

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, AUTHORIZING THE CITY MANAGER TO FINALIZE, EXECUTE AND ADMINISTER AN AGREEMENT BETWEEN THE CITY OF MESQUITE, TEXAS, AND KAUFMAN COUNTY MUNICIPAL UTILITY DISTRICT NO. 12 FOR THE PROVISION OF WASTEWATER SERVICE TO THE WJ TRINITY POINTE, LP 283.647 ACRES DEVELOPMENT LOCATED ON THE WEST CORNER OF FM 2932 AND GRIFFIN LANE.

WHEREAS, pursuant to Ordinance No. 4785 adopted on June 15, 2020, the City Council approved a change of zoning to Planned Development – Industrial for the development of an industrial business park on 283.647 acres located on the west corner of FM 2932 and Griffin Lane in Kaufman County, Texas, having an address of 12955 FM 2932 and known as the 2932 Industrial Park (the “**Project**”); and

WHEREAS, WJ Trinity Pointe, LP (“**Wynne Jackson**”), is developing the Project; and

WHEREAS, Wynne Jackson has requested retail wastewater service from the City of Mesquite, Texas (the “**City**”), for the Project and the City intends to enter into an agreement with Wynne Jackson to provide retail wastewater service to the Project; and

WHEREAS, the most efficient means for providing retail wastewater service to the Project includes transporting the Project’s wastewater through the wastewater collection system of the Kaufman County Municipal Utility District No. 12 (the “**District**”) to the Point of Entry on the Lower East Fork Wastewater Interceptor System and the District has agreed to provide these services; and

WHEREAS, for the purposes stated herein, Staff recommends the City enter into a Wastewater Transportation Agreement with the District (the “**Agreement**”) substantially in the form of the Agreement attached hereto as Exhibit A and incorporated herein by reference; and

WHEREAS, upon full review and consideration of the Agreement and all matters attendant and related thereto, the City Council finds that the Agreement is in the best interest of the City and will benefit 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. That the City Council finds that the terms and provisions of the Agreement is in the best interest of the City and will benefit the City and its citizens.

SECTION 3. That the City Council hereby approves the Agreement and hereby authorizes the City Manager to: (i) finalize and execute the Agreement; and (ii) take such actions and execute such documents as are necessary or advisable to consummate the transactions contemplated by the Agreement.

SECTION 4. That the City Manager is further hereby authorized to administer the Agreement on behalf of the City including, without limitation, the City Manager shall have the authority to: (i) provide any notices required or permitted by the Agreement; (ii) approve amendments to the Agreement provided such amendments, together with all previous amendments approved by the City Manager, do not increase City expenditures under the Agreement in excess of \$50,000.00; (iii) approve or deny any matter in the Agreement that requires the consent of the City provided, however, notwithstanding the foregoing, any assignment of the Agreement that requires the consent of the City pursuant to the terms of the Agreement shall require the approval of the City Council; (iv) approve or deny the waiver of performance of any covenant, duty, agreement, term or condition of the Agreement; (v) exercise any rights and remedies available to the City under the Agreement; and (vi) execute any notices, amendments, approvals, consents, denials and waivers authorized by this Section 4 provided, however, notwithstanding anything contained herein to the contrary, the authority of the City Manager pursuant to this Section 4 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 5. The sections, paragraphs, sentences, clauses and phrases of this resolution are severable and, if any phrase, clause, sentence, paragraph or section of this resolution should be declared invalid, illegal or unenforceable by the final judgment or decree of any court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of any of the remaining phrases, clauses, sentences, paragraphs and sections of this resolution and such remaining provisions shall remain in full force and effect and shall be construed and enforced as if the invalid, illegal or unenforceable provision had never been included in this resolution.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 19th day of January 2021.

Bruce Archer
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

Sonja Land
City Secretary



David L. Paschall
City Attorney

EXHIBIT A TO RESOLUTION NO. _____

WASTEWATER TRANSPORTATION AGREEMENT

WASTEWATER TRANSPORTATION AGREEMENT

THIS WASTEWATER TRANSPORTATION AGREEMENT (“Agreement”) is made by and among the City of Mesquite, Texas (the “City”), a Texas home-rule municipal corporation, and Kaufman County Municipal Utility District No. 12 (the “District”), a Texas conservation and reclamation district organized under Article XVI, Section 59 of the Texas Constitution, (collectively, the “Parties” and singularly as a “Party”).

RECITALS

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

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; and

WHEREAS, WJ Trinity Pointe LP, a Texas limited partnership (“Wynne Jackson”) is developing 283.647 acres of property located on the west corner of FM 2932 and Griffin Lane in Kaufman County, Texas into an industrial park known as the 2932 Industrial Park (“Development”); and

WHEREAS, Wynne Jackson has requested retail wastewater service from the City; and

WHEREAS, the City entered into a wastewater service agreement with Wynne Jackson whereby the City and Wynne Jackson expressed their intent that the City provide retail wastewater service to the Development; and

WHEREAS, in order to serve the Development, the City has requested that the District transport, and the District has agreed to transport, the wastewater originating from the Development through the District’s wastewater collection system (hereinafter defined) to the Point of Entry on the Lower East Fork Wastewater Interceptor System, as that term is defined in the June 21, 2005 Lower East Fork Wastewater Interceptor System Contract between the City of Mesquite, the City of Seagoville, and North Texas Municipal Water District; 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 agrees to perform governmental functions and services; and

WHEREAS, the Parties acknowledge and agree 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, the Parties agree that the provisions of this Agreement 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 552 of the Texas Local Government Code and Section 49.213 of the Texas Water Code, the City and the District have the authority to enter into and perform their respective duties and obligations under this Agreement.

NOW THEREFORE, 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

“Connecting Facilities” means the wastewater system improvements and Wastewater Meter within the Development, to be constructed by Developer, that will connect and deliver wastewater from the Development to the Developer Wastewater Line, the location of which is generally shown on ***Exhibit B***.

“Daily Average Flow” means the arithmetic average of all determinations of the daily discharge within a period of one calendar year. The daily average flow determination shall consist of determinations made on at least four separate days. If instantaneous measurements are used to determine the daily discharge, the determination shall be the average of all instantaneous measurements taken during a 24-hour period.

“Developer” means, initially, Wynne Jackson, as the owner of the Development as of the Effective Date, and Wynne Jackson’s successors and assigns with respect to the Development.

“Developer Wastewater Line” means the wastewater line, to be constructed by Developer within the Temporary Construction Easement, connecting the Development to the District’s sanitary wastewater main.

“Development” means the commercial development to be located on approximately 283.647 acres in Kaufman County, Texas known (or to be known) as the 2932 Industrial Park, such land being described on ***Exhibit A***.

“District Wastewater Meter” means the wastewater meter and related appurtenances owned by the District that measures the amount of wastewater from and transported through the District that is discharged into the Lower East Fork Wastewater Interceptor System, the location of which is generally shown on ***Exhibit B***.

“District’s Rate Order” means the District’s Order Adopting Amended Consolidated Rate Order and Rules and Regulations; Establishing a Wastewater Control Order, Drought Contingency Plan, and Water Conservation Plan; Establishing Certain Other Policies; and Providing Penalties for Violation Thereof, adopted by the District and effective as of May 20, 2020, as amended from time to time.

“Effective Date” means the date as determined by Section 4.17 of this Agreement.

“Lower East Fork Wastewater Interceptor System” means the wastewater transportation facilities described in the June 21, 2005 Lower East Fork Wastewater Interceptor System Contract between the City of Mesquite, the City of Seagoville, and North Texas Municipal Water District, the location of which is generally shown on *Exhibit B*.

“Peak Flow” means the highest two hour average flow rate expected to be delivered to the District under any operational conditions, including periods of high rainfall (generally the two-year, 24 hour storm is assumed) and prolonged periods of wet weather.

“Point of Entry” means the point at which the District discharges its wastewater into the Lower East Fork Wastewater Interceptor System.

“Temporary Construction Easement” means a temporary, 20’ wide easement to be obtained by the District in favor of the Developer over two tracts of land for the construction of the Developer Wastewater Line, in the form attached hereto as *Exhibit D*. The legal description for and a depiction of the Temporary Construction Easement is attached hereto as *Exhibit C*.

“Transportation Charge” means the charge per month to the District, calculated by multiplying the amount of wastewater delivered to the Connecting Facilities, as measured by the Wastewater Meter, by the then-current Transportation Rate.

“Transportation Rate” means District’s Outside-District retail rate for Commercial, Governmental & Non-Taxable Customer Connections (as defined in the District’s Rate Order), pursuant to Section 5.04 District’s Rate Order and the Rate Schedule attached to the District’s Rate Order.

“Wastewater Meter” means the wastewater meter(s) and related appurtenances that is part of the Connecting Facilities that measures the flow of wastewater transported from the Development at the point that the Connecting Facilities tie into the Developer Wastewater Line.

ARTICLE II TRANSPORTATION OF WASTEWATER

2.1 Transportation of Wastewater.

a. The District and the City shall facilitate execution of the Temporary Construction Easement in favor of the Developer and record it in the Real Property Records of Kaufman County, Texas, prior to February 1, 2021 and provide evidence of its recording to the City.

b. The City shall deliver wastewater from the Development through the Connecting Facilities and the District shall transport, for the City, wastewater from the Connecting Facilities to the Point of Entry on the Lower East Fork Wastewater Interceptor System. The City and the District may, by mutual agreement, designate substitute or additional Connecting Facilities locations.

c. The Parties agree that the Daily Average Flow of wastewater delivered to the District at the Connecting Facilities will not exceed 0.169 million gallons per day (MGD), and that the Peak Flow of wastewater will not exceed 0.676 MGD. The Parties further agree that the maximum Average Daily Flow and Peak Flow are based on the Developer's intention to develop the Development solely for commercial uses.

2.2 Measuring Equipment.

a. Wastewater Meter. The City shall have furnished and installed, at no cost to the District, the Wastewater Meter, including a meter valve and locking mechanism, at a location and per a design approved, inspected, and accepted by the District.

b. Operation and Maintenance of Connecting Facilities. The City shall require the Developer to construct and complete the Connecting Facilities. Upon completion of the Connecting Facilities, the City shall require the Developer to dedicate and convey to the District the Connecting Facilities and an easement over the tract of land within which the Connecting Facilities are located. The Connecting Facilities will thereafter be owned by the District and the District shall own, operate, maintain and, when necessary, replace the Connecting Facilities. The City may access the Connecting Facilities at all reasonable times. The City and its employees and agents, when accessing the Connecting Facilities, shall notify the District's operator that the City intends to access the Connecting Facilities, and shall comply with all of the District's safety rules and requirements while accessing the Connecting Facilities. The City shall not calibrate, or otherwise make changes or repairs to the Connecting Facilities.

c. Calibration. The District will calibrate the Wastewater Meter in accordance with industry and manufacturing standards, and as requested by the City, at the District's expense. The District shall provide the City with at least five (5) business days notice to the City's Manager of Utilities of any calibration and the City shall have the right to observe the calibration. If the Wastewater 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 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 Wastewater Meter was known to be registering accurately, or, in the alternative, the City and the District may agree on another suitable method for calculating the wastewater usage during the period of meter failure.

d. Wastewater Meter Reading. The reading, calibration, and adjustment of the Wastewater Meter shall be done only by the employees or agents of the District. The results of each reading of the meter shall be recorded by the District, with a copy sent to the City, and representatives of the City may inspect the same at any time during reasonable business hours, upon reasonable written notice to the District of the date and time. The District shall read the Wastewater Meter by the second Monday of each month.

2.3 Developer Wastewater Line. The City shall ensure that the Developer constructs and completes the Developer Wastewater Line within the Temporary Construction Easement. Upon completion of construction of the Developer Wastewater Line, the City shall require the Developer to dedicate the Developer Wastewater Line to the District. The Developer Wastewater Line shall thereafter be owned, operated, maintained and, when necessary, replaced by the District subject to the contractor's two year maintenance bond in an amount not less than one hundred percent (100%) of the total construction cost of the Developer Wastewater Line. The City shall not own, operate, or maintain the Developer Wastewater Line at any point in time.

2.4 Obligations of the City and District. Notwithstanding the provisions of this Article, if the Developer does not construct the Developer Wastewater Line and Connecting Facilities, the City is not obligated to construct the Developer Wastewater Line and Connecting Facilities, and the District is not obligated to transport wastewater from the Development.

ARTICLE III RATES AND CHARGES; PAYMENTS

3.1 Payment of Transportation Charge. On or before the fifteenth (15th) day of each month, the City shall remit to the District the Transportation Charge. The assessment of the Transportation Charge shall commence the month the City begins to deliver wastewater to the District through the Connecting Facilities.

3.2 Lower East Fork Wastewater Interceptor System Fee. On or before the date the District begins to transport wastewater from the Development for the City, the City shall cause the Developer to remit to the District \$547,658.75 to reimburse the District a portion of the costs incurred by the District for the Lower East Fork Wastewater Interceptor System.

3.3 District Facilities Fee. On or before the date the District begins to transport wastewater from the Development for the City, the City shall cause the Developer to remit to the District \$437,049.40 for the use of capacity in the District's wastewater collection system.

3.4 Transportation Rate Changes. The Board of Directors of the District at any time and from time to time may change the Transportation Rate. The Transportation Rate shall be sufficient to cover the operation, maintenance, and administrative expenses associated with transporting the Developer's wastewater from the Connecting Facilities to the Point of Entry. The Transportation Rate shall be set in accordance with accepted rate-making practices and based on the District's cost of service to transport the wastewater for the City. At least sixty (60) days before the District adopts any resolution or order to change the Transportation Rate, the District shall provide the City with written notice of the proposed rate change along with the District's cost of service information related to the rate change. The City may provide the District with written comments regarding the proposed rate change.

ARTICLE IV
ADDITIONAL PROVISIONS

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

4.2 Term and Termination.

a. The term of this Agreement shall begin on the Effective Date and shall continue for thirty (30) years. Upon expiration of the term, it is the intent of the Parties that this Agreement will be renewed so that uninterrupted wastewater service will be available to serve the Development.

b. The City may terminate this Agreement under the following conditions:

1. If the Developer fails to construct and dedicate the Connecting Facilities and Developer Wastewater Line by December 31, 2025; or

2. If the City provides the District with six (6) months written notice of termination of this Agreement.

4.3 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.

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

4.5 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.

4.6 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.

4.7 Effect of Force Majeure.

a. If any Party is unable to perform, in whole or in part, its obligations under this Agreement (excluding the obligation to make payments due under this Agreement) by reason of “force majeure,” then performance of such obligations shall be suspended to the extent and during the period directly affected by the force majeure; provided, however, all due diligence must be exercised to eliminate the force majeure and to resume full performance at the earliest practicable time. As soon as reasonably possible after the occurrence of the force majeure relied upon to

suspend performance, the Party whose performance is suspended shall give notice and full particulars of the force majeure to the other Parties.

b. The term “force majeure” includes: acts of God; strikes; lockouts or other industrial disturbances; criminal conduct or sabotage; acts of the public enemy; orders of the government of the United States or the State of Texas or any civil or military authority; insurrections or riots; landslides; lightning; earthquakes; fires; hurricanes; storms; floods; washouts; droughts; epidemics; pandemics; arrests; restraints of government; civil disturbances; explosions; breakage or accidents to equipment, pipelines, or canals; partial or complete failure of sewer systems; or any other events, whether similar to those enumerated or otherwise, (i) that are not within the reasonable control of the Party claiming the right to suspend performance, and (ii) that could not have been avoided by the exercise of due diligence.

c. It is understood and agreed that the settlement of strikes, lockouts and other industrial or labor disturbances shall be entirely within the discretion of the Party having the difficulty and that the requirement that any force majeure be remedied with all due diligence shall not require the settlement of strikes, lockouts or other industrial or labor disturbances by acceding to the demands of the opposing Party if the settlement is unfavorable in the judgment of the Party having the difficulty.

4.8 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 only to the extent and during the period affected by the change. Any payment obligations arising from this Agreement shall be abated to a similar extent. 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.

4.9 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.

4.10 Assignment. Neither the District nor the City may assign its rights and obligations under this Agreement without first obtaining the written consent from the other Parties, which consent shall not be unreasonably withheld or delayed. Developer may assign this Agreement to any successor in interest of Developer in the Development.

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

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

Exhibit A – Legal Description of the Development

4.13 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:

If to the City: City of Mesquite, Texas
 1515 N. Galloway
 Attn: City Manager
 Mesquite, TX 75149
 Phone: 972-216-6293

And

 City of Mesquite, Texas
 1515 N. Galloway
 Attn: City Attorney
 Mesquite, TX 75149
 Phone: 972-216-6272

If to the District: Kaufman Municipal Utility Districts No. 12
 c/o Coats Rose, P.C.
 Attn: Mindy L. Koehne
 14755 Preston Road, Suite 600
 Dallas, TX 75254
 Phone: 972-788-1600

4.14 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. If an event of default shall occur, then the aggrieved Parties shall be entitled to specific performance, injunctive relief, 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 the delivery of wastewater by the District to the Development.

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

Exhibit A – Legal Description of Development

Exhibit B – Map of Locations of Connecting Facilities, District Wastewater Meter,
and Lower East Fork Interceptor
Exhibit C – Legal Description and Depiction of Temporary Construction Easement
Exhibit D – Form of Temporary Construction Easement

4.16 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.

4.17 Effective Date. The Effective Date of this Agreement is the date upon which this Agreement was executed by the last of the Parties.

CITY:

Cliff Keheley, City Manager
City of Mesquite, Texas

Date

ATTEST:

Sonja Land, City Secretary
City of Mesquite, Texas

APPROVED AS TO FORM:

David L. Paschall, City Attorney

DISTRICT:

Joey Guedea, President
Kaufman County MUD No. 12

Date

ATTEST:

_____, Board Secretary
Kaufman County MUD No. 12

Exhibit A
Legal Description of the Development

BEING, all of that 283.647 acre (12,355,673 square foot) tract of land situated in the John Moore Survey, Abstract Number 309, in the City of Mesquite, Kaufman County, Texas; being parts of those tracts of land described as Exhibit A, Tract 2 and Exhibit B, Tract 2 in Partnership Distribution and Partition Deed to Carolyn Crockett West, et al as recorded in Volume 1636, Page 43 of the Official Public Records of Kaufman County, Texas; said 283.647 acre tract of land being more particularly described by metes and bounds as follows:

BEGINNING, at a 1/2-inch iron rod with "DAA" cap found at the most northerly northwest corner of that tract of land described as Tract 4 in Special Warranty Deed to HW Heartland, L.P. as recorded in Volume 3119, Page 158 of the Official Public Records of Kaufman County, Texas; said point being an angle point in the southeast line of that called 41.500 acre tract of land described in Special Warranty Deed to D.R. Horton - Texas, Ltd. as recorded in Volume 5763, Page 43 of the Official Public Records of Kaufman County, Texas; said point being the west corner of said Exhibit A, Tract 2;

THENCE, North 44° 46' 47" East, at a distance of 668.48 feet passing a 5/8-inch iron rod with "PETITT RPLS 4087" cap found at the east corner of said 41.500 acre tract; said point being the south corner of that called 10.312 acre tract of land described in Special Warranty Deed to D.R. Horton - Texas, Ltd. as recorded in Volume 5853, Page 97 of the Official Public Records of Kaufman County, Texas; at distance of 1,898.52 feet passing a 3/4-inch iron pipe found at the east corner of said 10.312 acre tract; said point being an ell corner in the northwest line of said Exhibit A, Tract 2; continuing in all a total distance of 3,003.41 feet to a point for corner;

THENCE, South 45° 13' 13" East, a distance of 1,234.20 feet to a point for corner;

THENCE, North 08° 54' 22" East, a distance of 862.93 feet to a 5/8-inch iron rod with "BGE" cap set for corner in the southwest line of Farm-to-Market Highway No. 2932 (a 100-foot wide right-of-way);

THENCE, South 46° 06' 45" East, with the southwest line of said Farm-to-Market Highway No. 2932, a distance of 2,781.07 feet to a point for corner;

THENCE, South 43° 55' 46" West, departing the southwest line of said Farm-to-Market Highway No. 2932, and partially along Griffin Lane (a generally recognized public road, no record of dedication found), a distance of 3,681.29 feet to a point for corner;

THENCE, North 46° 15' 59" West, at a distance of 44.35 feet passing a 1/2-inch iron rod with "DAA" cap found at the east corner of said Tract 4; said point being in the southwest line of said Exhibit B, Tract 2; continuing with the northeast line of said Tract 4 and the southwest lines of said Exhibit B, Tract 2 and said Exhibit A, Tract 2 in all a total distance of 3,564.47 feet to the POINT OF BEGINNING and containing an area of 283.647 acres or 12,355,673 square feet of land, more or less.

Exhibit B

Map of Locations of Connecting Facilities, District Wastewater Meter,
and Lower East Fork Interceptor

Exhibit C

Legal Description for and Depiction of Temporary Construction Easement

Exhibit D

Form of Temporary Construction Easement

TEMPORARY CONSTRUCTION EASEMENT

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS THAT:
COUNTY OF KAUFMAN §

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL ESTATE BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER’S LICENSE NUMBER.

_____, a _____ (hereinafter referred to as “Grantor”), for Ten and No/100 Dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby grant unto **WJ TRINITY POINT, LP**, Texas limited partnership whose address is 600 N. Pearl, Suite 650, Dallas, Texas 75201 (“Grantee”), a non-exclusive, temporary easement over, across, under and through that certain tract of land situated in Kaufman County, Texas, owned by Grantor, and more particularly described on Exhibit “A” attached hereto (the “Temporary Easement Tract”).

The temporary construction easement hereby granted (the “Temporary Construction Easement”) shall be used only for the purposes of placing, constructing, operating, clearing, repairing, maintaining, rebuilding, replacing and relocating wastewater lines, and any and all related appurtenances and facilities (the “Facilities”), and for the additional purposes of access, material staging, and construction activity relating to the construction and installation of the Facilities. Subject to the further provisions hereof, Grantee, its agents, employees, workmen and representatives, shall have the right and privilege of ingress and egress across the Temporary Easement Tract as may be necessary to construct, repair, maintain, reconstruct and operate the Facilities.

It is expressly understood and agreed by and between the parties that this easement shall be subject to and governed by the following provisions:

- (1) The easement, rights and privileges granted herein are non-exclusive, and the Grantor reserves and retains the right to use the Temporary Easement Tract for all purposes which do not unreasonably interfere with the rights hereby granted.

(2) The easement, rights and privileges herein granted shall terminate and expire upon completion of the construction of the Facilities and completion of all demobilization and restoration work.

(3) During or immediately after any work on the Temporary Easement Tract pursuant to the rights granted hereby, the party performing such activities, at its sole cost and expense, shall take all reasonable measures to restore the grounds, surfacing materials, and other facilities of the owner of the Temporary Easement Tract, including landscaping, fences and pavement situated on the Temporary Easement Tract, to the condition which existed prior to such operations.

(4) The easement, rights and privileges herein granted shall be subject to all valid and subsisting encumbrances, conditions, covenants, restrictions, reservations, exceptions, rights-of-way and easements of record, including all laws, regulations, and restrictions by municipal or other governmental authority applicable to and enforceable against the Temporary Easement Tract.

TO HAVE AND TO HOLD the above described Temporary Construction Easement for the said purposes, together with all and singular, the rights, privileges, and appurtenances thereto as described above in anywise belonging to the said Grantee, its successors and assigns forever, subject to the limitations, conditions and restrictions set forth hereinabove.

[THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, this instrument is executed this ____ day of _____, 20__.

GRANTOR:

By: _____

Name: _____

Its: _____

ACKNOWLEDGEMENT

STATE OF TEXAS §

§

COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 20__, by _____, _____ of _____, a _____, on behalf said entity.

Notary Public in and for the State of Texas

(SEAL)

GRANTEE:

WJ TRINITY POINTE LP,
a Texas limited partnership

By: WJ Trinity Pointe GP LLC,
a Texas limited liability company,
its General Partner

By: _____

Name: _____

Title: _____

ACKNOWLEDGEMENT

STATE OF TEXAS §

§

COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 20____, by _____, _____ of WJ Trinity Pointe GP LLC, a limited liability company, General Partner of WJ Trinity Pointe LP, a Texas limited partnership, on behalf said entity.

Notary Public in and for the State of Texas

(SEAL)

After recording return to:

Joshua A. Bethke
Coats Rose, P.C.
14755 Preston Road, Suite 600
Dallas, Texas 75254

EXHIBIT "A"
Easement Tract Legal Description