

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, APPROVING A WATER TRANSPORTATION AND EMERGENCY INTERCONNECTION AGREEMENT WITH KAUFMAN COUNTY MUNICIPAL UTILITY DISTRICT NO. 12 AND BDMR DEVELOPMENT, LLC, TO PROVIDE TEMPORARY TREATED WATER TO THE POLO RIDGE RANCH DEVELOPMENT SITUATED ON APPROXIMATELY 805.79 ACRES OF LAND LOCATED SOUTH OF FM 740, WEST OF FM 2757 AND NORTH OF KELLY ROAD IN KAUFMAN COUNTY, TEXAS, AND WITHIN THE CORPORATE LIMITS OF THE CITY OF MESQUITE, TEXAS, AND AUTHORIZING THE CITY MANAGER TO FINALIZE, EXECUTE AND ADMINISTER THE AGREEMENT ON BEHALF OF THE CITY.

**WHEREAS**, on March 5, 2018, the City Council approved a Development Agreement (“**Agreement**”) between the City of Mesquite, Texas (“**City**”), BDMR Development, LLC (“**Developer**”), and Polo Ridge Fresh Water Supply District of Kaufman County to, among other things, participate in the financing of public infrastructure improvements for a single-family residential development on 805.79 acres in Kaufman County (“**Property**”) known as Polo Ridge Ranch (“**Development**”); and

**WHEREAS**, on June 17, 2019, the City Council approved a First Amendment to Polo Ridge Development Agreement to, among other things, amend Section 13.3 of the Agreement to provide for negotiating a water “wheeling” agreement with the Kaufman Municipal Utility District No. 12 (“**District**”) for water transmission to the Development at no cost to the City; and

**WHEREAS**, the Developer agreed to voluntary annexation of the Property which occurred on December 16, 2019, with the adoption of Ordinance No. 4748; and

**WHEREAS**, the City is in the process of designing and constructing a large diameter transmission main to connect the Development to the City’s water system; however, that large diameter transmission main will not be completed before the Development needs water service; and

**WHEREAS**, on June 25, 2020, the City, Developer and District concluded negotiations of a proposed Water Transportation and Emergency Interconnection Agreement (“**Wheeling Agreement**”), a copy of which is attached hereto as Exhibit A and incorporated herein by reference, that allows the City to transport the City’s treated water through the District’s 24-inch water line to serve the Development until the City’s large diameter transmission line is completed and the City can begin serving the Development through the City’s large diameter transmission line; and

**WHEREAS**, the Wheeling Agreement is intended to be an interlocal agreement as between the City and District under Chapter 791 of the Texas Government Code and the City and District have the authority to enter into and perform their respective duties and obligations under the Wheeling Agreement under Chapter 552 of the Texas Local Government Code and Section 49.213 of the Texas Water Code; and

**WHEREAS**, the District Board approved the proposed Wheeling Agreement at its July 15, 2020, Board meeting and the City Council's approval is required before the Wheeling Agreement can become effective; and

**WHEREAS**, upon full review and consideration of the Wheeling Agreement and all matters attendant and related thereto, the City Council finds that the Wheeling 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.** The City Council hereby approves the Wheeling Agreement, and hereby authorizes the City Manager to: (i) finalize and execute the Wheeling Agreement; and (ii) take such actions and execute such documents as are necessary or advisable to consummate the transactions contemplated by the Wheeling Agreement.

**SECTION 3.** The City Manager is further hereby authorized to administer the Wheeling 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 Wheeling Agreement; (ii) approve amendments to the Wheeling Agreement provided such amendments, together with all previous amendments approved by the City Manager, do not increase City expenditures under the Wheeling Agreement in excess of \$50,000; (iii) consent to the assignment of the Wheeling Agreement under the terms and pursuant to any assignment provisions of the Wheeling Agreement; (iv) approve or deny any matter in the Wheeling Agreement that requires the consent of the City provided, however, notwithstanding the foregoing, any provision of the Wheeling Agreement that requires the consent of the City Council pursuant to the terms of the Wheeling Agreement shall require the approval of the City Council; (v) approve or deny the waiver of performance of any covenant, duty, agreement, term or condition of the Wheeling Agreement; (vi) exercise any rights and remedies available to the City under the Wheeling Agreement; and (vii) execute any notices, amendments, approvals, consents, denials and waivers authorized by this Section 3, provided, however, notwithstanding anything contained herein to the contrary, the authority of the City Manager pursuant to this Section 3 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 4.** 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 3rd day of August 2020.

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Bruce Archer  
Mayor

ATTEST:

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Sonja Land  
City Secretary

APPROVED:



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David L. Paschall  
City Attorney

WATER TRANSPORTATION AND EMERGENCY INTERCONNECTION AGREEMENT  
BETWEEN THE CITY OF MESQUITE, KAUFMAN COUNTY MUNICIPAL UTILITY  
DISTRICT NO. 12, AND BDMR DEVELOPMENT, LLC

THIS WATER TRANSPORTATION AGREEMENT (“Agreement”) is made between the City of Mesquite, Texas (“Mesquite”), a Texas home-rule municipal corporation, Kaufman County Municipal Utility District No. 12 (“District”), a Texas conservation and reclamation district organized under Article XVI, Section 59 of the Texas Constitution, and BDMR Development, LLC (“Developer”), a Texas limited liability company (collectively, the “Parties”).

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, the City entered into a development agreement with Developer whereby the parties expressed their intent that the City provide retail water service to 805.79 acres of land located in Kaufman County, Texas known as the Polo Ridge Development (the “Development”); and

WHEREAS, by Ordinance No. 4748 adopted by the City Council of the City of Mesquite, the City annexed the Development; and

WHEREAS, Section 13.242 of the Texas Water Code allows the City to provide retail water service inside and outside its corporate limits without obtaining a certificate of convenience and necessity; and

WHEREAS, the City is in the process of designing and constructing a large diameter transmission main to connect the Development to the City’s water system; however, that large diameter transmission main will not be completed before the Development needs water service; and

WHEREAS, in order to serve the Development until the City’s water line is completed, the City and Developer have requested, and the District has agreed, that the District will transport the City’s treated water through the District’s existing 24-inch Water Line (hereinafter defined) to the Development; and

WHEREAS, on December 13, 2005, a Waterline Cost Participation Agreement was entered into by and between (i) Forney Acquisitions, L.P., Developer’s predecessor in interest, (ii) Kingsborough Municipal Utility Districts Nos. 1 through 5 of Kaufman County, Kaufman County

Municipal Utility District Nos. 9, 10, 11, 12 and 14's predecessors in interest, and (iii) Heartland 600 Development Land, L.P; and

WHEREAS, the Waterline Cost Participation Agreement provided for certain payments to be made by the Developer's predecessor in interest and that such deposit or payment made shall be considered the consideration for transportation of water pursuant to this Agreement; 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

"24-Inch Water Line" means the District's 24-inch water line that delivers water from the City's System to the District, the location of which is generally shown on ***Exhibit A***.

"24-Inch Water Line Connection" means the point where the 24-Inch Water Line is connected to the City's treated water facilities, the location of which is generally shown on ***Exhibit A***, and where the City delivers treated water to the District for transport through the 24-Inch Water Line to the Polo Ridge Connecting Facilities.

"24-Inch Water Line Meter" means the meter and related appurtenances owned by the City where the City measures the amount of water it delivers to the District for the District's retail water system, the location of which is generally shown on ***Exhibit A***.

"Development" means the residential development to be located on approximately 805.79 acres in Kaufman County, Texas, as shown on ***Exhibit A***.

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

“Large Diameter Transmission Main” means the large diameter transmission main being constructed by the City in order to connect the Development to the City’s water system, as shown on *Exhibit A*.

“Interconnection Water Meter” means the water meter(s) and related appurtenances owned by the City at the Polo Ridge Connecting Facilities measuring the flow of treated water transported to the Development and for measuring the flow of treated water supplied to either Party during an Emergency as that term is used in Section 3.1.

“Polo Ridge Connecting Facilities” means the Interconnection Water Meter and the water system improvements that connect and deliver water from the 24-Inch Water Line to the Interconnection Water Meter, the location of which is generally shown on *Exhibit A*.

## ARTICLE II TRANSPORTATION OF WATER

2.1 Delivery Points. The District agrees to deliver for the City treated water from the City’s system to the Development. The City 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 Polo Ridge Connecting Facilities. The City and the District may, by mutual agreement, designate substitute or additional Polo Ridge Connecting Facilities locations. The City shall be responsible for operating and maintaining the Polo Ridge Connecting Facilities. The payment and construction of the Polo Ridge Connecting Facilities will be completed by the Developer.

2.2 Water Delivery to the Development. 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 retail water service area and the Development through the earlier of December 31, 2025, or the date the City begins to provide water to the Development through its Large Diameter Transmission Main. 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 Development, the District shall have priority over the Development in receiving treated water from the City. The treated water delivered by the District to the Development for the City shall not be charged to the District as water delivered to the District pursuant to any wholesale water supply agreement between the District and the City. The City shall deduct the amount of water delivered through the Interconnection Water Meter to the Development from the amount of water the City delivers to the District through the 24-Inch Water Line Meter. The amount of water the City delivers to the District for the temporary transport to the Development shall be sufficient to meet the Development’s temporary treated water demands and to not cause a reduction in the amount of water needed to meet the water supply demands of the District.

### 2.3 Measuring Equipment.

a. Interconnection Water Meter. The Developer shall furnish and install, at its sole expense, the Interconnection Water Meter at a location and per a design approved, inspected, and accepted by the City. Developer 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 the Developer and accepted by the City, the City shall operate and maintain the Polo Ridge 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 the Development under this Agreement. The Interconnection Water Meter shall remain the property of the City. 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 the City's Manager of Utilities that the District's intends to access the metering equipment, and shall comply with all of City'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. Until the termination of the flow of water from the 24-Inch Water Line to the Development as provided in Section 2.4, the City will calibrate the Interconnection Water Meter at least once per every two years and additionally as requested by the Developer, at the Developer's expense. After the termination of the water from the 24-Inch Water Line to the Development as provided in Section 2.4, the City will calibrate the Interconnection Water Meter in accordance with industry and manufacturing standards, and as requested by the District, at the District's expense. 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, the City and the District may agree on another suitable method for calculating the treated water usage during the period of meter failure.

d. Cost Sharing. Prior to the termination of flow from the 24-Inch Water Line to the Development as provided by Section 2.4, the City shall be responsible for all costs associated with the maintenance and repair of the Polo Ridge Connecting Facilities. After the termination of flow from the 24-Inch Water Line to the Development as provided by Section 2.4, the City shall be responsible for the cumulative maintenance and repair costs of the Polo Ridge Connecting Facilities up to \$5,000. The City and District shall each be responsible for one-half of the cumulative maintenance and repair costs of the Polo Ridge Connecting Facilities over \$5,000. The City will invoice the District its share of the costs in accordance with the provisions of the Agreement Regarding Wholesale Treated Water Service, as amended (the "Wholesale Agreement"), between the City and the District.

e. Meter Reading. The reading, calibration, and adjustment of the meters described in this Article II shall be done only by the employees or agents of the City. The results of each reading of the meter or meters shall be recorded by the City, 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 the City of the date and time.

2.4 Completion of the City's Large Diameter Transmission Water Main. Within fifteen (15) days after the City's Large Diameter Transmission Main is operational and actively providing sufficient water to the Development, the City shall terminate the flow from the 24-Inch Water Line to the Development.

### ARTICLE III EMERGENCY INTERCONNECTION

3.1 Emergency Interconnection. The Parties agree that the Polo Ridge Connecting Facilities will remain in place after the completion of the City's Large Diameter Transmission Main to serve as an emergency interconnection for both the District's and the City's water systems in the event of any mechanical or electrical failure, repair or maintenance of the District's or the City's water production or distribution system or any act of nature that temporarily results in either the District or the City being unable to produce or supply its customers with a minimal supply of water at thirty-five (35) pounds per square inch, or a fire occurring in the District's or the City's service area that requires immediate use of the other Party's water for fire-fighting purposes and activities related thereto (collectively, an "Emergency"), subject to the provisions contained herein. Accordingly, this Article III is effective upon the City's termination of the flow from the 24-Inch Water Line to the Development under Section 2.4.

3.2 Access and Title to Water. The District and the City shall have keys to the Polo Ridge Connecting Facilities and shall have the right to access the Polo Ridge Connecting Facilities subject to the notice requirements in Section 3.4 and 3.5. The City shall have title to, possession and control of all water on its side of the Interconnection Water Meter. The District shall have title to, possession and control of all water on its side of the Interconnection Water Meter.

3.3 Maintenance. The District and the City shall consistently maintain its respective water distribution systems in good condition and shall promptly repair any leaks, ruptures or other defects in such system. During an Emergency, in the event a leak, rupture or other defect occurs within one of the water distribution systems which could either endanger or contaminate the other water distribution system or prejudice the other Party's ability to provide water to its customers, the other Party shall have the right to valve off and discontinue service to the Party that has the leak, rupture or other defect in its water distribution system until such leak, rupture or other defect has been remedied.



3.4 Normal Operations. After the City's termination of the flow from the 24-Inch Water Line to the Development under Section 2.4 of this Agreement, during normal operating conditions of the District's and the City's water distribution systems, water will be prevented from flowing through the Interconnection Water Meter and no water will be delivered through such facilities. In the event the District wishes to draw water from the City through the Interconnection Water Meter, except during an Emergency, it may do so only with the prior written consent of the City. In the event the City wishes to draw water from the District through the Interconnection Water Meter, except during an Emergency, it may do so only with the prior written consent of the District.

3.5 Emergency Supply. In the event it is experiencing an Emergency, the District or the City may open the valve at the Polo Ridge Connecting Facilities and be supplied water, but only after providing verbal notice of the Emergency to the other Party. The notice required to be given to the operator may be given to a Party's engineer if the operator is unavailable to receive such notice and may be given to a member of a Party's governing body if the operator and engineer are both unavailable to receive such notice. Such notice shall include a description of the cause of the Emergency and the expected duration thereof. The District and the City will each provide the other with the names, addresses and telephone numbers of its operator, engineer and members of its governing body for the purposes of giving notice hereunder. Utilization of the Polo Ridge Connecting Facilities shall be confirmed in writing to the governing body and operator of the supplying Party at the earliest practical time, but not later than forty-eight (48) hours after the valve is opened. Each Party may continue to receive water during the continuation of the Emergency within prior approval of the supplying Party; provided, however, that the supplying Party shall not be obligated to supply water hereunder for longer than ninety (90) calendar days, unless the Party with the Emergency provides written notice to the other Party detailing the reason for the continuance of the Emergency and providing an estimate of the expected duration of the Emergency. The supplying Party shall not be obligated to supply water hereunder after the additional ninety (90) calendar day period unless otherwise agreed in writing by both Parties. The Party with the Emergency shall cease using the Polo Ridge Connecting Facilities after there is no longer an Emergency and shall promptly close the valve between the two systems. Neither the District nor the City shall be obligated to supply water hereunder in such amounts or under such circumstances as will impair its ability to serve its own customers (including customers to whom such Party is supplying water on an Emergency basis). The obligation of the District to deliver water pursuant to this Article III shall run only to the City and shall in no event create any obligation to or duty toward any other party or any customer of the City. Likewise, the obligation of the City to deliver water pursuant to this Article III shall run only to the District and shall in no event create any obligation to or duty toward any other party or any customer of the District.

3.6 Meter Readings.

a. District Emergency. In the event the District experiences an Emergency after the City's termination of the flow from the 24-Inch Water Line to the Development under Section 2.4 of this Agreement, it shall be the duty of the District to read the Interconnection Water Meter prior

to opening the valve at the Polo Ridge Connecting Facilities and taking water from the City's system. Said meter reading shall be provided to the City with the consent or notice required under Sections 3.4 and 3.5 herein. During the period that the District has the valve at the Polo Ridge Connecting Facilities open, the District shall read the Interconnection Water Meter weekly and provide such readings to the City. When the valve is closed following the Emergency or as provided in a written consent under Section 3.4, the District shall again read the Interconnection Water Meter and promptly notify the City of the final reading.

b. City Emergency. In the Event the City experiences an Emergency after the City's termination of the flow from the 24-Inch Water Line to the Development under Section 2.4 of this Agreement, it shall be the duty of the City to read the Interconnection Water Meter prior to opening the valve at the Polo Ridge Connecting Facilities and taking water from the District's system. Said meter reading shall be provided to the District with the consent or notice required under Sections 3.4 and 3.5 herein. During the period that the City has the valve at the Polo Ridge Connecting Facilities open, the City shall read the Interconnection Water Meter weekly and provide such readings to the District. When the valve is closed following the Emergency or as provided in a written consent under Section 3.4, the City shall again read the Interconnection Water Meter and promptly notify the District of the final reading.

3.7 Simultaneous Emergencies. Neither the District nor the City shall be obligated to supply water pursuant to this Article III if an Emergency exists for both the District and the City at the same time.

3.8 Payment. The amount owed to the supplying Party shall be based on the readings of the Interconnection Water Meter under Section 3.6 herein and calculated using the rates charged under that certain Wholesale Agreement. Any amount owed to the supplying Party shall be accounted for as an addition to (if the City is the supplying Party) or deduction from (if the District is the supplying Party) the City's next monthly invoice to the District for treated water service under Section 3.3 the Wholesale Agreement.

#### 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. The term of this Agreement shall begin on the Effective Date and shall continue for thirty (30) years; provided, however, that the District's obligation to transport sufficient water through the 24-Inch Water Line for the City to serve the Development shall terminate upon the earlier of December 31, 2025 or the date the City's Large Diameter Transmission Main is operational.

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; arrests; restraints of government; civil disturbances; explosions; breakage or accidents to equipment, pipelines, or canals; partial or complete failure of treated water 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 Party may assign its rights and obligations under this Agreement without first obtaining a written consent from the other Party, which consent shall not be unreasonably withheld or delayed.

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.

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:

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

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

BDMR Development, L.L.C.  
Attn: Mehrdad Moayed  
1800 Valley View Lane  
Suite 300  
Farmers Branch, Texas 75234

And

Attn: Travis Boghetich  
Boghetich Law, PLLC  
1800 Valley View Lane  
Suite 300  
Farmers Branch, Texas 75234  
E-mail: [travis.boghetich@gmail.com](mailto:travis.boghetich@gmail.com)

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 treated water by the District to the Development.

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

Exhibit A – Water Transportation System Improvements  
Exhibit A – Large Diameter Transmission Main

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 Party.

CITY:

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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

DISTRICT:

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Joey Guedea, President  
Kaufman County MUD No. 12

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Date

ATTEST:

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\_\_\_\_\_, Board Secretary  
Kaufman County MUD No. 12

DEVELOPER:

BDMR Development, LLC,  
a Texas limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



***Exhibit A***



