

**AMENDED AND RESTATED IN ITS ENTIRETY**  
**AGREEMENT REGARDING WHOLESALE TREATED WATER SERVICE**

THIS AMENDED AND RESTATED IN ITS ENTIRETY AGREEMENT REGARDING WHOLESALE TREATED WATER SERVICE (Agreement) is made between the City of Mesquite, Texas (Mesquite), a Texas home rule municipal corporation, and Kaufman County Municipal Utility District No. 12 (District), a Texas conservation and reclamation district organized under Article XVI, Section 59 of the Texas Constitution (each individually, a “Party” or collectively, the “Parties”).

**RECITALS**

WHEREAS, Mesquite is a home-rule municipal corporation of the State of Texas;

WHEREAS, House Bill No. 3622 (“HB 3622”), 78th Texas Legislature, Regular Session, created Kingsborough Municipal Utility Districts Nos 1, 2, 3, 4, and 5 of Kaufman County for the purposes, among others, of providing and financing treated water facilities for development in and around the districts;

WHEREAS, on February 3, 2006, the Texas Commission on Environmental Quality (the “TCEQ”) approved multiple orders approving the name changes from Kingsborough Municipal Utility District Nos. 1, 2, 3, 4, and 5 to Kaufman County Municipal Utility District Nos. 8, 9, 10, 11, and 12, respectively;

WHEREAS, on March 30, 2020, the TCEQ approved an order approving the name change from Kaufman County Municipal Utility District No. 8 to Kaufman County Municipal Utility District No. 14;

WHEREAS, Kaufman County Municipal Utility District No. 12 is the retail water service provider for Kaufman County Municipal Utility District Nos. 9, 10, 11, 12 and 14 (collectively, the MUDs), Kaufman County Fresh Water Supply District Nos. 4A and 4B (collectively, the “FWSDs”), and the Trailwinds Development;

WHEREAS, the District is a political subdivision of the State of Texas operating under the authority of Article XVI, Section 59 of the Texas Constitution and Chapters 49 and 54 of the Texas Water Code;

WHEREAS, the District’s water service area is the area described on *Exhibit A*, which consists of the property located within the MUDs, the FWSDs and the Trailwinds Development (the “Water Service Area”);

WHEREAS, most of the District’s Water Service Area is located outside Mesquite limits and extraterritorial jurisdiction of Mesquite;

WHEREAS, pursuant to Mesquite’s wholesale water supply agreement with North Texas Municipal Water District (“North Texas”), as amended, a copy of which is attached herewith as

**Exhibit B** (the “North Texas Water Contract”), Mesquite must first obtain consent from North Texas to provide water to customers outside Mesquite’s city limits and extraterritorial jurisdiction;

WHEREAS, Mesquite consented to and supported the creation of the District and the MUDs and acknowledges that the District and the MUDs are essential to the full development of the property served by the District and for the successful implementation of this Agreement;

WHEREAS, in order to provide treated water to serve the Water Service Area, 2219 Kaufman Partners, L.P., the MUDs, and Mesquite entered in the August 27, 2004 Agreement Regarding Wholesale Treated Water Service, which was subsequently amended by that certain First Amendment to the Agreement Regarding Wholesale Treated Water Service, dated October 7, 2005 (collectively, the “August 27, 2004 Agreement”);

WHEREAS, the Parties agree that it is in the best interest of Mesquite and the District to amend and restate in its entirety the August 27, 2004 Agreement so that the Parties may enter into this Agreement and more clearly identify their respective obligations;

WHEREAS, Mesquite agrees, subject to the consent of North Texas, to provide wholesale treated water to the District in the amounts and at the times identified in Article II of this Agreement to the District so that the District may provide retail water service to the Water Service Area; and

WHEREAS, only the Water Service Area may be served by wholesale treated water provided by Mesquite through the North Texas Water Contract without the approval of Mesquite, which Mesquite will not unreasonably withhold, and without the approval of North Texas, which Mesquite will work in good faith to obtain on the District’s behalf; and

WHEREAS, Mesquite has the capability to provide wholesale treated water in the amounts and at the times identified in Article II of this Agreement pursuant to the North Texas Water Contract; and

WHEREAS, pursuant to the authority of Article III, Section 64(b) of the Texas Constitution and Chapter 791 of the Texas Government Code (“Chapter 791”), each Party that is a political subdivision of the State of Texas has the authority to contract and agree to perform governmental functions and services; and

WHEREAS, each Party that is a political subdivision of the State of Texas acknowledges and agrees that this Agreement is intended to be an interlocal agreement as between such political entities only pursuant to the authority of the Texas Constitution and Chapter 791; and

WHEREAS, to the extent that any provisions of this Agreement involve or constitute the exercise of a governmental function or service by any Party that is a political subdivision of the State of Texas, such provisions are intended to be enforceable to the maximum extent authorized by the Texas Constitution and Chapter 791; and

WHEREAS, pursuant to the authority of Chapter 402 of the Texas Local Government Code and Section 49.213 of the Texas Water Code, Mesquite and the District have the authority to enter into and perform their respective duties and obligations under this Agreement; and

WHEREAS, Mesquite has obtained the consent of North Texas to the extent such consent is required for Mesquite to perform its duties and obligations under this Agreement.

NOW THEREFORE, for and in consideration of the mutual promises of the Parties as set forth in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are acknowledged, the Parties agree as follows:

ARTICLE I  
DEFINITIONS

“24-Inch Water Line” means the 24-inch water line that delivers water from the Point of Delivery to the Water Service Area, the location of which is generally shown on *Exhibit C*.

“24-Inch Water Line Connection” means the point where the 24-Inch Water Line is connected to Mesquite’s treated water facilities, the location of which is generally shown on *Exhibit C*, and where Mesquite delivers treated water to the District for transport through the 24-Inch Water Line.

“August 27, 2004 Agreement” means collectively the August 27, 2004 Agreement Regarding Wholesale Treated Water Service between Mesquite, the MUDs, and 2219 Kaufman Partners, L.P., and the October 7, 2005 First Amendment to the Agreement Regarding Wholesale Treated Water Service between Mesquite, the MUDs, and Heartland 600 Development Land, L.P.

“Effective Date” means the date as determined by Section 5.20 of this Agreement.

“FWSD” or “FWSDs” means Kaufman County Fresh Water Supply District Nos. 4A and 4B.

“Heartland System Improvements” means the water system improvements that connect and deliver water from the 24-Inch Water Line to the Water Service Area, the location of which is generally shown on *Exhibit C*.

“Interconnection Water Meter” means the water meter(s) and related appurtenances owned by Mesquite at the connecting facilities for the Mesquite Service Area measuring the flow of treated water transported to the Mesquite Service Area.

“MGD” means million gallons per day.

“Mesquite Service Area” means the area identified on *Exhibit E* to which the District transports treated water for Mesquite to provide retail water service to the area.

“Mesquite Water Meter” means the water meter(s) and related appurtenances owned by Mesquite at the Point(s) of Delivery, the location of which is generally shown on the attached *Exhibit C*.

“MUD” or “MUDs” means Kaufman County Municipal Utility District Nos. 9, 10, 11, 12 and 14.

“North Texas” means North Texas Municipal Water District.

“North Texas Water Contract” means the August 1, 1988 North Texas Municipal Water District Regional Water Supply Facilities Amendatory Contract between Mesquite and North Texas, as amended by the First Amendment to the North Texas Municipal Water District Regional Water Supply Facilities Amendatory Contract, as that agreement may be amended from time to time, and attached as *Exhibit B*.

“Point of Delivery” means the point where the 24-Inch Water Line is connected to the treated water facilities controlled by Mesquite, the location of which is generally shown on *Exhibit C*. The Point of Delivery may be changed or additional Points of Delivery may be added by mutual written consent.

“Project Costs” means the costs to design and construct the improvements identified in *Exhibit D* and all right-of-way and easement acquisition costs.

“Water Service Area” means the area described in *Exhibit A*, which consists of the property located within the MUDs, the FWSDs and the Trailwinds Development.

“Water Service Requirement” means the amount of wholesale treated water Mesquite will make available to the District at the Point of Delivery as that amount and the time of such amount are described in Section 2.1.

“Water System Improvements” means the 24-Inch Water Line and the Heartland System Improvements, collectively.

ARTICLE II  
WATER QUANTITY AND DELIVERY; WATER QUALITY

2.1 Quantity and Rate of Delivery.

a. On the Effective Date of this Agreement, Mesquite shall make available to the District at the Point of Delivery up to 3.6 MGD at a maximum rate of delivery of 2,500 gallons per minute at any instant in time.

b. Upon the District meeting the following conditions set out in this Subsection 2.1.b., Mesquite shall make available to the District at the Point of Delivery up to 5.0 MGD at a maximum average rate of 3,472 gallons per minute at any instant time:

(1) The District has submitted a written request to Mesquite requesting that the Water Service Requirement be increased to 5.0 MGD;

(2) The District's average daily use as measured by the Mesquite Water Meter for the preceding twelve (12) consecutive months prior to the District's written request is at least 2.52 MGD (70% of 3.6 MGD), which is estimated to occur toward the end of 2024;

(3) The District has paid to Mesquite 29.3 percent of the Project Costs of the new 24 inch water line improvement identified on *Exhibit D*;

(4) The *Exhibit D* improvements have been completed, accepted, and placed online by Mesquite;

(5) The District has paid in full all amounts owed to Mesquite and is not otherwise in default of this Agreement.

c. Design and Construction of *Exhibit D* Improvements

(1) Within 30 days after the receipt of the District's written request as provided by Section 2.1.b.(1), Mesquite shall initiate the design of final plans for the improvements identified on *Exhibit D*. Upon completion and approval by Mesquite of the final plans, specifications, and bid documents for the improvements, Mesquite shall solicit public bids to complete the construction of the improvements and award the construction contract(s) in compliance with statutory and regulatory requirements to which Mesquite is bound. Mesquite shall cause the construction of the improvements to be started within forty-five days after Mesquite has obtained or been provided, as applicable, all permits, easements, dedication, and rights-of-ways required for the completion of the improvements, and cause the improvements to be completed within eighteen (18) months thereafter (as extended on a day-for-day basis for each day of delay arising from Force Majeure).

(2) Mesquite shall submit invoices to the District assessing the District its portion of the Project Costs associated with improvements identified in the *Exhibit D* improvements as Mesquite receives invoices from its consultant(s) and contractor(s). The invoice shall be due and payable to Mesquite in accordance with Section 4.3 of this Agreement.

d. If, after Mesquite has made available 5.0 MGD of water as provided by Section 2.1.b., the District's average daily use as measured at the Mesquite Water Meter is at least 3.5 MGD (70% of 5.0 MGD) for twelve (12) consecutive months and the District requires more than 5.0 MGD of treated water to serve the Water Service Area, the District may submit to Mesquite a written request for additional water for the Water Service Area. Such notice shall describe how much additional water the District requires, the proposed use of the water, and the time period in which the District will require the additional water. Mesquite, in its sole discretion, may provide the additional water as requested by the District, and may require the District to expand or make additional improvements to Mesquite's water system and to the Water System Improvements in order to provide the additional water to the District.

2.2 Quality. Mesquite agrees to provide at the Point of Delivery all treated water under this Agreement in accordance with the rules, regulations, standards, policies and other

requirements of TCEQ and of any other local, state, or federal governmental agency having jurisdiction.

2.3 Source of Water. The water Mesquite agrees to make available to the District pursuant to Section 2.1 is water provided to Mesquite by North Texas under the North Texas Contract.

2.4 Purpose and Place of Use. Treated water made available to the District under this Agreement shall be used solely for municipal purposes within the Water Service Area. The District shall not use the water supplied under this Agreement to fill or maintain the water level in any surface water impoundment. The District may only use the water made available to the District under this Agreement within the Water Service Area. The Parties acknowledge and agree that, notwithstanding any provision of this Agreement to the contrary, any water supply made available to the District hereunder shall be used solely in the Trinity River Basin and shall not be authorized for use outside of the Trinity River Basin.

2.5 Title to and Responsibility for Water; Reuse.

a. Title to all water supplied to the District shall be with Mesquite up to the Point of Delivery, at which point title shall pass to the District as applicable. Mesquite and the District shall be responsible for compliance with all applicable state and federal laws, rules, and regulations with respect to the delivery of the water owned by them as provided in this section. Notwithstanding anything to the contrary, the Parties agree that title to the water transported by the District to the Mesquite Service Area shall remain with Mesquite and Mesquite shall be solely responsible for compliance with all applicable state and federal laws, rules, and regulations with respect to the delivery of the water to the Mesquite Service Area.

b. As between the Parties, once the untreated wastewater produced as a result of the use of the water supply made available hereunder leave the boundaries of the District, title to such water transfers to North Texas. The District shall not have any right to the use of any of the treated wastewater effluent produced from such wastewater treatment plant(s) serving the Water Service Area for any purposes. North Texas shall have the right, as between the Parties, and pursuant to any necessary authorization of the State, to appropriate and/or reuse such treated wastewater effluent.

2.6 Water Conservation and Allocation of Water During Shortage. The District shall prepare, formally adopt, and implement, a water conservation plan and drought contingency plan that are consistent with TCEQ requirements for water conservation and that are consistent with similar plans adopted by Mesquite and North Texas. In the event of water rationing or other curtailment within Mesquite, or in the event that for any reason Mesquite does not have adequate water to meet the demands of its retail customers and meet the Water Service Requirement under this Agreement, Mesquite shall provide written notice as soon as reasonably possible of such rationing, curtailment, or inadequacy to the District, and the water that is available to Mesquite shall be allocated among all users on a "pro rata" basis. The District shall establish enforcement policies and procedures consistent with Mesquite's, including penalties and fines as allowed by law for violators of any rationing or curtailment plan.

2.7 Reservation of Rights. The Parties agree that Mesquite reserves the right to enter into additional wholesale treated water supply contracts with other entities. The District may enter into additional wholesale treated water supply contracts to receive additional treated water supplies to meet its retail water service water supply needs over 5.0 MGD if Mesquite has provided the District with a written determination that Mesquite is unable to supply the District with additional water over 5.0 MGD.

2.8 Representations and Warranties.

a. Mesquite represents and warrants as follows:

(1) that the term of the North Texas Water Contract continues until all bonds issued by North Texas have been paid and for the entire useful life of the North Texas system;

(2) that there are no events of default by either Mesquite or North Texas under the North Texas Water Contract, and, to the best knowledge and belief of Mesquite, there are no facts or circumstances which, with the giving of notice or passage of time, would constitute an event of default by either such Party;

(3) that Mesquite has the right under the North Texas Water Contract to treated water to serve the Water Service Area in the amounts sufficient to meet the Water Service Requirement; and

(4) that Mesquite has the right under the North Texas Water Contract, subject to obtaining the consent of North Texas, to enter into and perform its obligations under this Agreement.

b. Mesquite further agrees that:

(1) it will use its best efforts to obtain any additional consents, as may be necessary, from North Texas to the extent required for Mesquite to perform its duties and obligations under this Agreement;

(2) it will maintain the North Texas Water Contract in full force and effect throughout the term of this Agreement or will enter into a replacement contract with North Texas or other provider of treated water that will otherwise enable Mesquite to continue to meet the Water Service Requirement;

(3) as a "Member City" of North Texas, it will use its best efforts to cause North Texas to plan for and provide adequate capacity to provide treated water to Mesquite so that Mesquite can meet its obligations under this Agreement; and

(4) it will give the District written notice of any alleged event of default under the North Texas Water Contract that would adversely impact the ability of Mesquite to meet the

Water Service Requirement (which notice shall be given within 30 days after becoming aware of such alleged event of default).

ARTICLE III  
WATER SYSTEM IMPROVEMENTS AND OWNERSHIP

3.1 24-Inch Water Line and Related Improvements

a. The District owns the 24-Inch Water Line. The operation, maintenance, and end-of-life replacement of the 24-Inch Water Line shall be performed solely by the District.

b. Mesquite owns the Mesquite Water Meter. The operation, maintenance, and end-of-life replacement of the Mesquite Water Meter shall be performed solely by Mesquite.

c. The District owns Heartland System Improvements. The District shall maintain an air gap between the 24-Inch Water Line and the Heartland System Improvements. The operation, maintenance, and end-of-life replacement of the Heartland System Improvements shall be performed solely by the District.

d. Before the commencement of any expansions, improvements, or additions to the 24-Inch Water Line or 24-Inch Water Line Connection, the District shall prepare and submit to Mesquite detailed plans and specifications for the proposed improvements. Review and approval of the plans and specifications by Mesquite and all other agencies with jurisdiction is required before the commencement of construction. Mesquite shall have the right to review such plans and specifications at the sole cost of the District. Mesquite agrees to review and provide comments on any plans and specifications within 30 days after they are submitted to Mesquite.

e. The 24-Inch Water Line may be upgraded, repaired, expanded, improved, operated, and maintained within the public rights-of-way or easement belonging to the District. However, should additional rights-of-way or easements be necessary, the District shall be responsible for the acquisition of any such rights-of-way or easements. The standard dimensions of such rights-of-way or easements shall be sufficient to allow for the lawful construction, upgrade, repair, expansion, improvement, operation, maintenance, or removal of the 24-Inch Water Line and adequate ingress and egress for such purpose.

f. Inspection of 24-Inch Water Line. The District shall be solely responsible for inspection of the Water System Improvements as the work on any improvements progresses.

3.2 Reporting. By January 31 of each year, the District shall provide, or cause to be provided in writing to Mesquite a schedule of the number of connections and the type of connections, such as single family residential, multifamily residential, commercial, governmental and institutional uses, and peak daily water use and yearly water use the District anticipates will be added during the calendar year and projecting over the next ten year period.

3.3 District Delivery of Water for Mesquite.

a. The District agrees to deliver for Mesquite treated water from Mesquite's system to the area identified on *Exhibit E*, attached hereto and incorporated herein ("Mesquite Service Area"), until such time that Mesquite has completed the construction of the new facilities necessary for Mesquite to deliver treated water to the Mesquite Service Area (the "New Facilities") and the New Facilities are operational. Mesquite will deliver the treated water to the District's 24-Inch Water Line at the 24-Inch Water Line Connection, and the District will transport that water through its 24-Inch Water Line to the Mesquite Service Area. Mesquite and the District may, by mutual agreement, designate connecting facility locations. Mesquite shall be responsible for operating and maintaining the connecting facilities. The payment and construction of the connecting facilities will be completed by Mesquite.

b. The Parties acknowledge that there is sufficient capacity and pressure in the 24-Inch Water Line at the point of the 24-Inch Water Line Connection to supply treated water to the District's Water Service Area and the Mesquite Service Area. In the event that there is not sufficient capacity and pressure through the 24-Inch Water Line necessary meet the water supply demands of the District and the Mesquite Service Area, the District shall have priority over water service to the Mesquite Service Area in receiving treated water from Mesquite and the District shall not be liable to the City for any failure to transport such treated water to the Mesquite Service Area. The treated water delivered by the District to the Mesquite Service Area for Mesquite shall not be charged to the District as water delivered to the District pursuant to this Agreement. Mesquite shall deduct the amount of water delivered through the Interconnection Water Meter to the Mesquite Service Area from the amount of water Mesquite delivers to the District through the Mesquite Water Meter. The amount of water Mesquite delivers to the District for the transport to the Mesquite Service Area shall be sufficient to meet the Mesquite Service Area's treated water demands and to not cause a reduction in the amount of water needed to meet the water supply demands of the District.

c. For each retail water service connection added by Mesquite in the Mesquite Service Area, Mesquite shall pay the District a one-time connection fee in accordance with the schedule attached hereto as *Exhibit F* ("Connection Fee Schedule"). Such payments shall be made as a credit against the Wholesale Treated Water Charge identified in Section 4.2.a.

d. Mesquite agrees to complete the construction of the New Facilities, and such New Facilities shall be operational, by 11:59 pm Central Standard Time on the date of the expiration of ten (10) years from the Effective Date of this Agreement (the "New Facilities Completion Date"). The Parties agree that if the New Facilities are not completed and operational by the New Facilities Completion Date, Mesquite shall pay the District on a monthly basis for the water being provided by the District to the Mesquite Service Area, calculated as follows: the number of gallons delivered by the District to the Interconnection Water Meter multiplied times (1) the Bulk Rate (as defined in Section 4.2.a herein) plus (2) two times the Surcharge (as defined in Section 4.2.a herein), until such time that Mesquite provides written notice to the District that the New Facilities have been completed and are operational.

e. This Section 3.3 shall terminate upon written notice to the District that construction of the New Facilities is complete and the New Facilities are operational. Notwithstanding the foregoing, if Mesquite determines that the District's transportation of treated water to the Mesquite

Service area is no longer necessary, Mesquite, in its sole discretion, may terminate this Section 3.3 upon written notice by Mesquite to the District. Upon termination of this Section 3.3, the District shall no longer be obligated to transport Mesquite's treated water to the Mesquite Service Area and Mesquite will no longer be obligated to pay the one-time connection fee or any other charges detailed in this Section 3.3.

3.4 Measuring Equipment.

a. Interconnection Water Meter. Mesquite shall furnish and install, at its sole expense, the Interconnection Water Meter at a location and per a design approved, inspected, and accepted by Mesquite. Mesquite further agrees to construct, at its sole cost, a meter vault and locking mechanism in conjunction with the installation of the Interconnection Water Meter.

b. Operation and Maintenance of Interconnection Water Meter. Once installed by Mesquite, Mesquite shall operate and maintain the connecting facilities and the Interconnection Water Meter, along with all of the necessary equipment and devices of standard type for measuring properly the quantity of treated water transported by the District to Mesquite's Water Service Area under this Agreement. The Interconnection Water Meter shall remain the property of Mesquite. The District may access the metering equipment described in this Section at all reasonable times. The District and its employees and agents, when accessing the metering equipment, shall notify Mesquite's Manager of Utilities that the District's intends to access the metering equipment, and shall comply with all of Mesquite's safety rules and requirements while accessing the metering equipment. The District shall not calibrate, or otherwise make changes or repairs to the metering equipment.

c. Calibration. Mesquite will calibrate the Interconnection Water Meter at least once per every two years at its expense or as requested by the District, at the District's expense. Mesquite will calibrate the Interconnection Water Meter in accordance with industry and manufacturing standards. If the Interconnection Water Meter registers flow within the standards of the American Water Works Association (AWWA) for a meter of similar size and type, it will be considered accurate. If the meter fails to register flow within the standards of the AWWA accurately, the amount of treated water service will be estimated by using the treated water 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 the District may agree on another suitable method for calculating the treated water usage during the period of meter failure.

d. Meter Reading. The reading, calibration, and adjustment of the meters described in this Section 3.4. shall be done only by the employees or agents of Mesquite. The results of each reading of the meter or meters shall be recorded by Mesquite, with a copy sent to the District, and representatives of the District may inspect the same at any time during reasonable business hours, upon reasonable written notice to Mesquite of the date and time.

e. Upon the termination of Section 3.3, the Interconnection Water Meter shall service as an emergency interconnection between the District's and Mesquite's water systems.

ARTICLE IV

## RATES AND BILLING

4.1 Water Meter. Throughout the term of this Agreement, Mesquite will operate the Mesquite Water Meter at its sole cost and expense and will calibrate the Mesquite Water Meter at least once every 12 months, or more frequently at the request and expense of the District. 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 treated water service will be estimated by using the treated water 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 the District may agree on another suitable method for calculating the treated water usage during the period of meter failure.

### 4.2 Billing for Water Service.

a. Meter Readings and Water Rate and Charge. Throughout the term of this Agreement, Mesquite shall read the Mesquite Water Meter and the Interconnection Water Meter on a monthly basis and calculate its bill to the District for wholesale treated water service based on such monthly readings. The monthly amount charged by Mesquite to the District for wholesale treated water, and which the District will pay to Mesquite as provided in Section 4.3, shall be the number of gallons delivered to the District based on the meter reading for the month at the Mesquite Water Meter, minus the number of gallons delivered by the District to the Interconnection Water Meter, multiplied times (1) the bulk rate per 1,000 gallons that Mesquite is charged for purchasing treated water from North Texas (or from any other sources) (“Bulk Rate”) plus (2) twenty-five percent (25%) (“Surcharge”), (collectively “Wholesale Treated Water Charge”). The Parties agree that the charge in this Agreement does not violate the public interest. The Surcharge may be adjusted by Mesquite as provided in Section 4.2.b. of this Agreement. Notwithstanding the foregoing, Wholesale Treated Water Charge will never be less than the initial rate of \$ 1.358 per 1,000 gallons. The Bulk Rate charged by Mesquite shall automatically be increased in any month if the bulk rate charged by North Texas (or other provider) is increased.

b. Amendment to Rate. Mesquite agrees that before it may change the Surcharge, Mesquite shall conduct a rate study to evaluate Mesquite’s cost of service to provide water to the District. Such study shall be conducted by an independent consultant with specific expertise in the area of wholesale water rates. Based on the results of such studies, the Mesquite City Manager shall have the right to recommend to the Mesquite City Council revisions to this Agreement, including but not limited to an adjustment to the Surcharge set forth in Section 4.2.a. of this Agreement; which recommendation shall be in writing with full justification and shall be provided to all Parties. The Parties shall have 30 days during which to review the recommended revisions to this Agreement and provide written comments thereto. If any Party provides written comments within such 30-day period, such written comments shall be presented to the Mesquite City Council for their consideration at the next regular meeting following the expiration of such 30-day period. Public notice shall be given of such meeting and of the action to be taken. At such meeting, the Mesquite City Council shall consider all recommendations and comments and shall determine in its sole discretion what action to be taken. The Parties agree that such action by the Mesquite City Council shall be final and shall take effect 30 days after the giving of written notice by Mesquite.

d. Limitation of Fees and Charges. The fees charged by Mesquite pursuant to this Article and pursuant to Section 2.1, of this Agreement shall be the only fees and charges charged by Mesquite for providing wholesale treated water to meet the Water Service Requirement.

4.3 Payment of Water Service Bills. The amounts billed by Mesquite shall be the Wholesale Treated Water Charge and the Project Costs. All amounts billed by Mesquite, shall be due and payable to Mesquite within 15 days from the date invoiced, which due date shall be set out on the face of the bills. The Wholesale Treatment Water Charge shall be assessed on monthly basis. All bills become delinquent if not paid by such due date and an interest penalty of 10 percent or the maximum percent allowed by law, whichever is less, shall be added to the total due. If any portion of the total due remains unpaid for 30 days from the due date, Mesquite shall give written notice that water service will be terminated 15 days from date of notice. If the District has not paid the amount due within that 15-day period, Mesquite may terminate service and the District must pay all amounts due including water charges, penalty, reconnection fees and any reasonable attorney fees incurred by Mesquite prior to restoration of service by Mesquite. In addition to termination of service, Mesquite may pursue any and all available legal remedies which may be appropriate, including, but not limited to, the initiation of legal proceedings for the collection of any delinquent bill. All sums payable under this Agreement shall be paid without offset, counterclaim, abatement, suspension or diminution except as otherwise specifically agreed to. If the District disputes the amount to be paid, it shall nevertheless promptly make payment as billed by Mesquite and if it is subsequently determined by an agreement or final court decision that such disputed payment should have been less, Mesquite will then make proper adjustments so that such Party will receive its overpayments plus interest at Mesquite's average interest rate for revenue bond indebtedness on such overpayments. For purposes of this section, funds shall be deemed received by Mesquite if a check is received by Mesquite by 5:00 pm on the due date.

4.4 Operating Expense. Source of Payment. Sufficiency of Income. The Parties agree, represent and covenant that all rates required to be paid under this Agreement for services to be provided by Mesquite shall constitute a proper operating expense of both the combined water and sewer works operated by the District and shall be payable as an operating expense from the income or increment derived from its combined water and sewer works, as authorized by the Constitution and laws of the State of Texas, including the Regional Waste Disposal Act. The District shall adjust and maintain from time to time the rates charged to the customers of its combined water and sewer works such that the income or increment therefrom shall at all times be sufficient to promptly pay or make provisions for the prompt payment of all such rates and charges when and as the same become due and payable and to comply with all other provisions of the resolutions, orders, or indentures authorizing its bonds or other obligations of its water works system or combined water and sewer works.

4.6 **INDEMNIFICATION. THE DISTRICT, TO THE EXTENT ALLOWED BY LAW, AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND MESQUITE, ITS OFFICERS AND EMPLOYEES, FROM AND AGAINST LIABILITY FOR ANY AND ALL CLAIMS, LIENS, SUITS, DEMANDS, AND/OR ACTIONS FOR DAMAGES, INJURIES TO PERSONS, PROPERTY DAMAGE (INCLUDING DAMAGE TO THE WATER SYSTEM IMPROVEMENTS), AND EXPENSES, INCLUDING COURT COSTS AND ATTORNEYS' FEES AND OTHER REASONABLE COSTS ARISING OUT OF OR**

**RESULTING FROM THE QUALITY, QUANTITY AND PRESSURE OF ANY WATER DELIVERED BY MESQUITE IN CONNECTION WITH OR INCIDENTAL TO THE PROVISIONS OF THIS AGREEMENT AND FROM ANY LIABILITY ARISING OUT OF OR RESULTING FROM THE INTENTIONAL ACTS OR NEGLIGENCE, INCLUDING ALL SUCH CAUSES OF ACTION BASED UPON COMMON, CONSTITUTIONAL, OR STATUTORY LAW, OR BASED IN WHOLE OR IN PART UPON THE NEGLIGENT OR INTENTIONAL ACTS OR OMISSIONS OF THE DISTRICT, THE MUDS, AND THE FWSDS INCLUDING THEIR OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES, INVITEES, AND CUSTOMERS. THE DISTRICT SHALL HAVE THE RIGHT TO PARTICIPATE IN THE DEFENSE OF ANY ACTION TO WHICH THIS INDEMNIFICATION APPLIES (INCLUDING THE SELECTION OF OUTSIDE COUNSEL TO REPRESENT MESQUITE) AND TO REQUIRE THAT ANY JUDGMENT AGAINST MESQUITE BE APPEALED TO THE APPROPRIATE COURT OF APPEALS OR TO THE TEXAS SUPREME COURT; AND SHOULD MESQUITE FAIL OR REFUSE TO ALLOW SUCH PARTICIPATION OR FAIL OR REFUSE TO PURSUE SUCH APPEALS, THE INDEMNIFICATION PROVIDED BY THIS SECTION SHALL TERMINATE AS TO SUCH PARTY ONLY. ANY VOLUNTARY SETTLEMENT OF ANY ACTION TO WHICH THIS INDEMNIFICATION APPLIES SHALL REQUIRE THE CONSENT OF THE DISTRICT. NOTHING IN THIS INDEMNIFICATION SHALL BE DEEMED A WAIVER BY DISTRICT OF ANY IMMUNITIES TO WHICH IT IS OTHERWISE ENTITLED.**

ARTICLE V  
ADDITIONAL PROVISIONS

5.1 Recitals. The Parties acknowledge and agree that the “Recitals” set forth in this Agreement are true and correct.

5.2 Term. The term of this Agreement shall begin on the Effective Date and shall end on December 31, 2052 at 11:59 pm central standard time. Upon expiration of the term, it is the intent of the Parties that this Agreement will be renewed on terms mutually agreeable to both Parties so that uninterrupted treated water service will be available to serve the Water Service Area.

5.3 Severability. If any provision of this Agreement is held to be invalid for any reason by a court or agency of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and this Agreement shall be construed as if such invalid provision had never been contained herein, and the remaining enforceable provisions of this Agreement are expressly deemed severable for this purpose.

5.4 Cooperation. The Parties hereto agree to cooperate at all times in good faith to effectuate the purposes and intent of this Agreement.

5.5 Entire Agreement. This Agreement contains the entire agreement of the Parties and supersedes all prior or contemporaneous understandings or representations, whether oral or written, respecting the subject matter hereof.

5.6 Amendments. Any amendment to this Agreement must be in writing and shall be effective only if signed by the authorized representatives of each Party to this Agreement.

5.7 Effect of Force Majeure.

a. Should performance of any obligation created under this Agreement (excluding the obligation to make payments due under this Agreement) become impractical by reason of: fire, flood, storm, act of God, adverse weather conditions of unusual duration or nature, governmental authority, labor disputes, supply chain disruptions, war, endemic, pandemic, public health emergency, or any other cause not enumerated herein but which is beyond the reasonable control of the party whose performance is affected, then the performance of any such obligation is suspended during the period of, and only to the extent of, such prevention or hinderance, provided the affected party provides reasonable notice of the event of force majeure and exercises reasonable diligence to remove the cause of force majeure.

5.8 Effect of Legislative Changes. If any Party to this Agreement is unable to perform, in whole or in part, its obligations under this Agreement by reason of legislative or regulatory changes beyond its control, then performance shall be suspended to the extent and during the period affected by the change. Additionally, if there is a legislative or regulatory change where, as a result of such change, the obligations of or the restrictions upon any Party in providing or accepting service are significantly reduced, eliminated, or changed, then such affected Party may modify this Agreement upon sixty days' written notice to the other Parties. Modifications made pursuant to this section shall be limited to those changes necessary to make this Agreement consistent with the reduced, eliminated, or changed obligations of either Party resulting from the legislative or regulatory change.

5.9 No Third-Party Beneficiaries. This Agreement shall inure only to the benefit of the Parties and their successors and assigns as permitted by this Agreement. No person or entity that is not a Party to this Agreement shall be considered a third-party beneficiary of this Agreement.

5.10 Assignment.

a. The duties and obligations of the District under this Agreement may not be assigned, in whole or in part, to any person or entity without the prior written consent of Mesquite (which consent shall not be unreasonably withheld) and provided (i) the assignment is in writing duly executed by the District and the assignee, (ii) the written assignment obligates the assignee to perform all duties and obligations of the District under this Agreement that arise from and after the effective date of the assignment, and (iii) written notice of the assignment, together with a copy of the fully executed assignment, is provided to all Parties at least 30 days prior to the effective date of the assignment. From and after the effective date of any such assignment, the District shall be released from the performance of any duties or obligations under this Agreement arising from and after the effective date of the assignment. No assignment, however, shall release the District from any duties or obligations that arose prior to the effective date of the assignment unless the Parties agree to such a release.

b. The duties and obligations of Mesquite under this Agreement may be assigned, in whole or in part, to North Texas or to any political subdivision of the State of Texas that is a regional provider of treated water services provided (i) the assignment is in writing duly executed by Mesquite and the assignee, (ii) the written assignment obligates the assignee to perform all duties and obligations of Mesquite under this Agreement that arise from and after the effective date of the assignment, and (iii) written notice of the assignment, together with a copy of the fully executed assignment, is provided to all Parties at least 30 days prior to the effective date of the assignment. From and after the effective date of any such assignment, Mesquite shall be released from the performance of any duties or obligations under this Agreement arising from and after the effective date of the assignment. No assignment, however; shall release Mesquite from any duties or obligations that arose prior to the effective date of the assignment unless the Parties agree to such a release.

5.11 Consent to and Support of CCN. In the event the District elects to apply to the Public Utility Commission of Texas for a certificate of convenience and necessity to provide water service to serve all or any portion of the Water Service Area, Mesquite hereby consents to and agrees to support such application provided the District is not in default of the Agreement. In addition, Mesquite agrees to communicate such consent and support to the Public Utility Commission of Texas in whatever form may be reasonably requested by the District making the application or as otherwise requested by the Public Utility Commission of Texas.

5.12 Applicable Law. This Agreement shall be construed in accordance with Texas law.

5.13 Venue. Venue for any action arising hereunder shall be in Dallas County, Texas.

5.14 Notices. Any notice required or contemplated by this Agreement shall be deemed given (i) if mailed via Certified Mail Return Receipt Requested, on the earlier of the date actually received or five business days after mailed, and (ii) if deposited with a private delivery service (such as U.P.S. or FedEx), when delivered, as evidenced by a receipt signed by a person at the delivery address, when received at the delivery address. All notices shall be addressed as follows:

City of Mesquite, Texas  
1515 N. Galloway Ave.  
Attn: City Manager  
Mesquite, TX 75149  
Phone: 972.216.6293

And

City of Mesquite, Texas  
1515 N. Galloway Ave.  
Attn: City Attorney  
Mesquite, TX 75149  
Phone: 972.216.6272

Kaufman Municipal Utility Districts No. 12  
c/o Coats, Rose, Yale, Ryman & Lee, P.C.  
Attn: Timothy Green

3 Greenway Plaza, Suite 2000  
Houston, TX 77046-0307  
Phone: 713.651.0111

5.15 Events of Default. Except as provided in this section, no Party shall be in default under this Agreement until notice of the alleged failure of such Party to perform has been given (which notice shall set forth in reasonable detail the nature of the alleged failure) and until such Party has had a reasonable time to cure the alleged failure (such reasonable time determined based on the nature of the alleged failure, but in no event less than 15 days after written notice of the alleged failure has been given). In addition, no Party shall be in default under this Agreement if within the applicable cure period the Party to whom notice was given begins performance and thereafter diligently and continuously pursues performance until the alleged failure has been cured within a reasonable period of time. Notwithstanding the foregoing, a Party shall be in default of its obligation to make any payment required under this Agreement if such payment is not made within 10 business days after it is due. If an event of default shall occur, then the aggrieved Parties shall be entitled to specific performance, injunctive relief, relief provided in this Agreement and damages to the maximum extent available under applicable law; provided, however, no event of default shall entitle any Party to terminate this Agreement or to any other remedy that would result in the termination of treated water service to the Water Service Area (except for nonpayment of water as described in Section 4.3 or the failure to pay the charges as described in Sections 2.1 and 4.2 of this Agreement).

5.16 Exhibits. The following exhibits are attached to this Agreement and incorporated herein by reference:

Exhibit A – Water Service Area  
Exhibit B – North Texas Water Contract  
Exhibit C – Water System Improvements and Mesquite Water Meter  
Exhibit D – Mesquite System Improvements  
Exhibit E – Mesquite Service Area  
Exhibit F – Connection Fee Schedule

5.17 Counterparts. This Agreement may be executed in multiple counterparts, each of which will be deemed an original, and all of which will constitute one and the same instrument. Each Party represents and warrants that they have the full right, power and authority to execute this Agreement.

5.18 Consent of NTMWD. The Parties acknowledge that Mesquite has obtained consent from North Texas to the extent required for Mesquite to perform its duties and obligations under this Agreement.

5.19 August 27, 2004 Agreement. The Parties agree that the August 27, 2004 Agreement is amended and restated in its entirety in this Agreement on the Effective Date.

5.20 Effective Date. The Effective Date of this Agreement is the date upon which this Agreement was executed by Mesquite.

*[Signature Pages Follow]*

CITY OF MESQUITE

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Cliff Keheley, City Manager  
City of Mesquite, Texas

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Date

ATTEST:

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Sonja Land, City Secretary  
City of Mesquite, Texas

APPROVED AS TO FORM:

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David L. Paschall, City Attorney

KAUFMAN COUNTY MUNICIPAL  
UTILITY DISTRICT NO. 12:

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Joey Guedea, President  
Kaufman County MUD No. 12

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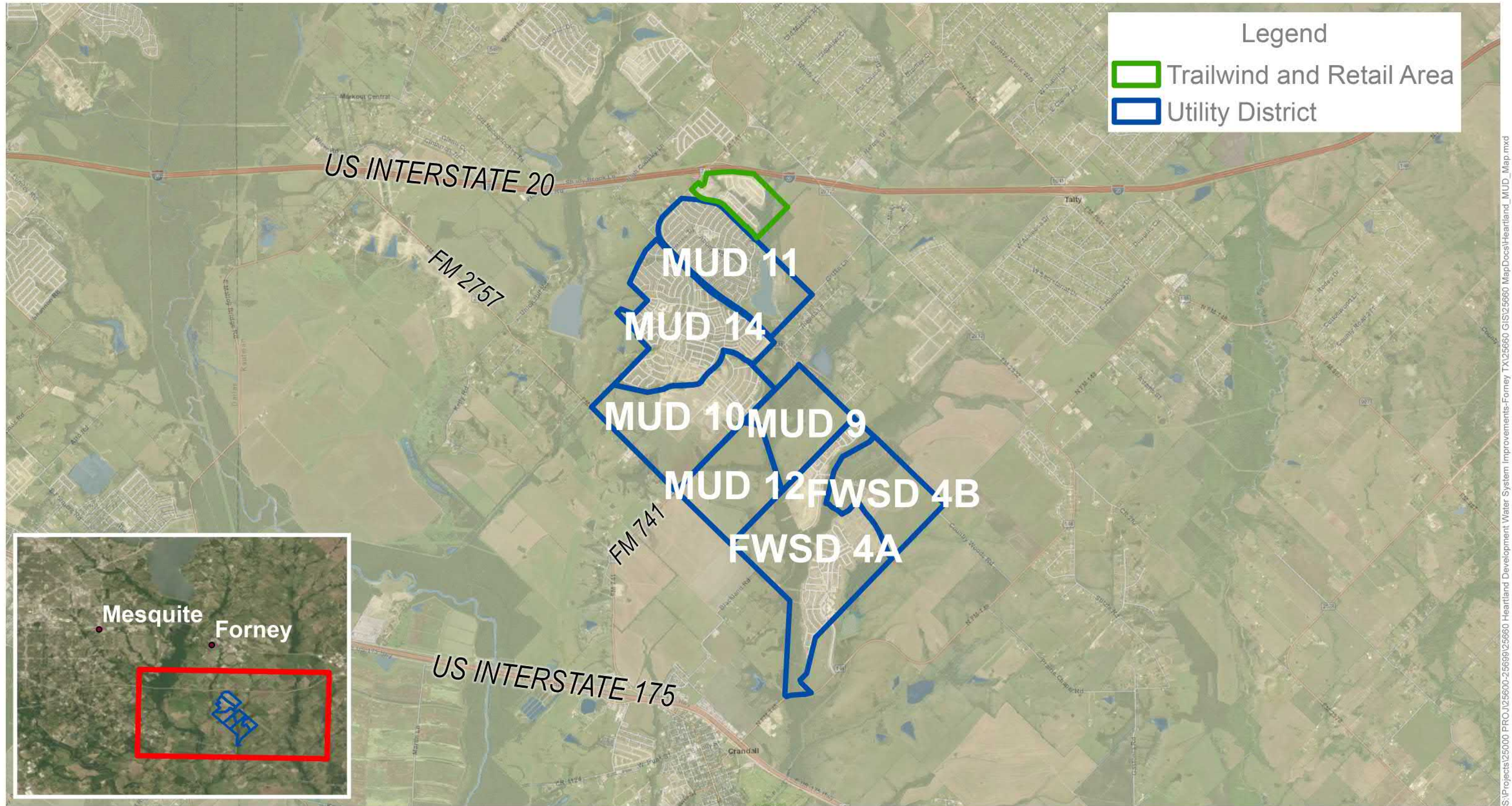
Date

ATTEST:

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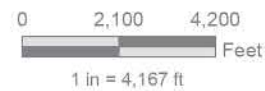
Katherine Haiman Shelton, Assistant Secretary  
Kaufman County MUD No. 12

**Exhibit A**  
**Water Service Area**



Tuesday, February 15, 2022

Project Number 21-18298



Project Extent  
**Heartland Community Water Improvements**  
 Kaufman County, Texas

**Source(s):**  
 Orthophoto (USDA, 2019)  
 Parcels (Cass County, 2021)



S:\Projects\25000 PROJ\25660-25699\25660 Heartland Development Water System Improvements-Forney TX\25660 GIS\25660 MapDocs\Heartland\_MUD\_Map.mxd

**Exhibit B**

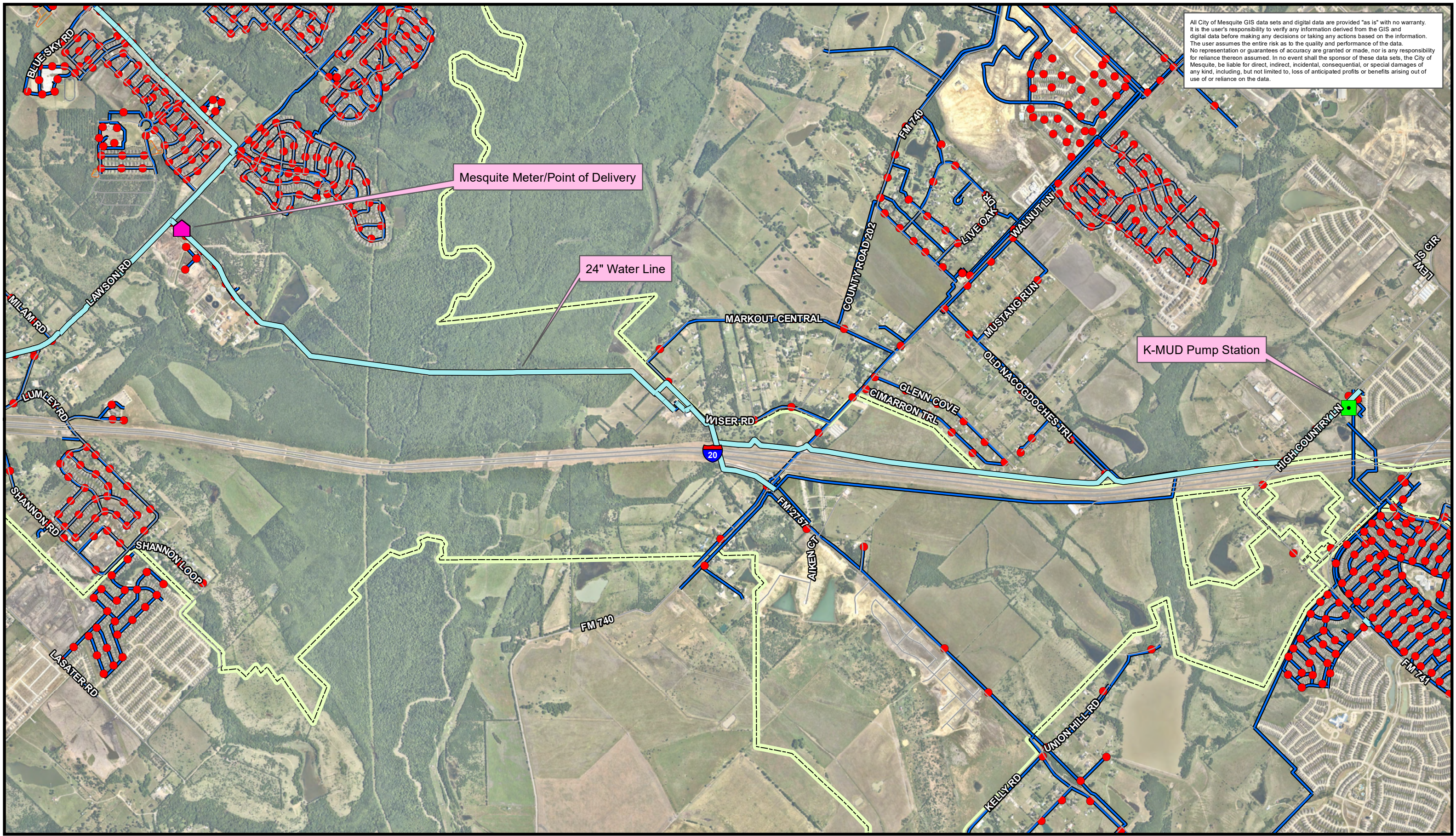
**North Texas Water Contract**

**Exhibit C**

**Water System Improvements and Mesquite Water Meter**

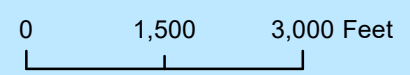
# Exhibit C - Heartland's K-MUD

All City of Mesquite GIS data sets and digital data are provided "as is" with no warranty. It is the user's responsibility to verify any information derived from the GIS and digital data before making any decisions or taking any actions based on the information. The user assumes the entire risk as to the quality and performance of the data. No representation or guarantee of accuracy are granted or made, nor is any responsibility for reliance thereon assumed. In no event shall the sponsor of these data sets, the City of Mesquite, be liable for direct, indirect, incidental, consequential, or special damages of any kind, including, but not limited to, loss of anticipated profits or benefits arising out of use of or reliance on the data.



**MESQUITE TEXAS**  
Real. Texas. Service.

Water Lines	Drainage Channels	Hydrants	Parcel Boundary	KMUD_PumpStation	Mesquite Meter/Point Delivery
Sewer Gravity Mains	Hydrology	Manholes	Detention Ponds		
Storm Sewer	Fiber Optic Lines	Inlets	24" Water Line		



Q:\GIS\Projects\City\_Manager\Kerby\KMUD\_WaterAgreements\KMUD\_11X17.mxd

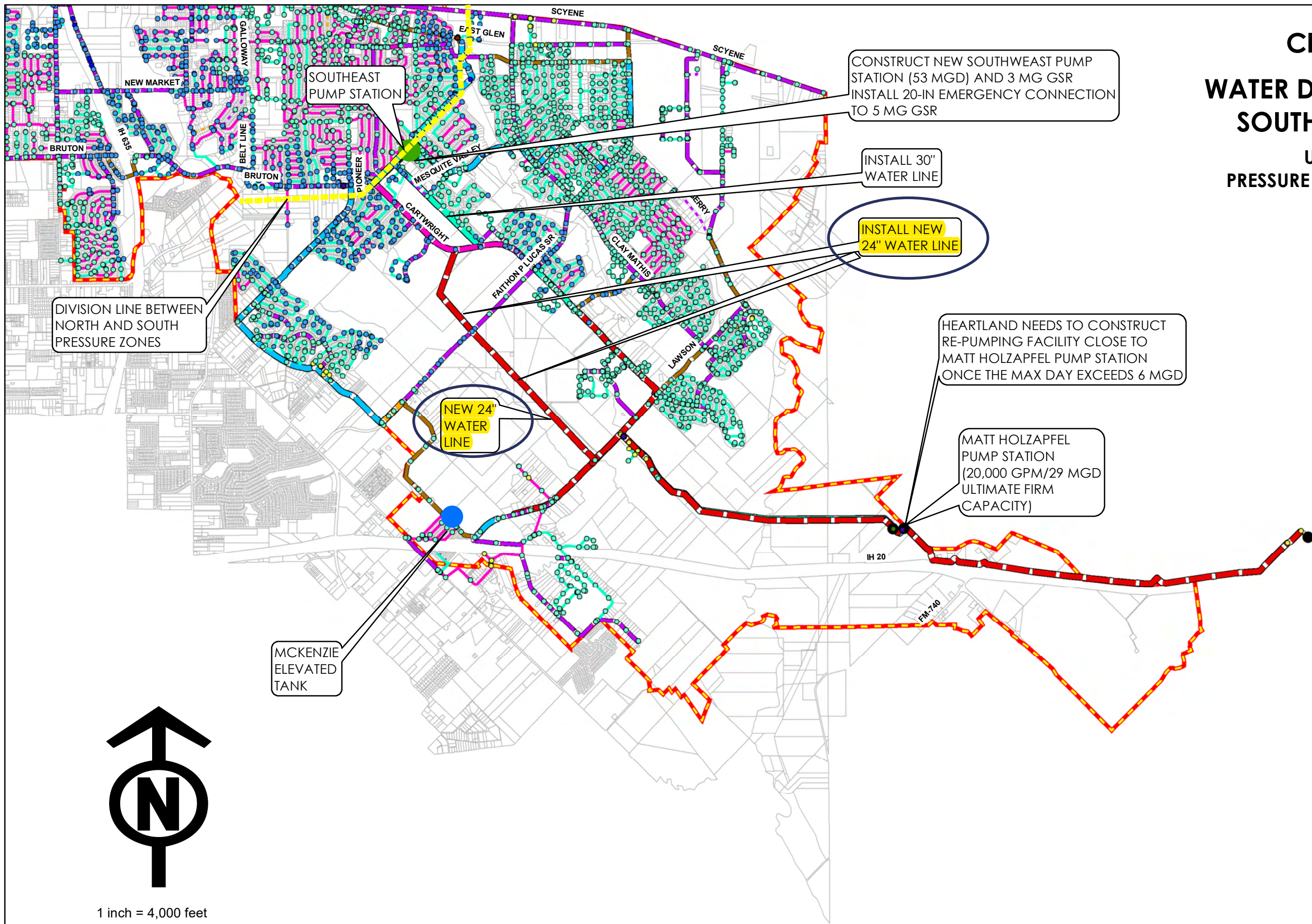


**Exhibit D**

**Mesquite System Improvements**

# CITY OF MESQUITE WATER DISTRIBUTION SYSTEM SOUTH PRESSURE PLANE

ULTIMATE SYSTEM  
PRESSURE @ PEAK HOUR (HOUR 21)



**LEGEND**

City Limits

**Pressure**

- < 20 PSI
- < 35 PSI
- < 50 PSI
- < 75 PSI
- < 100 PSI
- > 100 PSI

**Diameter**

- 1
- 2
- 3
- 4
- 6
- 8
- 10
- 12
- 14
- 16
- 18
- 20
- 24
- 30
- 36
- 42
- 48

**Exhibit E**

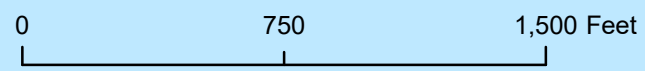
**Mesquite Service Area**

# Exhibit E - City Area to Service

All City of Mesquite GIS data sets and digital data are provided "as is" with no warranty. It is the user's responsibility to verify any information derived from the GIS and digital data before making any decisions or taking any actions based on the information. The user assumes the entire risk as to the quality and performance of the data. No representation or guarantee of accuracy are granted or made, nor is any responsibility for reliance thereon assumed. In no event shall the sponsor of these data sets, the City of Mesquite, be liable for direct, indirect, incidental, consequential, or special damages of any kind, including, but not limited to, loss of anticipated profits or benefits arising out of use of or reliance on the data.



 City Area To Service



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## Exhibit F

### Connection Fee Schedule

Meter Size	Connection Fee
5/8" x 3/4" PD	\$1,721.00
3/4" PD	\$2,581.50
1" PD	\$4,302.50
1 1/2" PD	\$8,605.00
2" PD	\$13,768.00
2" Compound	\$13,768.00
2" Turbine	\$27,536.00
3" Compound	\$30,117.50
3" Turbine	\$60,235.00
4" Compound	\$51,630.00
4" Turbine	\$111,865.00
6" Compound	\$116,167.50
6" Turbine	\$240,940.00
8" Compound	\$154,890.00
8" Turbine	\$413,040.00
10" Turbine	\$602,350.00