

**SETTLEMENT AGREEMENT**

This Settlement Agreement (“Agreement”) is entered into on this the \_\_ day of \_\_\_\_\_, 2020, by and between the **NORTH TEXAS MUNICIPAL WATER DISTRICT** (the “District”), a conservation and reclamation district and political subdivision of the State of Texas, created and functioning under Article 16, Section 59, of the Texas Constitution, pursuant to Chapter 62, Acts of the 52nd Legislature, Regular Session, 1951, as amended (the "District Act”), and the following:

**CITY OF ALLEN, IN COLLIN COUNTY, TEXAS**  
**CITY OF FARMERSVILLE, IN COLLIN COUNTY, TEXAS,**  
**CITY OF FORNEY, IN KAUFMAN COUNTY, TEXAS,**  
**CITY OF FRISCO, IN COLLIN AND DENTON COUNTIES, TEXAS**  
**CITY OF GARLAND, IN DALLAS COUNTY, TEXAS**  
**CITY OF MCKINNEY, IN COLLIN COUNTY, TEXAS,**  
**CITY OF MESQUITE, IN DALLAS AND KAUFMAN COUNTIES, TEXAS,**  
**CITY OF PLANO, IN COLLIN AND DENTON COUNTIES, TEXAS,**  
**CITY OF PRINCETON, IN COLLIN COUNTY, TEXAS,**  
**CITY OF RICHARDSON, IN DALLAS AND COLLIN COUNTIES, TEXAS,**  
**CITY OF ROCKWALL, IN ROCKWALL COUNTY, TEXAS,**  
**CITY OF ROYSE CITY, IN ROCKWALL AND COLLIN COUNTIES, TEXAS,**  
**and**  
**CITY OF WYLIE, IN COLLIN COUNTY, TEXAS**

(collectively such cities being referred to as the "Contracting Parties”).

**W I T N E S S E T H**

**WHEREAS**, each of the Contracting Parties is a duly incorporated city and political subdivision of the State of Texas operating under the Constitution and laws of the State of Texas; and

**WHEREAS**, the District and the Contracting Parties are authorized to enter into this Agreement; and

**WHEREAS**, the District presently owns various water rights and owns and operates other water supply and treatment facilities (the “System”) which serve the Contracting Parties; and

**WHEREAS**, the District has entered into a "North Texas Municipal Water District Regional Water Supply Facilities Amendatory Contract," dated as of August 1, 1988 (the "1988 Contract"), a "North Texas Municipal Water District – City of Allen Regional Water Supply Facilities Agreement," dated October 1, 1998, and a "North Texas Municipal Water District – City of Frisco Regional Water Supply Facilities Agreement," dated October 1, 2001 (collectively, the "Contracts") with the Contracting Parties; and

**WHEREAS**, the District presently supplies and sells treated water from the System to the Contracting Parties under the Contracts; and

**WHEREAS**, the Cities of Garland, Mesquite, Plano, and Richardson, Texas ("Petitioning Cities") presented to the Public Utility Commission of Texas ("PUCT") petitions seeking the PUCT's review of the District's rates for fiscal years 2017, 2018, 2019, and 2020, which the PUCT respectively assigned Docket Nos. 46662, 47863, 49043, and 50382 (collectively referred to as the "PUCT Proceedings"); and

**WHEREAS**, the Petitioning Cities have agreed to request that the PUCT allow the Petitioning Cities to withdraw the petition in Docket No. 46662 with prejudice and that the PUCT issue a final order dismissing the proceedings in Docket No. 46662, and have agreed to otherwise withdraw with prejudice the petitions in Docket Nos. 47863, 49043, and 50382 upon issuance of a final, non-appealable order by the PUCT dismissing the proceedings in Docket No. 46662; and

**WHEREAS**, the District and the Contracting Parties (collectively the "Parties") deem it necessary and advisable that the Contracts be amended, such amendments reflected in a separate document entitled *First Amendment to North Texas Municipal Water District Regional Water Supply Facilities Amendatory Contract* (the "Contract Amendment"); and

**WHEREAS**, the Parties agree that resolution of the PUCT Proceedings by unanimous settlement agreement is in the public interest; and

**WHEREAS**, capitalized terms used in this Agreement and not otherwise defined herein shall have the meanings assigned to them in the Contracts, as amended.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained in this Agreement, the Parties agree as follows:

**I. COVENANT TO DEFEND NATURAL DRAWDOWN METHOD AND 5|5|1 PROCESS.** The Parties agree:

- A. That the Natural Drawdown Method and the 5|5|1 Process set forth in Section 2 of the Contract Amendment for calculating a Contracting Party's minimum amount is just and reasonable.
- B. For a period of not less than twenty (20) years, not to seek, aid, or support review by the PUCT or its successor agency of the method for calculating a Contracting Party's minimum amount agreed to and as described in Section 2 of the Contract Amendment.
- C. For a period of not less than twenty (20) years, not to institute, prosecute, or in any way aid any action or suit at law or in equity against any Contracting Party or the District for damages, costs, loss of services, expenses, or compensation for or on account of any damage, loss or injury either to person or property, or both, whether known or unknown, past, present or future, arising out of or related to the method for calculating a Contracting Party's minimum amount agreed to and as described in Section 2 of the Contract Amendment, except for claims by any Contracting Party against the District arising out of misapplication of the method for calculating a Contracting Party's minimum amount.
- D. For a period of not less than twenty (20) years, not to seek, support or aid in obtaining legislative changes to the method for calculating a Contracting Party's minimum amount agreed to and as described in Section 2 of the Contract Amendment.
- E. To oppose efforts by any entity not a party to this Agreement to seek legislative changes to the method for calculating a Contracting Party's minimum-amount agreed to and as described in Section 2 of the Contract Amendment.
- F. If any entity not a party to this Agreement seeks review by the PUCT, or its successor agency, of the method for calculating a Contracting Party's minimum amount as described in Section 2 of the Contract Amendment, the District and the Contracting Parties agree:
  - 1. To support the method for calculating a Contracting Party's minimum amount agreed to and as described in Section 2 of the Contract Amendment; and
  - 2. To oppose changes to the method for calculating a Contracting Party's minimum amount agreed to and as described in Section 2 of the Contract Amendment.
- G. Any party to this Agreement that seeks review by the PUCT and/or through litigation in the courts of the method for calculating a Contracting Party's minimum amount agreed to and as described in Section 2 of the Contract Amendment, shall

be responsible for the costs of participation in such review and/or litigation of all parties to this Agreement.

**II. ELIGIBILITY FOR CHANGE IN MINIMUM-AMOUNT METHODOLOGY.** The District's Board of Directors may apply the methods of determining the minimum amount described in the Contract Amendment to a contract entered into under Section 4(c) of the 1988 Contract provided that

- A. Any such contract shall specifically and unambiguously state the terms of the applicable method of determining the minimum amount payable thereunder, and
- B. Any such contract shall provide that the District's Board of Directors has exclusive authority to determine rates set pursuant to such contract as such rates may be changed from time to time.

**III. INDEPENDENT REVIEW.** By March 1, 2021, and on each third anniversary of such date thereafter, the District shall engage an independent, third-party consultant to perform a financial management analysis of the audited financial information and all additional relevant information for the System for the three preceding Fiscal Years. The Independent Review shall include Items A through G, as stated below, and such other items as determined by the Board.

- A. The reasonableness of Operations and Maintenance Expenses for the System;
- B. The assignment of shared costs to the District's various systems, including the System, and functionalization of expenses as variable versus fixed;
- C. Confirmation of the amount of the required Bond Service Component as defined in Section 9(a)(B) of the Contract, and compliance of such amount with the Contract and the applicable Bond Resolutions;
- D. Confirmation of balances in any funds required to be established or maintained by the provisions of the Bond Resolutions, including but not limited to, examination of balances in any debt service reserve funds and compliance of such balances with the requirements of the Bond Resolutions;
- E. Examination of balances, including the need for and the reasonableness of such balances, in any other special, contingency, reserve, or other funds established by Board policy but not otherwise required to be established or maintained by the provisions of the Bond Resolutions; and

- F.** Examination of the District's collection and application of Other Revenues as described in Section 9(f) of the Contracts, as amended, so as to reduce, to the maximum extent feasible, the amounts that otherwise would be payable by the Contracting Parties for treated water.

The consultant's review shall include, but will not be limited to, calculation of just and reasonable rates, including analysis of any appropriate surcharge or premium, to be charged to non-Contracting Parties in existing (when allowed by contract), new, renewed or amended contracts, taking into consideration: (1) the status of the Contracting Parties as long-term capital contributors to the System with joint and several liability for repayment of bond indebtedness, (2) the Contracting Parties' primary right to water from the System (as set out in Sections 1a(12) and 7(c) of the District's Enabling Act); (3) the non-Contracting Parties' water demands including demand for future infrastructure and water resources; and (4) any other relevant considerations requested by the District's Board of Directors.

- G.** Examination of the District's compliance with Section 9 of the Contracts, as amended, in setting the Annual Requirement and base rate.

The consultant shall deliver a report addressing the Independent Review within nine (9) months of being engaged by the District. During the annual budget process, the District's Board of Directors will review all recommendations contained in the consultant's report. Unless the Board of Directors votes to reject any or all of the consultant's recommendations prior to adopting the District's annual budget, the Board of Directors shall implement the consultant's recommendations that were not rejected by a vote of the Board.

- IV. DISTRICT SETTLEMENT CONTRIBUTION.** The District has agreed to contribute \$6.6 million payable to [**INSERT NAME OF ESCROW AGENT**] to facilitate resolution of disputes related to the PUCT Proceedings. The contribution by the District shall not be counted in determining the District's Annual Requirement for any year.
- V. EFFECTIVE DATE.** This Agreement shall become effective upon the Contract Amendment becoming effective.

**IN WITNESS WHEREOF**, the Parties acting under authority of their respective governing bodies have caused this Agreement to be duly executed in several counterparts, each of which shall constitute an original, all as of the day and year first above written, which is the date of this Agreement.

**NORTH TEXAS MUNICIPAL WATER DISTRICT**

BY \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Secretary, Board of Directors

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
Attorneys for the District

(District Seal)

**CITY OF ALLEN, TEXAS**

BY \_\_\_\_\_  
Mayor

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
City Attorney

(City Seal)

ATTEST:

\_\_\_\_\_  
City Secretary

**CITY OF FARMERSVILLE, TEXAS**

BY \_\_\_\_\_  
Mayor

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
City Attorney

(City Seal)

ATTEST:

\_\_\_\_\_  
City Secretary

**CITY OF FORNEY, TEXAS**

BY \_\_\_\_\_  
Mayor

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
City Attorney

(City Seal)

ATTEST:

\_\_\_\_\_  
City Secretary

**CITY OF FRISCO, TEXAS**

BY \_\_\_\_\_  
Mayor

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
City Attorney

(City Seal)

ATTEST:  
\_\_\_\_\_  
City Secretary

**CITY OF GARLAND, TEXAS**

BY \_\_\_\_\_  
Mayor

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
City Attorney

(City Seal)

ATTEST:  
\_\_\_\_\_  
City Secretary



**CITY OF MCKINNEY, TEXAS**

BY \_\_\_\_\_  
Mayor

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
City Attorney

(City Seal)

ATTEST:

\_\_\_\_\_  
City Secretary

**CITY OF MESQUITE, TEXAS**

BY \_\_\_\_\_  
Mayor

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
City Attorney

(City Seal)

ATTEST:

\_\_\_\_\_  
City Secretary

**CITY OF PLANO, TEXAS**

BY \_\_\_\_\_  
Mayor

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
City Attorney

(City Seal)

ATTEST:

\_\_\_\_\_  
City Secretary

**CITY OF PRINCETON, TEXAS**

BY \_\_\_\_\_  
Mayor

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
City Attorney

(City Seal)

ATTEST:

\_\_\_\_\_  
City Secretary

**CITY OF RICHARDSON, TEXAS**

BY \_\_\_\_\_  
Mayor

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
City Attorney

(City Seal)

ATTEST:  
\_\_\_\_\_  
City Secretary

**CITY OF ROCKWALL, TEXAS**

BY \_\_\_\_\_  
Mayor

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
City Attorney

(City Seal)

ATTEST:  
\_\_\_\_\_  
City Secretary

**CITY OF ROYSE CITY, TEXAS**

BY \_\_\_\_\_  
Mayor

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
City Attorney

(City Seal)

ATTEST:

\_\_\_\_\_  
City Secretary

**CITY OF WYLIE, TEXAS**

BY \_\_\_\_\_  
Mayor

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
City Attorney

(City Seal)

ATTEST:

\_\_\_\_\_  
City Secretary