

EXCESS CAPACITY PURCHASE AGREEMENT

THE STATE OF TEXAS

§

COUNTY OF DENTON

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THIS EXCESS CAPACITY PURCHASE AGREEMENT (the "Agreement") is made and entered into as of the 23rd day of September, 2009, by and between DENTON COUNTY FRESH WATER SUPPLY DISTRICT NO. 1-A ("District 1-A"), DENTON COUNTY FRESH WATER SUPPLY DISTRICT NO. 1-B ("District 1-B"), DENTON COUNTY FRESH WATER SUPPLY DISTRICT NO. 1-C ("District 1-C"), DENTON COUNTY FRESH WATER SUPPLY DISTRICT NO. 1-D ("District 1-D"), DENTON COUNTY FRESH WATER SUPPLY DISTRICT NO. 1-E ("District 1-E"), DENTON COUNTY FRESH WATER SUPPLY DISTRICT NO. 1-F ("District 1-F"), DENTON COUNTY FRESH WATER SUPPLY DISTRICT NO. 1-G ("District 1-G") and DENTON COUNTY FRESH WATER SUPPLY DISTRICT NO. 1-H ("District 1-H"), being political subdivisions of the State of Texas created and operating under the provisions of Article XVI, Section 59 of the Texas Constitution and Chapters 51, 49 and 53 of the Texas Water Code, as amended (singly, the "District"; together, the "Districts").

WITNESSETH:

WHEREAS, the Districts have been created for the purpose of providing roads, bridges, facilities in aid thereof, water facilities and services, sanitary sewer facilities and services, and drainage facilities and services to the land located within their respective boundaries; and

WHEREAS, District 1-A, in 2006 entered into a construction contract to construct a Sanitary Sewer Lift Station (the "Lift Station"); and

WHEREAS, the Lift Station was constructed to benefit the residents and property located within the original boundaries of Denton County Fresh Water Supply District No. 1, specifically which included, at that time, District 1-B, District 1-C, District 1-D and District 1-E; and

WHEREAS, District 1-B, District 1-C, District 1-D and District 1-E (the "Selling Districts") entered into a Cost Sharing Agreement dated April 19, 2006, a copy of which is attached hereto as Exhibit "A" (the "Cost Sharing Agreement"), to share in the construction of the Lift Station to serve the Districts and acquire from District 1-A that portion of the capacity of the Lift Station benefiting residents and property within the boundary of each respective District; and

EXHIBIT "G"

WHEREAS, the Boards of Directors of the Selling Districts deem it to be of mutual economic and utilitarian benefit to sell a portion of the current excess capacity of the Lift Station to District 1-F, District 1-G and District 1-H, and

WHEREAS, pursuant to the laws of the State of Texas, including particularly, but not by way of limitation, the Interlocal Cooperation Act, Chapter 791, Texas Government Code, as amended, and Section 49.213, Texas Water Code, as amended, the Boards of Directors of the Districts have determined that this Agreement is beneficial and advantageous to their respective Districts; and

WHEREAS, the Selling Districts wish to modify the Cost Sharing Agreement to the terms and conditions set forth in this Agreement;

NOW THEREFORE, for and in consideration of the mutual promises, covenants, benefits and obligations hereinafter set forth, the Districts hereby contract as follows:

ARTICLE I

REALLOCATION OF ORIGINAL CAPACITY COSTS AND BENEFITS

Section 1.01. Based on the ultimate total sewer connections as they have been estimated in September, 2009, the original Lift Station capacity should be reallocated as follows:

District	SFR (Units)	Equivalency (1 Unit = 1 Connection)	Commercial (Acres)	Equivalency (1 Acre = .75 Connection)	Total Connections	Percent Share
1-A						
1-B	655	655	21	16	671	36.69%
1-C	0	0	5	4	4	0.22%
1-D	771	771	20	15	786	42.97%
1-E	363	363	7	5	368	20.12%
1-F						
1-G						
1-H						
	1789	1789		40	1829	

ARTICLE II

PAYMENT

Section 2.01. Each of the Selling Districts shall pay from its available funds the following sums for the portion of the Purchase Price, as defined in this Section, representing Lift Station capacity which benefits residents and property within its boundaries and in consideration therefore shall own the above-references percentage of Lift Station capacity:

TOTAL ESTIMATED PROJECT COSTS

Construction		\$1,025,900.00
Engineering		\$56,593.00
TOTAL		\$1,082,493.00

ACTUAL COST SHARING AMOUNT

<u>District</u>		<u>% Share</u>
District 1-B		\$ 397,131.11
District 1-C		\$ 2,367.40
District 1-D		\$ 465,193.82
District 1-E		\$ 217,800.67
Total		\$ 1,082,493

ARTICLE III

METHODOLOGY FOR COMPUTING EXCESS CAPACITY ON NEW DEVELOPMENT

Section 3.01 The Selling Districts, wish to sell current excess capacity to District 1-F, District 1-G and District 1-H (the “Acquiring Districts”) based on the actual capacity needed as development occurs within their respective District.

Section 3.02 Demand Load Equivalency. Based on the calculations of the engineer for the Districts, the average single-family residential unit generates 450 gallons of sewer usage daily, the average multi-family unit generates 250 gallons of sewer usage daily, and the average commercial development generates 1,350 gallons per acre of sewer usage daily. In order to equitably calculate the capacity utilization needed by various types of development, the following equivalency factors will be utilized to determine the total equivalent connections of each District.

Type of Construction	Unit of Measure	Load Factor
Single-Family Residential	Unit	1
Multi-Family Residential	Unit	.50
Commercial	Acre	.75

Section 3.03 Annual Recalculation of Demand Allocation. Each July, the General Manager will calculate the total new equivalent connections that have been generated in the Acquiring Districts to reallocate the percentage capacity utilized in the Lift Station by each District.

Section 3.04 Cost Per Connection. Based on the total number of equivalent sewer connections within the Selling Districts of 1,829, and the total project cost being \$1,082,493, the original cost of each connection is \$591.93. As new connections are added within the Acquiring Districts, the total cost per connection will decrease.

Section 3.05 District Cost for Capacity. The total amount of new connections a District creates each year multiplied by the Cost Per Connection will be determine the cost to each District to purchase capacity in the Lift Station. Each District that purchases capacity in the Lift Station shall pay for its excess capacity in the Lift Station in the next fiscal year or as soon as funds are available as determined by District 1-A and reflected in the annual Facilities Maintenance and Operations Budget. In any year when funds are not available to make payments for capacity, the debt will be accrued annually at no interest until such debt is eliminated.

Section 3.06 Calculation of District Reimbursement. Each District that has purchased capacity in the Lift Station will be reimbursed, by the purchasing Districts, based on the difference between the original cost per connection minus the sum of the current year cost per connection minus the total amount that has previously been reimbursed, times the number of connections for which capacity in the Lift Station has been purchased.

GENERAL AND MISCELLANEOUS PROVISIONS

Section 3.01. Addresses and Notices. Unless otherwise provided in this Agreement, any notice herein provided or permitted to be given, made or accepted by a District must be in writing and may be given or be served by depositing the same in the United States mail postpaid and registered or certified and addressed to the District to be notified, with return receipt requested, or by delivering the same to an officer of such District, or by prepaid telegram, when appropriate addressed to the District to be notified. Notice deposited in the mail in the manner hereinabove described shall be conclusively deemed to be effective from and after the expiration of three (3) days after it is so deposited. Notice given in any other manner shall be effective only if and when received by the district notified. For the purposes of notice, the addresses of the Districts shall, until changed as hereafter provided, be as shown below. The Districts shall have the right from time to time and at any time to change their respective addresses and each shall have the right to specify as its address any other address by at least fifteen (15) days written notice to the other District.

If to District No. 1-A:

Denton County Fresh Water Supply District No. 1-A
2540 King Arthur Blvd., Suite 220
Lewisville, Texas 75056

If to District No. 1-B, 1-C, 1-D, 1-E, 1-F, 1-G, 1-H:

Denton County Fresh Water Supply District No. 1-B, 1-C, 1-D, 1-E, 1-F, 1-G, 1-H
2540 King Arthur Blvd., Suite 220
Lewisville, Texas 75056

Section 3.02. Parties in Interest. While the provisions of this Agreement are, in part, intended to establish as between the Districts an acceptable manner of providing water, sanitary sewer, and drainage service to the residents of the Districts, this Agreement shall be for the sole and exclusive benefit of the District, and shall not be construed to confer any benefit or right upon any other parties.

Section 3.03. Severability. The provisions of this Agreement are severable, and, if any word, phrase, clause, sentence, paragraph, section or other part of this Agreement or the application thereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such word, phrase, clause, sentence, paragraph, section or other part of this Agreement to other persons or circumstances shall not be affected thereby.

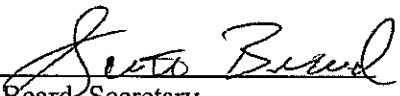
Section 3.04. Amendment. This Agreement shall be subject to change, modification or amendment only by written instrument signed by the Districts.


Section 3.5. Cooperation. Each District hereby agrees that it will take all actions and execute all documents necessary to fully carry out the purposes and intent of this Agreement.


IN WITNESS WHEREOF, the Districts have executed this Agreement in multiple copies, each of which shall be deemed an original, as of the date and year first written above.

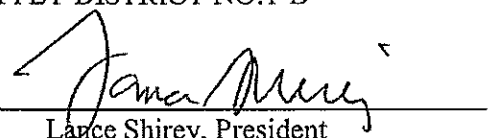
EXECUTED AS OF THIS 23rd day of September 2009.


(SIGNATURE PAGE FOLLOWS)

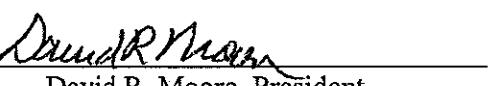
By: 
Scott Beard, Secretary
(DISTRICT SEAL)

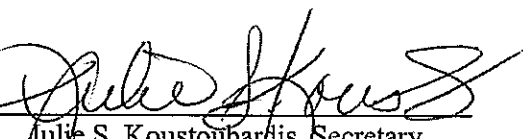
DENTON COUNTY FRESH WATER
SUPPLY DISTRICT NO.1-A
By: 
Gaylord S. O'Con, President

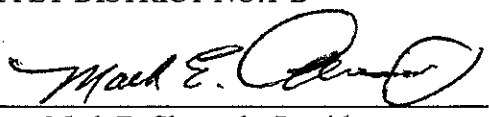
By: 
~~ASST. Inge W. Drechsler, Secretary~~
(DISTRICT SEAL) **ROBERT HANSON**

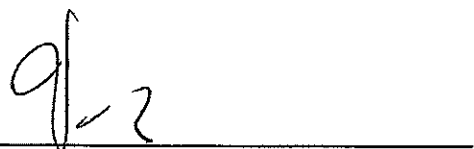
DENTON COUNTY FRESH WATER
SUPPLY DISTRICT NO.1-B
By: 
Lance Shirey, President

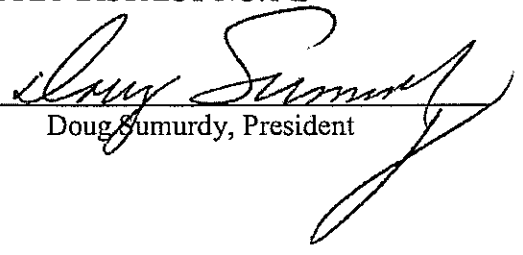
By: 
Debra Caskey, Secretary
(DISTRICT SEAL)


DENTON COUNTY FRESH WATER
SUPPLY DISTRICT NO.1-C
By: 
David R. Moore, President

By: 
Julie S. Koustoubardis, Secretary
(DISTRICT SEAL)

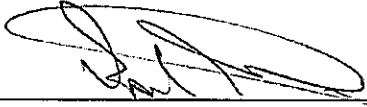
DENTON COUNTY FRESH WATER
SUPPLY DISTRICT NO.1-D
By: 
Mark E. Channels, President

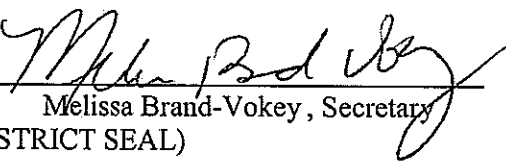
By: 
Vance Timm, Assistant Secretary
(DISTRICT SEAL)

DENTON COUNTY FRESH WATER
SUPPLY DISTRICT NO.1-E
By: 
Doug Sumurdy, President

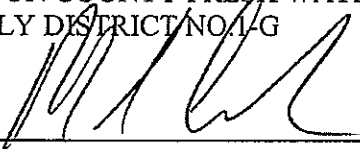
By: 
ASST. Brian Carlton, Secretary
(DISTRICT SEAL) CHERYL MABERY


DENTON COUNTY FRESH WATER
SUPPLY DISTRICT NO.1-F

By: 
Paul Miller, President

By: 
Melissa Brand-Vokey, Secretary
(DISTRICT SEAL)

DENTON COUNTY FRESH WATER
SUPPLY DISTRICT NO.1-G

By: 
Mark Crouch, President

By: 
Corwin Snow, Secretary M. CLARK
(DISTRICT SEAL)

DENTON COUNTY FRESH WATER
SUPPLY DISTRICT NO.1-H

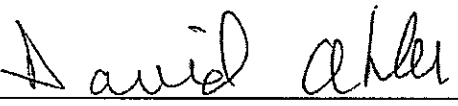
By: 
David Ahles, Vice President

Exhibit "A"

COST SHARING AGREEMENT
(LIFT STATION)

THE STATE OF TEXAS §

COUNTY OF DENTON §

THIS COST SHARING AGREEMENT (the "Agreement") is made and entered into as of the 19th day of April, 2006 by and between DENTON COUNTY FRESH WATER SUPPLY DISTRICT NO. 1-A ("District 1-A"), DENTON COUNTY FRESH WATER SUPPLY DISTRICT NO. 1-B ("District 1-B"), DENTON COUNTY FRESH WATER SUPPLY DISTRICT NO. 1-C ("District 1-C"), DENTON COUNTY FRESH WATER SUPPLY NO. 1-D ("District 1-D") and DENTON COUNTY FRESH WATER SUPPLY DISTRICT NO. 1-E ("District 1-E"), each being a political subdivision of the State of Texas created and operating under the provisions of Article XVI, Section 59 of the Texas Constitution and Chapters 51, 49 and 53 of the Texas Water Code, as amended (singly, the "District"; together, the "Districts").

WITNESSETH:

WHEREAS, the Districts and other districts have been created for the purpose of providing roads, bridges, facilities in aid thereof, water facilities and services, sanitary sewer facilities and services, and drainage facilities and services to the land located within the original boundaries of Denton County Fresh Water Supply District No. 1 (collectively the "Facilities"); and

WHEREAS, part of the Facilities shall include a Sanitary Sewer Lift Station (the "Lift Station") at a cost of \$1,082,493 including engineering costs (the "Purchase Price"); and

WHEREAS, District 1-A has been awarded a Construction Contract in its name to construct such Lift Station and serves as manager of the Districts; and

WHEREAS, the Lift Station to be purchased will be for the benefit of the residents and the property located within the original boundaries of Denton County Fresh Water Supply District No. 1, which includes only District 1-B, District 1-C, District 1-D and District 1-E (but not District 1-A); and

WHEREAS, the respective Boards of Directors of the Districts each deem it to be of mutual economic and utilitarian benefit for District 1-B, District 1-C, District 1-D and District 1-E to acquire from District 1-A that portion of the capacity of the Lift Station benefiting residents and property within the boundaries of each respective District; and

WHEREAS, pursuant to the laws of the State of Texas, including particularly, but not by way of limitation, the Interlocal Corporation Act, Article 4413(32)(c), Vernon's Texas Civil Statutes, as amended and Section 49.213, Texas Water Code, as amended, the respective Boards of Directors of the Districts have determined that this Agreement is beneficial and advantageous to their respective Districts.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, benefits and obligations hereinafter set forth, the Districts hereby contract as follows:

ARTICLE 1

ALLOCATION OF EXCESS CAPACITY COSTS AND BENEFITS

Section 1. Based on ultimate total water connections for each of the Districts as they have been estimated on April 19, 2006 by the Districts' engineer, the Districts estimate that Lift Station capacity should be allocated as follows:

<u>District</u>	<u>% Share</u>
District 1-B	29.18
District 1-C	0.13
District 1-D	34.20
<u>District 1-E</u>	<u>36.49</u>
Total	100.00

ARTICLE 2

PAYMENT

Section 2. Each of the Districts shall pay from its available funds the following sums for the portion of the Purchase Price representing Lift Station capacity which benefits residents and property within its boundaries and in consideration therefor shall own the above-referenced percentage of Lift Station capacity:

TOTAL ESTIMATED PROJECT COSTS

Construction	\$1,025,900.00
<u>Engineering</u>	<u>\$ 56,593.00</u>
TOTAL	\$1,082,493.00

ESTIMATED COST SHARING AMOUNT

<u>District</u>	<u>Amount</u>
District 1-B	\$315,871.46
District 1-C	\$ 1,407.24
District 1-D	\$370,212.60
<u>District 1-E</u>	<u>\$395,001.70</u>
Total	\$1,082,493.00

Should estimated construction costs be adjusted by Change Orders to the Lift Station contract as recommended by the Districts' engineer and approved by District 1-A, or should additional engineering fees be due with regard to the Lift Station, such additional costs shall be shared proportionately by the Districts based on the allocation formula detailed in Section 1 hereof.

ARTICLE 3

GENERAL AND MISCELLANEOUS PROVISIONS

Section 3.1 Addresses and Notices. Unless otherwise provided in the Agreement, any notice herein provided or permitted to be given, made or accepted by a District must be in writing and must be given or be served by depositing the same in the United States mail postpaid and registered or certified and addressed to the District to be notified, with return receipt requested, or by delivering the same to an officer of such District, or by prepaid telegram, when appropriately addressed to the District to be notified. Notice deposited in the mail in the manner hereinabove described shall be conclusively deemed to be effective from and after the expiration of three (3) calendar days after it is so deposited. Notice given in any other manner shall be effective only if and when received by the District notified. For the purposes of notice, the respective addresses of the Districts shall, until changed as hereafter provided, be as shown below. The Districts shall have the right from time to time and at any time to change their respective addresses, and each shall have the right to specify as its address any other address by at least fifteen (15) calendar days written notice to the other Districts.

If to District 1-A:

Denton County Fresh Water Supply District No. 1-A
2560 King Arthur Blvd., Suite 120
Lewisville, Texas 75056-5579

If to District 1-B, District 1-C, District 1-D or District 1-E:

c/o Leonard Frost Levin Van Court and Marsh, P.C.
600 N. Pearl Street, Suite 900
Dallas, Texas 75201-2872


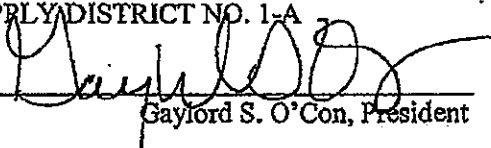
Section 3.2 Parties in Interest. While the provisions of this Agreement are, in part, intended to establish as among the Districts an acceptable manner of providing water sanitary sewer and drainage service to the residents of the Districts, this Agreement shall be for the sole and exclusive benefit of the Districts and shall not be construed to confer any benefit or right upon any other parties.


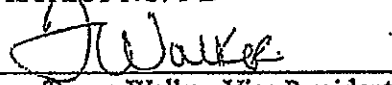
Section 3.3 Severability. The provisions of the Agreement are severable, and, if any word, phrase, clause, sentence, paragraph, section or other part of this Agreement or the application thereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such word, phrase, clause, sentence, paragraph, section or other part of this Agreement to other persons or circumstances shall not be affected thereby.

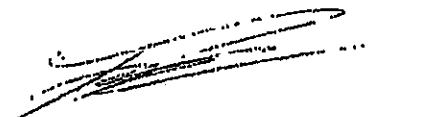
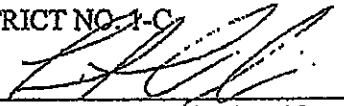
Section 3.4 Amendment. This Agreement shall be subject to change, modification or amendment only by written instrument signed by each of the Districts.

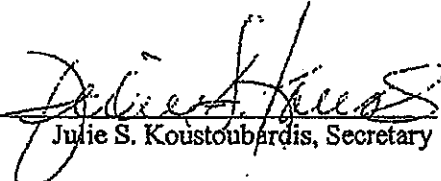
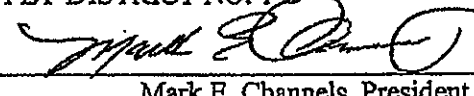
Section 3.5 Cooperation. Each District hereby agrees that it will take all actions and execute all documents necessary to fully carry out the purposes and intent of this Agreement.

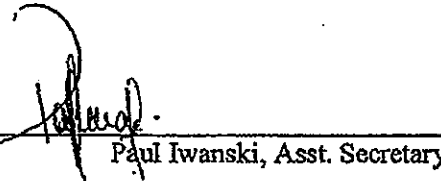
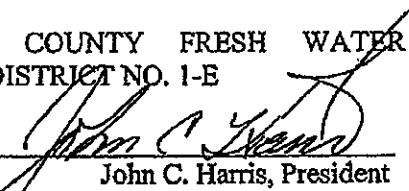
IN WITNESS WHEREOF, the Districts have executed this Agreement in multiple counterparts, each of which shall be deemed an original, as of the date and year first written above.

DENTON COUNTY FRESH WATER
SUPPLY DISTRICT NO. 1-A
By:  Scott Beard, Secretary
By:  Gaylord S. O'Con, President

DENTON COUNTY FRESH WATER
SUPPLY DISTRICT NO. 1-B
By:  Emil Reichstadt, Secretary
By:  Teresa Walker, Vice President

DENTON COUNTY FRESH WATER
SUPPLY DISTRICT NO. 1-C
By:  Preston D. Freeman, Asst. Secretary
By:  Charles C. Vaughn, President

DENTON COUNTY FRESH WATER
SUPPLY DISTRICT NO. 1-D
By:  Julie S. Koustoubardis, Secretary
By:  Mark E. Channels, President

DENTON COUNTY FRESH WATER
SUPPLY DISTRICT NO. 1-E
By:  Paul Iwanski, Asst. Secretary
By:  John C. Harris, President

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