,000 gallons that Mesquite is charged for wholesale wastewater service from NTMWD so that Crandall always pays the same effective volumetric rate applicable to Mesquite plus the Volumetric Surcharge.

Section 4.04 Crandall Water Rates and Charges. Crandall will determine and charge its retail water customers such rates as are determined by its governing body. During the term of this Agreement, Crandall will fix and collect rates and charges for retail water service that are, in the opinion of its governing body, sufficient, together with any other revenues available to Crandall, to produce the amount necessary to operate, repair, and maintain the Crandall System, and to pay the cost of Wholesale Wastewater Service from Mesquite. Crandall will be solely responsible for ensuring that its retail rates and charges are determined and collected in accordance with applicable law.

ARTICLE V

**WHOLESALE BILLING METHODOLOGY AND
RELATED MATTERS**

Section 5.01 Monthly Statement. For each monthly billing period, Mesquite will forward to Crandall a bill providing a statement of the total owed by Crandall for Wholesale Wastewater Service provided to Crandall during the previous monthly billing period. Crandall will pay Mesquite for each bill submitted by Mesquite to Crandall by check or bank-wire on or before thirty (30) days from the date of the invoice. Payments shall be mailed to the address indicated on the invoice, or can be hand-delivered to Mesquite's billing office upon prior arrangement. If payments will be made by bank-wire, Crandall shall verify wiring instructions. Payment must be received at Mesquite's billing office or bank by the due date in order not to be considered past due or late. In the event Crandall or an assignee responsible for payment in accordance with this Agreement fails to make payment of a bill within said thirty (30) day period, Crandall shall pay, in addition, Mesquite's then-current, Council-approved wholesale wastewater service late payment charges on the unpaid balance of the invoice so long as said late payment chargers are consistent with applicable provisions of the Texas Prompt Payment Act, which shall control to the extent of any inconsistency.

Section 5.02 Effect of Nonpayment. With respect to monthly billings, if Mesquite has not received payment from Crandall by the due date, the bill will be considered delinquent, unless contested in good faith. In such event, Mesquite will notify Crandall, or its assignee responsible for payment in accordance with this Agreement, of such delinquency in writing, if Crandall or its assignee fails to make payment of the delinquent billing within 30 calendar days from the date of transmittal of such written notice of delinquency from Mesquite, then Mesquite may, at its discretion, terminate or reduce the level of Wholesale Wastewater Service to Crandall until payment is made.

Section 5.03 Protests, Disputes or Appeals. Nothing in this Agreement is intended to limit, impair or prevent any right of Crandall to protest, dispute or appeal with respect to rate making, the establishment of fees and charges or any other related legal or administrative proceedings affecting services or charges to Crandall under this Agreement.

Section 5.04 Metering Facility Accuracy; Calibration. Mesquite shall own the Metering Facilities after the Completion Date. Throughout the term of this Agreement, Mesquite will operate the Metering Facilities at its sole cost and expense and will calibrate the Metering Facilities at least once every 12 months, or more frequently at the reasonable request and expense of Crandall. A meter registering not more than three percent above or below the test result will be considered accurate. If any meter fails to register accurately, the amount of wastewater service will be estimated by using the wastewater usage for a corresponding number of days based on data from the most recent billing cycle in which the meter was known to be registering accurately or, in the alternative, Mesquite and Crandall may agree on another suitable method for calculating the wastewater usage during the period of meter failure.

**ARTICLE VI
REGULATORY COMPLIANCE**

Section 6.01 Agreement Subject to Applicable Law. The Agreement will be subject to all valid rules, regulations, legal interpretations, policies and applicable laws of the United States of America, the State of Texas and/or any other governmental body or agency having lawful jurisdiction or any authorized representative or agency of any of them.

Section 6.02 Cooperation to Assure Regulatory Compliance. Since the Parties must comply with all federal, state, and local requirements to obtain permits, grants, and assistance for system construction, studies, and any other applicable and/or relevant legal or regulatory requirements, each party will cooperate in good faith with the other Party at all times to assure compliance with any such governmental requirements where noncompliance or non-cooperation may subject the parties to penalties, loss of grants or other funds, or other adverse regulatory action in the performance of this Agreement.

ARTICLE VII
TERM, TERMINATION, DEFAULT, REMEDIES

Section 7.01 Term and Termination.

- (a) This Agreement shall become effective upon the Effective Date and shall remain in effect for a term of thirty (30) years unless terminated earlier as provided herein. Upon termination of the LEFIS Contract such that Mesquite may no longer receive wholesale wastewater service from NTMWD, then this Agreement shall terminate automatically.
- (b) After September 30, 2032, Crandall may terminate this Agreement at any time by providing not less than twelve (12) months' prior written notice of termination to Mesquite. Any payment obligations of Crandall that accrue prior to termination of this Agreement shall survive termination.
- (c) If a regional facility for the treatment of wastewater is opened by NTMWD which may serve Crandall's needs, Crandall may terminate this Agreement on six (6) months' prior written notice of termination to Mesquite. Any payment obligations of Crandall that accrue prior to termination of this Agreement shall survive termination.

Section 7.02 Default.

(a) In the event Crandall shall default in the payment of any amounts due to Mesquite under this Agreement, or in the performance of any material obligation to be performed by Crandall under this Agreement, then Mesquite shall give Crandall at least 30 days' written notice of such default and the opportunity to cure same. Thereafter, in the event such default remains uncured, Crandall shall have the right to pursue any remedy available at law or in equity.

- (b) In the event Mesquite shall default in the performance of any material obligation to be performed by Mesquite under this Agreement, then Crandall shall give Mesquite at least 30 days' written notice of such default and the opportunity to cure same. Thereafter, in the event such default remains uncured, Crandall shall have the right to pursue any remedy available at law or in equity, pending cure of such default by Mesquite. In the event such default remains uncured for an additional 180 days, then Crandall shall, in addition to and not in lieu of any other remedies available to Crandall, have the right to notify Mesquite that Crandall intends to take a more limited amount of Wholesale Wastewater Service from Mesquite (which shall be at least the amount Mesquite is then able to provide to Crandall) and Crandall may then obtain other wastewater services from another provider or may take appropriate action to supply itself with additional wastewater services upon giving Mesquite written notice of its intent to do so. Mesquite acknowledges that the replacement of the Wholesale Wastewater Service which Mesquite has agreed to provide under this Agreement would be difficult and expensive for Crandall, and agrees to use diligent good faith efforts to perform its obligations under this Agreement.

Section 7.03 Additional Remedies Upon Default. It is not intended hereby to specify (and this Agreement shall not be considered as specifying) an exclusive remedy for any default, but all such other remedies existing at law or in equity may be availed of by any party and shall be cumulative of the remedies provided. Recognizing however, that Mesquite's undertaking to provide and maintain the services of the Mesquite System is an obligation, to the extent that Mesquite's failure in the performance of which cannot be adequately compensated in money damages alone, Mesquite agrees, in the event of any default on its part, that Crandall shall have available to it the equitable remedies of mandamus and specific performance in addition to any other legal or equitable remedies (other than termination of this Agreement) that may also be

available. In recognition that failure in the performance of Crandall's obligations could not be adequately compensated in money damages alone, Crandall agrees in the event of any default on its part that Mesquite shall have available to it the equitable remedies of specific performance in addition to any other legal or equitable remedies that may also be available to Mesquite. If either party institutes legal proceedings to seek adjudication of an alleged default under this Agreement, the prevailing party in the adjudication shall be entitled to its reasonable and necessary attorneys' fees. THE PARTIES ACKNOWLEDGE AND AGREE THAT THIS AGREEMENT IS SUBJECT TO SUBCHAPTER I, CHAPTER 271, TEXAS LOCAL GOVERNMENT CODE. Notwithstanding any provision herein to the contrary, neither Party shall be responsible for consequential damages in the of a breach.

ARTICLE VIII **GENERAL PROVISIONS**

Section 8.01 Assignability. Assignment of this Agreement by either Party is prohibited without the prior written consent of the other party, which consent shall not be unreasonably withheld, delayed or conditioned; provided however that Mesquite hereby consents to the assignment of this Agreement to any affiliate of Crandall, to and successor entity created by merger or consolidation with Crandall, or to any entity that acquires all or substantially all of the assets of Crandall. Other than assignment by Crandall to an affiliate, or successor entity created by merger or consolidation, any assignment of this Agreement by Crandall requires prior consent of the Mesquite evidenced by adoption of a resolution, which consent shall not be unreasonably withheld, delayed or conditioned.

Section 8.02 Amendment. This Agreement may be amended or modified only by written agreement duly authorized by the respective governing bodies of Crandall and Mesquite and executed by duly authorized representatives of each.

Section 8.03 Necessary Documents and Actions. Each Party agrees to execute and deliver all such other and further instruments and undertake such actions as are or may become necessary or convenient to effectuate the purposes and intent of this Agreement.

Section 8.04 Entire Agreement. This Agreement constitutes the entire agreement of the Parties and this Agreement supersedes any prior or contemporaneous oral or written understandings or representations of the Parties regarding Wholesale Wastewater Service by Mesquite to Crandall for the Wholesale Service Area.

Section 8.05 Applicable Law. This Agreement will be construed under and in accordance with the laws of the State of Texas.

Section 8.06 Venue. All obligations of the Parties created in this Agreement are performable in Kaufman County, Texas, and venue for any action arising under this Agreement will be in Kaufman County, Texas.

Section 8.07 No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer upon any person or entity, other than to the Parties, any rights, benefits, or remedies under or by reason of this Agreement.

Section 8.08 Duplicate Originals. This Agreement may be executed in duplicate originals each of equal dignity.

Section 8.09 Notices. Any notice required under this Agreement may be given to the respective Parties by deposit in regular first-class mail or by hand-delivery to the address of the other Party shown below:

Crandall:

City Manager
110 S. Main Street

PO Box 277
Crandall, TX 75114

Mesquite:

City Manager
1515 N. Galloway Ave.
Mesquite, Texas 75149

Notices shall be deemed received on the date of hand delivery or within three days of deposit in first-class mail.

Section 8.10 Consents and Approvals. Wherever this Agreement requires any Party, or its agents or employees, to provide a consent, approval or similar action, the parties agree that such consent, approval or similar action will not be unreasonably withheld or delayed.

Section 8.11 Severability. Should any court declare or determine that any provisions of this Agreement is invalid or unenforceable under present or future laws, that provision shall be fully severable; this Agreement shall be construed and enforced as if the illegal, invalid, or unenforceable provision had never comprised a part of this Agreement and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, in place of each such illegal, invalid, or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable. Texas law shall govern the validity and interpretation of this Agreement.

Section 8.12 Records. Mesquite and Crandall each agree to preserve, for a period of at least three years from their respective dates of origin, all books, records, test data, charts and other records pertaining to this Agreement. Mesquite and Crandall shall each, respectively, have the right during reasonable business hours to inspect such records to the extent necessary to verify the accuracy of any statement, charge or computation made pursuant to any provisions of this Agreement.

Section 8.13 Force Majeure. If any party is rendered unable, wholly or in part, by Force Majeure to carry out any of its obligations under this Agreement, other than an obligation to pay or provide money, then such obligations of that party to the extent affected by such Force Majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time shall be suspended during the continuance of any inability so caused to the extent provided but for no longer period. Such cause, as far as possible, shall be remedied with all reasonable diligence. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the affected party, and that the above requirements that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demand of the opposing party or parties when such settlement is unfavorable to it in the judgment of the affected party.

Section 8.14 Good Faith. Each party agrees that, notwithstanding any provision herein to the contrary (i) it will not unreasonably withhold or condition or unduly delay any consent, approval, decision, determination or other action which is required or permitted under the terms of this Agreement, and (ii) it will act in good faith and shall at all times deal fairly with the other party.

Section 8.15 Authority of Parties Executing Agreement, Validity. By their execution, each of the individuals executing this Agreement on behalf of a party represents and warrants to the other party that he or she has the authority to execute the document in the capacity shown on this document. Each of the parties further represent and warrant that this Agreement constitutes a valid and binding contract, enforceable against it in accordance with its terms.

Section 8.16 Exhibits. The following exhibits, attached to this Agreement, are incorporated into this Agreement as if fully set forth:

Exhibit A: Crandall Connection Facilities & Point of Entry
Exhibit B: Wholesale Service Area

Section 8.17 Effective Date. This Agreement will be effective from and after the last date of due execution by all Parties.

CITY OF MESQUITE

By: _____

Name: _____

Title: _____

Date: _____

ATTEST: _____
City Secretary

APPROVED AS TO FORM:

City Attorney

CITY OF CRANDALL

By: _____

Name: _____

Title: _____

Date: _____

ATTEST: _____
City Secretary

APPROVED AS TO FORM:

City Attorney

Exhibit A

Exhibit B