

**UPPER TRINITY REGIONAL WATER DISTRICT  
CONTRACT FOR NON-POTABLE WATER SERVICE  
WITH  
DENTON COUNTY FRESH WATER SUPPLY DISTRICT NO. 1**

THE STATE OF TEXAS §  
  §  
COUNTY OF DENTON §

THIS CONTRACT FOR NON-POTABLE WATER SERVICE (the "Contract") made and entered into as of the 8th day of March, 1995 (the "Contract Date"), by and between UPPER TRINITY REGIONAL WATER DISTRICT, (the "District"), a conservation and reclamation district created pursuant to Article XVI, Section 59 of the Constitution of the State of Texas, and DENTON COUNTY FRESH WATER SUPPLY DISTRICT NO. 1 ("FWSD"), which party also may be referred to herein as "Member".

**WITNESSETH:**

WHEREAS, FWSD is a duly incorporated political subdivision of the State of Texas operating under the Constitution and laws of the State of Texas; and

WHEREAS, FWSD is a governmental entity in Denton County that is taking definitive steps satisfactory to the District to provide retail utility service to customers within its service area; and

WHEREAS, FWSD is a Participating member of the District pursuant to REGIONAL RAW WATER SUPPLY CONTRACT, dated June 10, 1991, and the REGIONAL TREATED WATER SUPPLY CONTRACT, dated May 7, 1992; and

WHEREAS, FWSD desires that the District undertake steps to develop a dual delivery system to provide non-potable water service in addition to the treated water service already contracted; and

**WHEREAS**, the District proposes to develop a regional non-potable water system for Participating Members and Customers, which system is planned to include transmission lines, pump stations, and metering facilities; and

**WHEREAS**, the District proposes to develop the non-potable water system by constructing, owning and operating such facilities, which facilities will be planned and designed to serve additional Customers on a regional basis; and

**WHEREAS**, FWSD and District agree that future Customers will be required to contribute a share of costs to reimburse FWSD and Texas Water Development Board for funds advanced for Project development as provided herein; and

**WHEREAS**, District proposes to construct of the non-potable water Project generally in accordance with the engineering report titled "Non-Potable Water Supply Study" prepared by Halff Associates, Inc., dated December 1994; and

**WHEREAS**, the District proposes to provide raw water for the Project pursuant to a contract to be negotiated with City of Denton; and

**WHEREAS**, the District proposes to provide treated wastewater effluent for the Project pursuant to a contract to be negotiated with City of Lewisville; and

**WHEREAS**, when available and practical, FWSD desires to use its water from Cooper Lake pursuant to its contract with District, dated June 10, 1991; and

**WHEREAS**, the District and FWSD are authorized to enter into this Contract pursuant to the District's enabling statute, H.B.3112 (1989 regular session of the Texas Legislature) (the "Act") and Vernon's Ann. Tex. Civ. St. Article 4413 (32c) (the "Interlocal Cooperation Act"), and other applicable laws; and

**WHEREAS**, the District and FWSD agree that FWSD shall own and operate its internal water pumping, storage and distribution facilities; and

**WHEREAS**, it is expected by the parties hereto that as soon as practicable after the execution of this Contract, the District will issue an installment of Bonds to provide part of the money to acquire and construct the Project, and thereafter, if necessary, will issue a subsequent installment or installments of Bonds to complete the acquisition and construction of the Project, with all of said Bonds to be payable from and secured by Annual Payments made under this Contract by FWSD and all other future Customers.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained, the District agrees to provide non-potable water service to the FWSD pursuant to this Contract, and District will use its best efforts to issue its Bonds and to acquire, construct and complete the Project and other System facilities upon and subject to the terms and conditions hereinafter set forth, to-wit:

## **ARTICLE I**

### **Definitions**

**Section 1.1.** The following terms and expressions as used in this Contract, unless the context clearly shows otherwise, shall have the following meanings:

1. **"Act"** means H. B. 3112 adopted by the Legislature of the State of Texas in the 1989 regular session, which was signed by the Governor and became effective June 16, 1989.
2. **"Additional Participating Member"** means any governmental entity other than FWSD with which the District makes a contract similar to this Contract for supplying non-potable water from the System, provided that after execution of any such contract, such party shall become one of the Participating Members for all purposes of this Contract.
3. **"Administrative Payment"** means the amount of money to be paid to the District by FWSD during each Annual Payment Period as its proportionate share of Administration and Planning Expenses of the District.

4. **"Adjusted Annual Payment"** means the Annual Payment as adjusted by the Board during or after such Annual Payment Period, as provided by this Contract.

5. **"Administrative and Planning Expenses"** means the general overhead cost and expenses of managing the District, but not including expenses related to this Project or other capital projects financed by the District; such expenses shall include the administration of the District's general office, the activities and meetings of the Board and the planning activities of the District, to the extent such programs and activities shall be for the general welfare of the District; activities and programs for the benefit of specific parties and for specific capital projects shall, unless otherwise authorized, be the responsibility of the benefitting parties.

6. **"Annual Payment"** means the amount of money to be paid to the District by FWSD during each Annual Payment Period as its proportionate share of the Annual Requirement.

7. **"Annual Payment Period"** means the District's fiscal year, which currently begins on October 1 of each calendar year and ends on September 30 of the next following calendar year, but which may be any twelve consecutive month period fixed by the District; and the first Annual Payment Period under this Contract is estimated to be the period of October 1, 1994, through September 30, 1995.

8. **"Annual Requirement"** means the total amount of money required for District to pay all Operation and Maintenance Expenses of the System, and to pay the Bond Service Component of the Annual Requirement as described hereinafter including debt service on its Bonds, and any sums required to pay or restore any amounts required to be deposited in any special or reserve funds required to be established and/or maintained by the provisions of the Bond Resolutions.

9. **"Board"** means the governing body of the District.

10. **"Boardmembers"** means a member or members of the Board.

11. **"Bond Resolution"** means any resolution of the District which authorizes any Bonds.

12. **"Bonds"** means all bonds hereafter issued by the District, whether in one or more series or issues, and the interest thereon, to acquire, construct and complete the Project, and/or all bonds issued subsequently to improve, extend, operate or maintain the System, and any bonds issued to refund any bonds or to refund any such refunding bonds.

13. **"Customer"** means any wholesale user of the non-potable water services provided by the District from the System.

14. **"Customer Advisory Council"** or **"Council"** means the committee authorized to be created to consult with and advise the District with respect to the System as provided in this Contract.

15. **"Demand"** means the maximum rate of flow expressed in MGD mutually established by Member and District that is, or may be, taken by Member within a Water Year.

16. **"District"** means the Upper Trinity Regional Water District, a conservation and reclamation district pursuant to Article XVI, Section 59 of the Constitution of the State of Texas created in accordance with the Act.

17. **"Facilities Charge"** means a charge to cover capital costs and other fixed costs of the Project, which charge shall be in lieu of a fee for Demand.

18. **"MGD"** is an abbreviation for "million gallons of water per day".

19. **"Operation and Maintenance Expenses"** means all costs and expenses of operation and maintenance of the System, including (for greater certainty but without limiting the generality of the foregoing) repairs and replacements; operating personnel; the costs of utilities; the amounts required to pay the U. S. Army Corps of Engineers or any other federal, state, or local agency for water storage rights or other interests in water in any reservoir, or for the purchase of water, or for the use or operation of any property or facilities; the costs of supervision, engineering, accounting, auditing, legal services, insurance premiums, supplies, services, administration and equipment necessary for proper operation and maintenance of the System; and payments made by District in satisfaction of judgments

resulting from claims not covered by District's insurance arising in connection with the acquisition, construction, operation, and maintenance of the System. The term also includes the charges of the bank or banks acting as paying agents and/or registrars for any Bonds. The term does not include depreciation expense which is a non-cash expense; nor does it include Administration and Planning Expenses, payment of which is provided for separately.

20. **"Participating Member"** means a governmental entity that provides retail utility service, or that is taking definitive steps to provide retail utility service, to customers within its boundaries that contracts with the District for participation in, and payment for, the Project or System, and specifically includes the FWSD.

21. **"Point of Delivery"** means the point designated in this Contract where water will be delivered to FWSD from the System.

22. **"Project"** means the non-potable water Project, generally as defined in the report titled **"Non-Potable Water Supply Study"** prepared by Halff Associates, Inc., dated December 1994, which is herein referred to as the "Project"

23. **"State"** means the State of Texas.

24. **"System"** means the Project, together with all future improvements, enlargements, extensions, and additions which are deemed necessary and feasible by the District to provide non-potable water service to Participating Members and other Customers and all future new facilities and/or water rights which are acquired or constructed with the proceeds from the sale of any Bonds or revenues from the System, and any water supply or treatment facilities which are deliberately and specifically, at the option of the District, made a part of the System by resolution of the Board, and all repairs to or replacements of the System. Said term does not include any District facilities which provide treated water service, wastewater treatment or disposal services, or solid waste disposal services. Said term does not include any facilities acquired or constructed by the District with the proceeds from the issuance of "Special Facilities Bonds", which are hereby defined as being revenue obligations of the District which are not secured by or payable from payments made under this Contract and similar contracts with Participating Members or Customers, and which are

payable solely from sources other than revenues of the System.

25. "Water Year" means the period of June 1 of each calendar year through May 31 of the next following calendar year.

## ARTICLE II

### General Provisions

**Section 2.01. Board Representation/Weighted Votes.** FWSD shall be entitled to representation on the Board according to the provisions of prior contracts with the District. In determination of weighted capital votes pursuant to the Act, the minimum capacity in the Project subscribed by this Contract shall be added to the amount of raw water subscribed in the Raw Water Supply Contract dated June 10, 1991.

**Section 2.02. Water Sales.** District agrees to deliver to FWSD non-potable water in accordance with the specifications and restrictions of this Article. District agrees to provide non-potable water to meet volume and demand requirements of FWSD as provided herein.

**Section 2.03. Water Supply Limitations.** Delivery of non-potable water to meet the requirements of FWSD is subject to, and limited by, available System supply and System deliverability, as determined by the District. Such delivery shall not be unreasonably withheld. The District will use its best efforts to furnish and remain in position to furnish water sufficient for all reasonable non-potable water requirements of FWSD; however, the District's obligation shall be limited to the amount of non-potable water available from the System; and, provided further that the maximum rate of delivery shall be consistent with the capacities and abilities of System facilities, and shall not exceed the amounts fixed on an equitable and uniform basis by the Board.

**Section 2.04. Quantity.** The District agrees to deliver non-potable water under this Contract to FWSD at its Point of Delivery. This contract does not require a minimum quantity of water to be purchased by FWSD. Nonetheless, FWSD does hereby agree to make

sufficient payments to assure adequate funds to the District to fulfill its obligations under this Contract. The District reserves the right to specify a minimum volume if necessary to assure adequate funds and if necessary to maintain equity between FWSD and other Customers, if such other Customers are added to the System.

**Section 2.05. Minimum Amounts.** For the purpose of calculating the minimum amount of each Annual Requirement for which FWSD is unconditionally liable, without offset or counterclaim, FWSD, during each Annual Payment Period, shall be deemed to have taken and used the minimum capacity (regardless of whether or not such capacity is, or was, actually taken or used) specified for FWSD in Exhibit B.

**Section 2.06. Demand.** Initially, there will be no minimum Demand requirement. However, in future years, the District hereby retains the right to change to a two-part Volume and Demand type rate if, in the District's sole judgement, such a rate format is required to assure that the sum of all payments will be adequate to support the costs and expenses of the District, or if necessary to maintain equity between FWSD and other Customers, if such other Customers are added to the System.

**Section 2.07. Demand Meters.** A Demand meter will not be required during initial construction of the Project. However, FWSD and District agree that if the District later determines it is necessary to adopt the Demand/Volume rate form, the District may require the installation of a rate-of-flow controller at the cost and expense of the Member to regulate and measure Demand. Further, the District may require, at its discretion, a future Customer to install a rate-of-flow controller as part of the initial installation.

**Section 2.08. Changes in Demand.** Customer shall give reasonable notice to District of anticipated changes in peak day requirements, so the District can assure adequate water supply and pumping capacity. Such notice shall be given at least six (6) months in advance

if the requested change, when considered with other pending or contemporaneous requests, does not require construction of additional facilities. The Executive Director of the District



may waive the six (6) month notice requirement for good cause shown. If construction of additional facilities is required, such advance notice as will be necessary to allow for financing, design and construction of the needed facilities shall be given.

**Section 2.09. Other Water Supplies.** FWSD is not obligated to secure all of its water supply requirements from the District, either initially or in the future. Nonetheless, the District has a desire to promote, achieve and maintain efficient System operation and to promote conservation of limited ground water resources. To that end, FWSD agrees to minimize the installation of new wells to withdraw additional underground water resources. Further, if FWSD develops plans to seek future surface water supplies from an entity other than the District, FWSD agrees to give the District six (6) months written notice of such intention and to give the District an opportunity to address the needs or concerns so noticed. The acquisition of, or use of, water from other sources shall never obviate nor reduce the obligations, duties and responsibilities of FWSD to make payments specified in this Contract and to secure the payment of Bonds issued pursuant to this Contract.

**Section 2.10. Resale.** Except as provided in Exhibit C hereof, FWSD hereby agrees not to resell water purchased from District except to retail customers within FWSD's boundaries or prescribed service area (as may be adjusted from time to time) unless FWSD has received prior written approval from the District. Approval to make retail sales to individual customers outside such boundaries may be granted by the Executive Director of the District. Approval to make wholesale sales for resale shall require the specific approval of the Board. In granting such authorization, District may establish the terms and conditions of the conveyance of such water including, but not restricted to, the setting of monetary rates for sale of such water. "Convey" means sell, trade, donate, exchange, transfer title, or contract therefor. This provision applies to all water whether initially conveyed to Member under this Contract, obtained from the water wells of Member or from other sources.

**Section 2.11. Other Contracts.**

a) The District reserves the right to supply non-potable water from the System to additional Customers under contracts similar to this Contract. Each contract with any additional Customer shall comply with the requirements of this Contract, and shall provide

for reimbursement of cost as appropriate to FWSD. Such reimbursement shall be determined pursuant to Article IV of this Contract. After such additional Customers are added to the System, costs of the System will be shared between all Customers on an equitable basis as determined by the District.

b) However, the District shall not obligate itself to sell or deliver non-potable water from the System to an additional Customer if, in the judgment and discretion of the District, such sale would jeopardize the District's ability to meet its obligation to transport and deliver non-potable water from the System to the FWSD.

c) The parties hereto recognize and acknowledge that it is the policy and practice of the District that any other person that desires to receive service from the System shall contract directly with the District to become a Customer or an Additional Participating Member of the District.

**Section 2.12. Quality.** The water to be delivered by the District and received by FWSD shall be non-potable water from the System. FWSD has satisfied itself that such water will be suitable for its needs.

**Section 2.13. Raw Water or Treated Wastewater Effluent.** To the extent practicable and as permitted by applicable laws and regulations of the State or federal government, District shall deliver either untreated raw water or treated wastewater effluent as requested by FWSD.

**Section 2.14. Points of Delivery.**

a) District agrees to deliver water contracted for by FWSD at Point of Delivery as delineated in Exhibit A attached hereto. The initial delivery facilities delineated in Exhibit A hereof shall be constructed by District and shall be included in the cost of the Project.

b) Unless otherwise mutually agreed to, FWSD shall be responsible for the design, contracting, construction and financing of facilities and acquisition of any right-of-way for additional or future Points of Delivery for water from the System. Plans for an Additional

Point of Delivery shall be submitted to District for written approval; and, all designs, materials and specifications shall conform to District requirements. FWSD agrees that District has the right to make periodic inspections during the construction phase of such future or additional delivery facilities. Final acceptance of completed delivery facilities is subject to the written approval of District. FWSD agrees that after final inspection and acceptance of delivery facilities, Member will convey title to such facilities and associated rights-of-way to District. Upon conveyance of title to delivery facilities by appropriate instrument(s), District shall be responsible for operation and maintenance thereof.

**Section 2.15. Metering Equipment.**

a) The District will furnish, install, operate, and maintain at its expense the necessary equipment and devices of standard type required for measuring the quantity of non-potable water delivered under this Contract from the System to Member through its Point of Delivery. Such meters and other equipment so installed shall remain the property of the District. The District shall inspect, calibrate, and adjust its meters at least annually as necessary to maintain accurate measurements of the quantity of non-potable water being delivered. Member shall have access to the metering equipment at all reasonable times for inspection and examination; however, the reading, calibration, and adjustment thereof shall be done only by employees or agents of the District. If requested, Member may witness such reading, calibration and adjustment of meters. All readings of meters will be entered upon proper books of record maintained by the District. Member may have access to said record books during normal business hours.

b) Member may request, in writing, that the District calibrate any meter or meters in the presence of the Member. The District will make up to two (2) such calibrations in any fiscal year at no charge to the requesting Member. All requested calibrations in excess of two (2) will be made at the expense of the requesting Member, except when the accuracy of the meter is beyond the limits of commercial accuracy in which case the District shall bear such expense. If, for any reason, any meter is out of service or out of repair, or if, upon any test, the percentage of inaccuracy of any meter is found to be in excess of commercial accuracy [which unless otherwise agreed to shall be considered to be plus or minus two

( 2%  $\pm$  ) percent], registration thereof shall be corrected for a period of time extending back to the time when such inaccuracy began, if such time is ascertainable, and if not ascertainable, then for a period extending back one-half ( $\frac{1}{2}$ ) of the time elapsed since the date of the last calibration, but in no event further back than a period of six (6) months.

c) Member may, at its option and at its own expense, install and operate a meter (check meter) to check any meter installed by the District, but the measurement for the purpose of this Contract shall be solely by the District's meters, except as in this Section specifically provided to the contrary. All such check meters shall be of standard make, shall be installed in a location approved by the District, and shall be subject at all reasonable times to inspection and examination by any employee or agent of the District; however, the reading, calibration, and adjustment thereof shall be made only by the Member, except during any period when a check meter may be used under specific written consent by the District for measuring the amount of non-potable water delivered into the System, in which case the reading, calibration, and adjustment thereof shall be made by the District with like effect as if such check meter or meters had been furnished or installed by the District.

d) If either party at any time observes a variation between the delivery meter and the check meter, if any such check meter shall be installed, such party will promptly notify the other party, and the parties hereto shall then cooperate to procure an immediate calibration test and joint observation of any adjustment and the same meter or meters shall then be adjusted to accuracy. Each party shall give the other party forty-eight (48) hours notice of the time of all tests of meters so that the other party may conveniently have a representative present.

e) If for any reason any meters are out of repair so that the amount of water delivered cannot be ascertained or computed from the reading thereof, the water delivered through the period such meters are out of service or out of repair shall be estimated and agreed upon by the parties hereto upon the basis of the best data available. For such purpose, the best data available shall be deemed to be the registration of any check meter or meters if the same have been installed and are accurately registering. Otherwise, the amount of water delivered during such period may be estimated:

(i) by correcting the error if the percentage of the error is ascertainable by calibration tests or mathematical calculation, or

(ii) estimating the quantity of delivery by deliveries during the preceding periods under similar conditions when the meter or meters were registering accurately.

**Section 2.16. Unit of Measurement.** The unit of measurement for non-potable water delivered from the System hereunder shall be 1,000 gallons, U. S. Standard Liquid Measure.

**Section 2.17. Access.**

a) FWSD agrees to provide ingress and egress for District employees and agents to all its premises inside or outside FWSD boundaries to install, operate, inspect, test, and maintain facilities owned or maintained by District.

b) District agrees to provide ingress and egress for FWSD employees and agents to all premises under control of the District to install, operate, inspect, test, and maintain facilities, and read meters owned or maintained by Member.

**Section 2.18. Reporting Requirements.** Approximately sixty days after the end of each fiscal year, FWSD shall furnish in writing to the District the following information:

a) The number of gallons of non-potable raw water used for the following purposes during the fiscal year just ended:

- 1) Irrigation
- 2) Make-up water for lakes and ponds
- 3) Other purposes

b) The number of gallons of non-potable treated wastewater effluent used for the following purposes during the fiscal year just ended:

- 1) Irrigation
- 2) Make-up water for lakes and ponds
- 3) Other purposes

c) An estimate of the projected annual water requirements from the System by FWSD for each of the next five (5) years for non-potable raw water and non-potable treated wastewater effluent, respectively;

d) An estimate of Demand for the next Water Year.

The purpose of this Section is to permit the District to accumulate statistical data which will enable it to plan for adequate service, and to facilitate plans for betterment and future facilities expansion.

**Section 2.19. Customer Advisory Council.** The provisions of this Section shall become effective when more than one entity is participating in the System.

a) The FWSD and each additional Customer may appoint one representative to the Customer Advisory Council for the System. The Council shall elect such officers as it deems necessary. The Council shall consult with and advise the District with regard to financial matters, budgets, operation and maintenance, contracts for additional Customers, improvements and extensions of the System and other pertinent matters relating to the System. The Council shall have access to and may inspect at reasonable times all physical elements of the System and all records and accounts of the District pertaining to the System.

b) The term of membership on the Council shall be at the pleasure of each Customer represented, respectively, and each member shall serve until replaced by such Customer. All expenses of the Council in discharging its duties under this Section shall be considered as an Operation and Maintenance Expense of the System.

**Section 2.20. Water Conservation, Drought Contingency Plan.**

a) District expects to purchase on an interruptible basis non-potable raw water and treated wastewater effluent from City of Denton and City of Lewisville, respectively. Accordingly, if either source exercises its right to limit, curtail or interrupt delivery of water to District, the District may make corresponding curtailments to FWSD deliveries. The District will give reasonable notice to FWSD of intent to limit, curtail or interrupt delivery of water and will make reasonable effort to supply substitute water.

b) FWSD agrees that non-potable water supplies or services may be limited or curtailed pursuant to this Section and Section 2.03. District and FWSD agree to coordinate the implementation of any action to limit or curtail water supplies to minimize adverse impact on FWSD and System operation; on adequacy of service; and, to promote public understanding of the need for, and terms of, such limitation or curtailment.

c) It is the policy of the District to prepare, adopt and maintain a regional water conservation plan which incorporates loss reduction measures and demand management practices which insure that the available supply of the System is used in an economically efficient and environmentally sensitive manner. Similarly, it is the policy of the District to prepare, adopt and maintain a drought and emergency contingency plan for water supply to Customers. FWSD agrees to cooperate in the implementation of both plans and to adopt and enforce such or similar plans for use within its jurisdiction. The water conservation plan prepared by FWSD pursuant to the Regional Treated Water Contract between FWSD and District can be adapted to include non-potable water to satisfy the requirement of this Section.

**Section 2.21. Standards.** Member agrees to protect its storage and distribution system from cross connections under the specifications required by health standards of the State. Member agrees to provide air gaps for any ground storage and backflow preventers for any elevated storage receiving water from the System. Further, Member agrees to specifically protect against cross connections between its non-portable water system and its potable treated water system. Member agrees to provide internal storage sufficient to meet its emergency needs and to maintain a reasonable load factor for deliveries from the System.

**Section 2.22. Contracts with Denton and Lewisville.** It is the intent of FWSD and the District to allow the District to contract with other entities for non-potable water:

(i) with the City of Denton to provide for a source of raw water on an interruptible basis out of Lake Lewisville, and

(ii) with City of Lewisville for a source of treated wastewater effluent from the City's wastewater treatment plant below Lake Lewisville.

Pending final approval of said contracts, or mutually acceptable alternative sources of non-potable water, District will not award a contract for construction of Project, and District will not request FWSD to pay for any such construction cost. Nonetheless, it is agreed that engineering efforts for design and for preparation of construction documents shall proceed pursuant to this Contract in order to expedite the Project.

## ARTICLE III

### Construction and Issuance of Bonds

**Section 3.01. Consulting Engineers.** The District and FWSD agree that the District will choose the Consulting Engineers for the System and may change Consulting Engineers at the option of the District.

**Section 3.02. Construction of Project and System.** The District agrees to use its best efforts to issue its Bonds, payable from and secured by Annual Payments made under this Contract, to acquire and construct the Project and other System facilities when, and as needed, as determined by the District, to supply non-potable water to FWSD, future additional Participating Members and other Customers. Such construction may be in phases and each phase will be financed by the District through the issuance of one or more series or issues of its Bonds; and, the District agrees to use its best efforts to issue its Bonds for such purpose. Also, Bonds may, at the discretion of the District, be issued to refund any Bonds, and be issued to extend, enlarge, repair, renovate, equip, operate, maintain and otherwise improve the System and any System facilities. District agrees that such



improvements will be made in accordance with generally accepted engineering practices. It is anticipated that such improvement will be financed by the District through the issuance of one or more series or issues of its Bonds payable from and secured by Annual Payments made under this Contract.

**Section 3.03. Bond Proceeds.** The proceeds from the sale and delivery of such Bonds may be used, to the extent deemed advisable by the District, to fund a debt service reserve fund, a contingency fund, and interest on the Bonds during construction; and such proceeds also will be used for the payment of the District's expenses and costs in connection with the Project and System (including all engineering and design costs and expenses, and the cost of the land and interests therein related to the System) and the Bonds, including, without limitation, all financing, legal, printing, and other expenses and costs related to the issuance of such Bonds and the System.

**Section 3.04. Bond Resolution.** Each Bond Resolution of the District shall specify the exact principal amount of the Bonds to be issued thereunder, which shall mature within the maximum period, and shall bear interest at not to exceed the maximum rates then permitted by law, and each Bond Resolution shall create and provide for the maintenance of a revenue fund, an interest and sinking fund, a debt service reserve fund, and any other funds deemed advisable, all in the manner and amounts as provided in such Bond Resolution. Member agrees that if and when such Bonds are actually issued and delivered to the purchaser thereof, either for the purpose of initially acquiring and constructing the Project, or subsequently for improving and/or extending the System, the Bond Resolution authorizing the Bonds shall for all purposes be deemed to be in compliance with this Contract in all respects, and the Bonds issued thereunder will constitute Bonds as defined in this Contract for all purposes.

## ARTICLE IV

### Fiscal Provisions

**Section 4.01. Annual Requirements.** Subject to the terms and provisions of this Contract, the District will provide and pay for the cost of the acquisition, construction and

improvement of the System and all System facilities, by issuing its Bonds in amounts which will be sufficient to accomplish such purposes. It is acknowledged and agreed that payment to be made under this Contract and similar contracts with other Customers, if any, will be the primary source available to the District to provide the Annual Requirement. In compliance with the District's duty to fix and from time to time to revise the rates and charges for services of the System, the Annual Requirement may change from time to time. Each such Annual Requirement shall be the responsibility of FWSD. If other Customers are added, District will allocate costs on a pro rata basis among the Customers as hereinafter provided, and the Annual Requirement for each Annual Payment Period shall be provided for in each Annual Budget and shall at all times be not less than an amount sufficient to pay or provide for the payment of:

- a) An "Operation and Maintenance Component" equal to the amount paid or payable for all Operation and Maintenance Expenses of the System; and
- b) A "Capital Component" equal to:
  - 1) the principal of, redemption premium, if any, and interest on, its Bonds, as such principal, redemption premium, if any, and interest become due, less interest to be paid out of Bond proceeds or from other sources if permitted by any Bond Resolution, and all amounts required to redeem any Bonds prior to maturity when and as provided in any Bond Resolution, plus the fees, expenses and charges of each paying agent/registrar for paying the principal of and interest on the Bonds, and for authenticating, registering and transferring Bonds on the registration books; and
  - 2) the proportionate amount of any special, contingency or reserve funds required to be accumulated and maintained by the provisions of any Bond Resolution; and
  - 3) an amount in addition thereto sufficient to restore any deficiency in any of such funds required to be accumulated and maintained by the provisions of any Bond Resolution; and

c) An amount deemed appropriate and necessary by the Board to be required as a special reserve for operation and maintenance expenses of the System or for capital improvements. Any such reserve shall be used as operating capital for Operation and Maintenance Expenses, for emergency expenses and a fluctuating reserve for additions to or shortfalls in the annual revenues of the System. The normal level of such reserve shall not exceed 25% of the annual Operation and Maintenance Expenses [estimated to be approximately three (3) months expenses].

**Section 4.02. Annual Budget.** Each Annual Budget for the System shall always provide for amounts sufficient to pay the Annual Requirement. The Annual Budget for the System for all or any part of the first Annual Payment Period during which the System is placed into operation shall be prepared by the District based on estimates made by the District. On or before June 15 of each year after the System is first placed in operation, the District shall furnish to Member a preliminary estimate of the Annual Payment required from Member for the next following Annual Payment Period. Not less than forty days before the commencement of the Annual Payment Period after the System is first placed into operation, and not less than forty days before the commencement of each Annual Payment Period thereafter, the District shall cause to be prepared as herein provided its preliminary budget for the System for the next ensuing Annual Payment Period. A copy of such preliminary budget shall be filed with Member for review before action by the Board. Member may submit comments about the preliminary budget directly to the Board. The Board may adopt the preliminary budget or make such amendments thereto as the Board may deem proper. The budget thus approved by the Board shall be the Annual Budget for the next ensuing Annual Payment Period. The Annual Budget (including the first Annual Budget) may be amended by the District at any time to transfer funds from one account or fund to another account or fund so long as such transfer will not increase the total budget. The amount for any account or fund, or the amount for any purpose, in the Annual Budget may be increased through formal action by the Board even though such action might cause the total amount of the Annual Budget to be exceeded; provided that such action shall be taken only in the event of an emergency or special circumstances which shall be clearly stated in a resolution at the time such action is taken by the Board.

**Section 4.03. Payments**

a) For the non-potable water services to be provided to FWSD under this Contract, FWSD agrees to pay, at the time and in the manner hereinafter provided, the Annual Requirement (Annual Payment). FWSD shall pay the Annual Requirement for each Annual Payment Period directly to the District, in installments in accordance with the schedule of payments furnished by the District, as hereinafter provided.

b) FWSD shall pay its Annual Payment, including a Facilities Charge and the charges for actual volume of non-potable water taken. The District shall estimate its cost and shall establish a Facilities Charge and a price per 1,000 gallons of volume for purposes of determining the monthly payment to be made by each Member. Member shall pay a Facilities Charge in quarterly (until changed hereafter by mutual agreement) installments, unless FWSD agrees to pay on an annual basis according to a discount formula specified by District. Such Facilities Charge shall be sufficient to cover the fixed cost portion of the Annual Requirement. Member shall pay a volume charge based on the actual volume of non-potable water delivered to Member monthly. The volume charge shall be sufficient to cover the variable cost portion of the Annual Requirement and specifically the variable costs associated with treating, pumping, transporting and delivering the water.

**Section 4.04. Fiscal Policy.** It is provided that in estimating costs for services, the District is specifically authorized, in its discretion, to include in such estimate of costs reasonable contributions to reserve funds or to assume that the Annual Payment Period may be a wet year which could cause revenues to be increased if the year is actually normal or dry. This fiscal policy is expressly approved by Member and is deemed by the parties hereto to be beneficial in the fiscal management of the System, and will assure the timely availability of funds even under unexpected circumstances. Upon receipt during any Annual Payment Period of an amount sufficient to meet the then current Annual Budget of the System for the remainder of the then current Annual Payment Period, the District shall deposit subsequent revenues received into appropriate reserve or contingency accounts. If there is a shortfall in revenues, the District may withdraw from the reserves, adjust the Annual Requirement, revise the payment schedule or do any combination thereof.

**Section 4.05. Minimum Payment.** It is agreed that if, during any Annual Payment Period, the estimated and/or actual metered volume of non-potable water provided by the System to FWSD is, for any reason whatsoever, less than the minimum capacity prescribed by this Contract in Exhibit B, FWSD shall pay its Annual Payment according to such minimum capacity. All contracts with Additional Participating Members or Customers shall provide for equitable minimum capacities, demands or volumes.

**Section 4.06. Redetermination of Annual Requirements.** Notwithstanding the foregoing, the Annual Requirement, and Member's share thereof (Annual Payment), shall be redetermined, after consultation with Member, at any time during any Annual Payment Period, to the extent deemed necessary or advisable by the District, if:

- (i) The District commences furnishing services of the System to an Additional Participating Member or Customer;
- (ii) Unusual, extraordinary, or unexpected expenditures for operation and maintenance expenses are required which are not provided for in the District's Annual Budget or reserves for the System;
- (iii) Operation and maintenance expenses of the System are substantially less than estimated;
- (iv) District issues Bonds which require an increase in the capital component of the Annual Payment; or
- (v) The District receives either significantly more or significantly less revenues or other amounts than those anticipated.

**Section 4.07. Other Revenues.** During each Annual Payment Period, all revenue derived from sales of System water, other than sales of water to FWSD, shall be credited to and be used for paying part of the Annual Requirement in the manner determined by the

District, with the result that such credits shall reduce, to the extent of such credits, the amounts which otherwise would be payable by FWSD.

**Section 4.08. Prompt Payment / Disputed Bills.** FWSD hereby agrees that it will make payments to the District required by this Contract within 20 days of the date a bill for service is rendered. If FWSD, at any time, disputes the amount to be paid by it to the District, FWSD shall nevertheless promptly make such payment or payments; but, if it is subsequently determined by agreement or court decision that such disputed payments should have been less, or more, the District shall promptly revise and reallocate the charges in such manner that FWSD will recover its overpayment or the District will recover the amount due it. All amounts due and owing to the District by FWSD or due and owing to FWSD by the District shall, if not paid when due, bear interest at the rate of ten (10%) percent per annum from the date when due until paid.

**Section 4.09. Delinquent Bills** . The District shall, to the extent permitted by law, suspend the delivery of water from the System if FWSD remains delinquent in any payments due hereunder for a period of sixty days, and shall not resume delivery of water while FWSD is so delinquent. However, the District shall pursue all legal remedies against Member to enforce and protect the rights of the District and the holders of the Bonds. If FWSD is delinquent, FWSD shall not be relieved of the liability to the District for the payment of all amounts which would have been due hereunder had no default occurred. It is understood that the foregoing provisions are for the benefit of the holders of the Bonds so as to insure that all of the Annual Requirement will be paid. If any amount due and owing the District by Member is placed with an attorney for collection, Member shall pay to the District all attorneys fees, in addition to all other payments provided for herein, including interest.

**Section 4.10. Updated Schedule of Payment.** If, during any Annual Payment Period, Member's Annual Payment is redetermined in any manner as provided or required in the foregoing Sections, the District will promptly furnish such Member with an updated schedule of monthly payments reflecting such redetermination.

**Section 4.11. Reimbursement to FWSD.**

(a) Depending on the amount and terms of proposed State participation in the Project, FWSD may be entitled to reimbursement of costs if additional Customers participate in the System in the future. The District will determine whether a reimbursement is warranted, and if so, how much. In conjunction with a proposed contract for an additional Customer, District will determine if FWSD has paid any capital cost (principal and interest) that would have been paid by the additional Customer if said Customer had participated in the Project with FWSD from the initial Contract Date. If so, District agrees that FWSD is entitled to reimbursement of such capital costs with interest. District will determine the amount of such payments by FWSD and will establish the amount of the reimbursement (based on pro rata share of capacity) to be paid by such additional Customer, with interest. The interest rate will be determined by District, which rate will not be less than the interest rate on the District's then most recent long-term bond issue. Also, such additional Customer shall reimburse (with interest) as determined by District, an appropriate share (based on pro rata share of capacity) of the original project development costs (for engineering studies and project management) which were advanced by FWSD. District and FWSD agree that such project development costs paid by FWSD were thirty thousand dollars (\$30,000.00) as of December 31, 1994.

(b) Further, FWSD shall be entitled to a fee for initial development of the Project and for risks taken during such Project development regardless of whether such additional Customer makes payment to District for reimbursement to Texas Water Development Board for State participation or to FWSD for capital cost advanced. Such fee shall be determined by the District and shall be collected from future additional Customers, if any. The amount of said fee shall be equal to fifty (50%) percent of total interest to be paid on capital costs by the additional customers as provided above.

## ARTICLE V

### Miscellaneous Provisions and Special Conditions

**Section 5.01. Future Customers.** In anticipation of additional Customers in the future,

certain facilities in the Project will be oversized in excess of capacity requirements currently projected for FWSD. District will manage the Project and the System to provide for a fair distribution (based on pro rata share of capacity) of initial costs and future costs between parties.

**Section 5.02. Operation and Maintenance of System.** The District will continuously operate and maintain the System in an efficient manner and in accordance with good business and engineering practices, and at reasonable cost and expense. The District recognizes its right and duty to operate the various facilities of the System in the most prudent and economical manner for the benefit of all Customers.

**Section 5.03. Project Schedule.** It is the intent of the parties that the Project will be placed in operation as soon as practicable, and the District agrees to proceed diligently with the design and construction of the Project to meet such schedule, subject to the other terms and conditions in this Contract.

**Section 5.04. Permits, Financing and Applicable Laws.** It is understood that any obligations on the part of the District to acquire, construct, and complete the Project and other System facilities and to provide non-potable water from the Project and other System facilities to FWSD, and potentially other Customers, shall be:

- (i) conditioned upon the District's ability to obtain all necessary permits, material, labor, and equipment;
- (ii) conditioned upon the ability of the District to finance the cost of the Project and other System facilities through the actual sale of the District's Bonds; and
- (iii) subject to all present and future valid laws, orders, rules, and regulations of the United States of America, the State of Texas, and any regulatory body having jurisdiction.



**Section 5.05. Title to Water; Indemnification.** Title to all water supplied to Member shall be in the District up to Point of Delivery, at which point title shall pass to the receiving Member. The District and FWSD agree to save and hold each other harmless from all claims, demands, and causes of action which may be asserted by anyone on account of the transportation and delivery of said water while title remains in such party.

**Section 5.06. Payments From Revenues or From Taxes.** The District shall have the right to demand payment by FWSD of any obligations assumed by it or imposed on it under and by virtue of this Contract from funds raised or to be raised by utility revenue or by ad valorem taxes. However, the obligations under this Contract shall never be construed to be a debt of such kind as to require FWSD to levy and collect a tax to discharge such obligation unless District determines it necessary to invoke the tax pledge provisions contained in Exhibit C. Member may make payments from its water and wastewater (sewer) system revenues, or from any other lawful source, including ad valorem taxes.

**Section 5.07. Operating Expenses.** FWSD represents and covenants that all payments to be made by it under this Contract shall constitute reasonable and necessary "operating expenses" of its combined waterworks and sewer system, as defined in Vernon's Ann. Tex. Civ. St. Article 1113, and that all such payments will be made from the revenues of its combined waterworks and sewer system or any other lawful source. FWSD represents and has determined that the non-potable water supply to be obtained from the System, including the Project and other System facilities, is absolutely necessary and essential to the present and future operation of its water system and that the System is the best long-term source of supply of non-potable water therefor, and, accordingly, all payments required by this Contract to be made by FWSD shall constitute reasonable and necessary operating expenses of its system as described above, with the effect that the obligation to make such payments from revenues of such systems shall have priority over any obligation to make any payments from such revenues (whether of principal, interest, or otherwise) with respect to all bonds or other obligations heretofore or hereafter issued by FWSD.

**Section 5.08. Rates for Water and Wastewater Services.** FWSD agrees throughout the term of this Contract to continuously operate and maintain its waterworks system and its

wastewater (sewer) system, and to fix and collect such rates and charges for water and wastewater services, to be supplied by its systems as will produce revenues in an amount equal to at least:

- (i) all of the expenses of operation and maintenance of such system or systems, including specifically, its payments under this Contract, and
- (ii) all other amounts as required by law and the provisions of the ordinance or resolutions authorizing its revenue bonds or other obligations now or hereafter outstanding, including the amounts required to pay all principal of and interest on such bonds and other obligations.

**Section 5.09. Use of Funds and System.** The District covenants and agrees that neither the proceeds from the sale of the Bonds, nor the moneys paid pursuant to this Contract, nor any earnings from the investment of any of the foregoing, will be used for any purposes, except those directly relating to the System, and the Bonds as provided in this Contract; provided that the District may rebate any excess arbitrage earnings from such investment earnings to the United States of America in order to prevent any Bonds from becoming "arbitrage bonds" within the meaning of the Internal Revenue Code of 1986 (the "Code") or any amendments thereto in effect on the date of issue of such Bonds. FWSD covenants and agrees that it will not use, or permit the use of, the System in any manner that would cause the interest on any of the Bonds to be or become subject to federal income taxation under said Code or any amendments thereto in effect on the date of issue of such Bonds.

**Section 5.10. Rights-of-Way.**

a) FWSD hereby grants to the District without additional cost to the District, the perpetual use of the streets, easements, and rights-of-way under its control for the construction, operation, and maintenance of the System and the Project.

b) FWSD agrees that with prior written approval, District may use streets, alleys and public rights-of-way within Member's boundaries for pipeline purposes to provide water to Member or to other Customers without charges or tolls, provided that District makes the

necessary repairs to restore to their original condition the streets, alleys or public rights-of-way so used.

**Section 5.11. Use of Customer Facilities.** FWSD and District desire to develop and operate the System in the most efficient manner. To that end, the policy of the District is to encourage joint-use of facilities, including existing and future pipelines, storage tanks and pump stations owned by and under the control of Customers wherever feasible and advantageous to the delivery of water from the System. The District agrees that if it proposes the joint use of such facilities and if a Customer agrees, that the Customer whose facilities will be used is entitled to fair and reasonable compensation for the use of facilities and for the service provided by the Customer to District.

Further, it is agreed by all parties to this Contract that such compensation will be considered to be an Operation and Maintenance Expense of the System.

**Section 5.12. Unconditional Obligation to Make Payments.** Recognizing the fact that FWSD urgently requires the facilities and services of the Project and the System, and that such facilities and services are essential and necessary for actual use and for standby purposes; and, recognizing the fact that the District will use payments received from the FWSD and future Customers, if any, to pay and secure its Bonds, it is hereby agreed that FWSD shall be unconditionally obligated to pay, without offset or counterclaim, the Annual Requirement, as provided and determined in this Contract, regardless of whether or not the District actually acquires, constructs or completes the Project or the System or is actually delivering water from the System to FWSD, or whether or not FWSD actually receives or uses water from the System (whether due to Force Majeure or any other reason whatsoever), regardless of any other provisions of this or any other contract or agreement between any of the parties hereto. This covenant by the FWSD shall be for the benefit of and enforceable by the holders of the Bonds as well as the District.

**Section 5.13. Insurance.** The District agrees to carry and arrange for fire, casualty, public liability, and/or other insurance, including self insurance, on the System for purposes and in amounts which, as determined by the District, ordinarily would be carried by a privately owned utility company owning and operating such facilities, except that the District shall not be required to provide liability insurance except to insure itself against risk of loss due to claims for which it can, in the opinion of the District's legal counsel, be liable under

the Texas Tort Claims Act or any similar law or judicial decision. Such insurance will provide, to the extent feasible and practicable, for the restoration of damaged or destroyed properties and equipment, to minimize the interruption of the services of such facilities. All premiums for such insurance shall constitute an Operation and Maintenance Expense of the System.

**Section 5.14. Future Capacity.** The Project will include capacity in pipelines and certain other facilities for future needs of FWSD, Additional Participating Members and other Customers. Member agrees that it is in the best interest of the District and Member, to plan, acquire and construct the Project and System with excess capacity in anticipation of future increases in Member's requirements and in anticipation of future new Customers. Further, FWSD agrees that if the District executes a financial plan for the Project that includes participation by the State in future capacity costs and includes deferral of a portion of the capital costs to a future date, that FWSD will assume its respective share, when due, of such System cost so deferred as if Bonds had been issued during the initial construction of the Project. The District reserves the right to Contract with Additional Participating Members and other Customers for equitable participation (on a pro rata basis) in such future capacity.

**Section 5.15. Special Provisions.** The parties hereto acknowledge and agree to the Special Provisions which are set forth in Exhibit C hereto which Exhibit is incorporated herein for all purposes.

## ARTICLE VI

**Section 6.01. Force Majeure.** If by reason of force majeure any party hereto shall be rendered unable wholly or in part to carry out its obligations under this Contract, other than the obligation of FWSD to make the payments required under this Contract; then, if such party shall give notice and full particulars of such force majeure in writing to the other parties within a reasonable time after occurrence of the event or cause relied on, the obligation of the party giving such notice, so far as it is affected by such force majeure, shall be suspended during the continuance of the inability then claimed, but for no longer period, and any such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "Force Majeure" as employed herein shall mean acts of God, strikes,

lockouts or other industrial disturbances, acts of public enemy, orders of any kind of the Government of the United States of America or the State of Texas, or any Civil or military authority, insurrection, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, partial or entire failure of water supply, or on account of any other causes not reasonably within the control of the party claiming such inability.

**Section 6.02. Limitations and Conditions.**

a) To provide the services and to perform the obligations contemplated in this Contract, it is the intent of FWSD and the District to allow the District to contract with other parties for sources of raw water and treated wastewater effluent. Obligation of the District to deliver water under this Contract is expressly subject to the District entering into such contracts. Further, it is expressly understood that such contracts may require the District to compensate such other parties, or for the District to participate with other parties in the construction of certain additional facilities in order for the District to carry out its obligations under this Contract. The District retains the right and option to construct its own facilities rather than to contract with others, if in the District's judgment such facilities, if constructed by the District, would allow the District to provide more dependable or economical service to Member.

b) If the District determines that it will be necessary to participate with other parties in the construction of facilities in order to fulfill its obligations under this Contract, FWSD hereby agrees that such participation is as much a part of the Project as if separate facilities were constructed by the District. Furthermore, any cost, rates, fees or charges applicable to pumping, transportation or treatment of water by others, and charges for other services rendered by other parties at the request of the District for the benefit of the Project and System shall constitute Operation and Maintenance Expense of the System as defined herein.

**Section 6.03. Modification.** No change, amendment or modification of this Contract shall be made or be effective which will affect adversely the prompt payment when due of all moneys required to be paid by FWSD under this Contract or any similar contract and no

such change, amendment or modification shall be made or be effective which would cause a violation of any provisions of any Bond Resolution.

**Section 6.04. Addresses and Notice.** Unless otherwise provided herein, any notice, communication, request, reply or advice (herein severally and collectively, for convenience, called "Notice") herein provided or permitted to be given, made or accepted by any party to any other party 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 party to be notified, with return receipt requested, or by delivering the same to an officer of such party, or by prepaid telegram when appropriate, addressed to the party to be notified. Notice deposited in the mail in the manner hereinabove described shall be conclusively deemed to be effective, unless otherwise stated herein, from and after the expiration of three days after it is so deposited. Notice given in any other manner shall be effective only if and when received by the party to be notified. For the purposes of notice, the addresses of the parties shall, until changed as hereinafter provided, be as follows:

If to the District, to:

Executive Director  
Upper Trinity Regional Water District  
396 West Main Street, Suite 102  
P. O. Drawer 305  
Lewisville, Texas 75067

If to Denton County Fresh Water Supply District No. 1, to:

President, Board of Directors  
Denton County Fresh Water Supply District No. 1  
2001 Bryan Tower, Suite 700  
Dallas, Texas 75201

The parties hereto 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 parties hereto.

**Section 6.05. State or Federal Laws, Rules, Orders or Regulations.** This Contract is subject to all applicable Federal and state laws and any applicable permits, ordinances,

rules, orders and regulations of any local, state or federal governmental authority having or asserting jurisdiction, but nothing contained herein shall be construed as a waiver of any right to question or contest any such law, ordinance, order, rule or regulation in any forum having jurisdiction.

**Section 6.06. Remedies Upon Default.** It is not intended hereby to specify (and this Contract shall not be considered as specifying) an exclusive remedy for any default, but all such other remedies (other than termination) existing at law or in equity may be availed of by any party hereto and shall be cumulative. Recognizing however, that the District's undertaking to provide and maintain the services of the System is an obligation, failure in the performance of which cannot be adequately compensated in money damages alone, the District agrees, in the event of any default on its part, that FWSD shall have available to it the equitable remedy of mandamus and specific performance in addition to any other legal or equitable remedies (other than termination) which may also be available. Recognizing that failure in the performance of FWSD's obligations hereunder could not be adequately compensated in money damages alone, FWSD agrees in the event of any default on its part that the District shall have available to it the equitable remedy of mandamus and specific performance in addition to any other legal or equitable remedies (other than termination) which may also be available to the District. Notwithstanding anything to the contrary contained in this Contract, any right or remedy or any default hereunder, except the right of the District to receive the Annual Payment which shall never be determined to be waived, shall be deemed to be conclusively waived unless asserted by a proper proceeding at law or in equity within two (2) years plus one (1) day after the occurrence of such default. No waiver or waivers of any breach or default (or any breaches or defaults) by any party hereto or of performance by any other party of any duty or obligation hereunder shall be deemed a waiver thereof in the future, nor shall any such waiver or waivers be deemed or construed to be a waiver of subsequent breaches or defaults of any kind, character or description, under any circumstance.

**Section 6.07. Severability.** The parties hereto specifically agree that in case any one or more of the sections, subsections, provisions, clauses or words of this Contract or the application of such sections, subsections, provisions, clauses or words to any situation or circumstance should be, or should be held to be, for any reason, invalid or unconstitutional, under the laws or constitutions of the State or the United States of America, or in

contravention of any such laws or constitutions, such invalidity, unconstitutionality or contravention shall not affect any other sections, subsections, provisions, clauses or words of this Contract or the application of such sections, subsections, provisions, clauses or words to any other situation or circumstance, and it is intended that this Contract shall be severable and shall be construed and applied as if any such invalid or unconstitutional section, subsection, provision, clause or word had not been included herein, and the rights and obligations of the parties hereto shall be construed and remain in force accordingly.

**Section 6.08. Venue.** All amounts due under this Contract, including, but not limited to, payments due under this Contract or damages for the breach of this Contract, shall be paid and be due in Denton County, Texas, which is the County in which the principal administrative offices of the District are located. It is specifically agreed among the parties to this Contract that Denton County, Texas, is the place of performance of this Contract; and in the event that any legal proceeding is brought to enforce this Contract or any provision hereof, the same shall be brought in Denton County, Texas.

**Section 6.09. Term of Contract.** This Contract shall be effective on, and from, the Contract Date. This Contract shall continue in force and effect for thirty (30) years, or for such additional time that Bonds issued by the District for the System remain outstanding, whichever date is greater. The Contract may be renewed or extended for additional periods by mutual agreement of FWSD and District as to terms and conditions. The District's obligation to provide the contracted for services shall commence from the date that the District, in writing, deems the Project operational and functional to deliver non-potable water to FWSD.



IN WITNESS WHEREOF, the parties hereto acting under authority of their respective governing bodies have caused this Contract 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 date is the Contract Date.

UPPER TRINITY REGIONAL WATER DISTRICT

Bobby D Meek  
Tom Harpool, President, Board of Directors

ATTEST:

Johnny Harris  
Johnny Harris, Secretary, Board of Directors

APPROVED AS TO FORM AND LEGALITY:

John F. Boyle, Jr.  
John F. Boyle, Jr., General Counsel  
Upper Trinity Regional Water District

DENTON COUNTY FRESH WATER SUPPLY  
DISTRICT NO. 1

Marvin Robert Feagin  
~~Michael McAdams, President, Board of Directors~~  
Marvin Robert Feagin, Vice President

ATTEST:

Chick R. Adams  
Asst. Secretary, Board of Directors

APPROVED AS TO FORM:

John F. Boyle, Jr.  
John F. Boyle, Jr., General Counsel

# EXHIBIT A

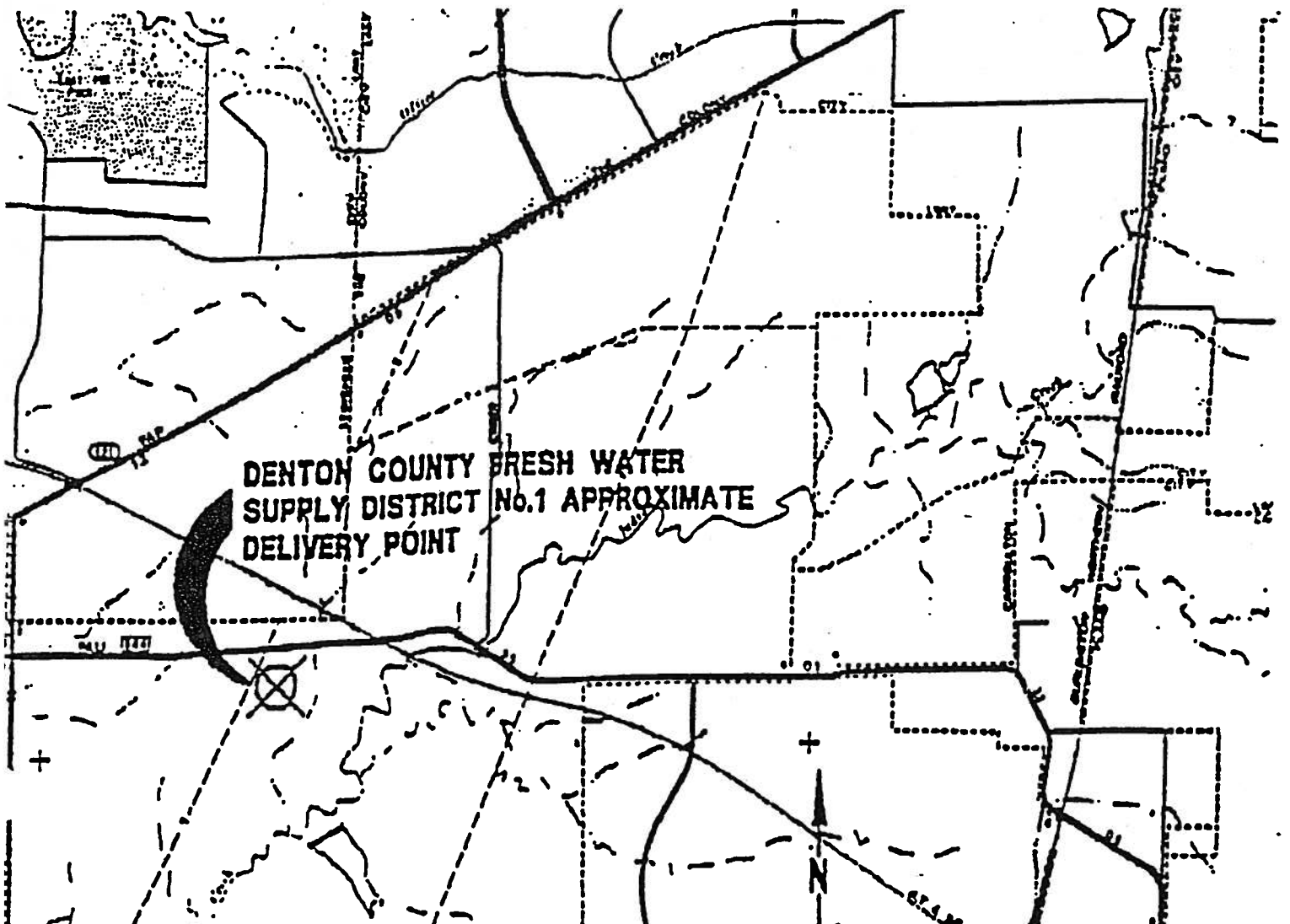
## UPPER TRINITY REGIONAL WATER DISTRICT and DENTON COUNTY FRESH WATER SUPPLY DISTRICT NO. 1 CONTRACT FOR NON-POTABLE WATER SERVICE

### APPROXIMATE DELIVERY POINT

The Point of Delivery shall be the general vicinity of the intersection of Highway 544 and the Texas Utilities Electric transmission Right of Way as shown on the following sketch.

#### Note

Upon mutual agreement of the District and Customer, an updated Exhibit A may be substituted for this Exhibit A.



## EXHIBIT B

**UPPER TRINITY REGIONAL WATER DISTRICT  
and  
DENTON COUNTY FRESH WATER SUPPLY DISTRICT NO. 1  
CONTRACT FOR NON-POTABLE WATER SERVICE**

**MINIMUM AMOUNT OF SYSTEM CAPACITY BEING COMMITTED FOR  
DENTON COUNTY FRESH WATER SUPPLY DISTRICT NO 1.**

The provisions of this Exhibit B form a part of the Contract and are applicable to the District and to FWSD as if set forth in its entirety in the body of the Contract.

**Minimum Capacity Reserved for FWSD: 3.35 mgd**

The following quantities are estimates of usage for planning purposes and shall be used by District until superseded by annual projections developed pursuant to Section 2.18 of this Contract.

<u>Non-Potable Water</u>	<u>Estimated Quantities (gallons per year)</u>	
	<b>First Year</b>	<b>Fifth Year</b>
Raw Water	0	89,000,000
Treated Wastewater Effluent	158,000,000	86,000,000

To support the separate facilities to make both raw water and treated wastewater effluent available, reasonable quantities of each shall be purchased by FWSD.

# EXHIBIT C

## UPPER TRINITY REGIONAL WATER DISTRICT and DENTON COUNTY FRESH WATER SUPPLY DISTRICT NO. 1 CONTRACT FOR NON-POTABLE WATER SERVICE

### SPECIAL PROVISIONS FOR DENTON COUNTY FRESH WATER SUPPLY DISTRICT NO. 1

The provisions of this Exhibit C form a part of the Contract and are applicable to the Upper Trinity Regional Water District (the "District") and to Denton County Fresh Water Supply District No. 1 ("FWSD") as if set forth in their entirety in the body of the Contract.

1. An election held on January 15, 1983 and ordered by the Commissioners Court of Denton County, Texas pursuant to Chapter 53, Texas Water Code, created the FWSD to conserve, transport and distribute fresh water from any sources for domestic and commercial purposes. Section 53.198, Texas Water Code, empowers a fresh water supply district to hold an election therein to authorize a maintenance tax and, if such tax be voted, to thereafter levy an ad valorem tax to pay costs of district improvements and other lawful expenses of the district. FWSD hereby pledges, covenants and promises to hold a maintenance tax election for an unlimited maintenance tax on the date of its next general election and at subsequent general elections if same be necessary. If such tax be voted and in the event the FWSD is unable to pay its obligations under this Agreement from its revenues or other legally available funds, the FWSD further pledges, covenants and promises to levy an ad valorem tax in an amount sufficient to accomplish the payment of such obligations, and such obligations shall be and constitute lawful expenses of the FWSD.
2. Section 53.029, Texas Water Code, authorizes a fresh water supply district under certain circumstances to subdivide into two new districts. Nothing contained in this Agreement shall preclude such subdivision, provided the District is notified in writing at least sixty (60) days in advance of such subdivision and provided the obligations under this Agreement are assumed by the two new districts in a manner that is approved in writing by the District. The review by the District shall be limited to fiscal responsibility and operational compatibility. The District agrees not to unreasonably withhold its approval or disapprove such proposal within forty-five (45) days of receipt of notice.

**Exhibit C - Contract for Non-Potable Water Service**

**Page 2**

3. The FWSD, or any district created therefrom pursuant to Section 53.029 of the Texas Water Code, retains the right to transfer, assign and convey its rights, titles, interests and responsibilities under this Agreement to any city, town or village that annexes FWSD in its entirety and assumes said responsibilities as a matter of law or agrees to assume said rights, titles, interests and responsibilities in their entirety. Any other transfer, assignment and conveyance must be submitted to the District in writing for its approval. The District shall approve or disapprove said request within 120 days of receipt of written request and such approval shall not be unreasonably withheld.
4. During the interim period until the Project becomes operational, FWSD is obligated to pay all costs required to administer, develop and operate the Project.
5. In recognition of FWSD's participation with District in the Raw Water Contract for water from Cooper Reservoir in Sulphur River Basin, District agrees to provide a raw water credit to FWSD for the appropriate raw water component of the cost of non-potable water service actually being provided to FWSD if and when such water from Cooper Reservoir is available to District for use in the System, whether such water from Cooper Reservoir is actually delivered directly to the District or whether other raw water is made available by substitution to District as a result of an agreement to exchange water from Cooper Reservoir with water otherwise available in local Denton County water reservoirs from City of Dallas or other entities holding water rights.
6. Other provisions of this Contract notwithstanding, District agrees to first use FWSD's water from Cooper Lake, when available, to fulfill obligations of this Contract to deliver raw water to FWSD, unless otherwise requested by FWSD. Further, if any of FWSD's water from Cooper Lake is temporarily surplus to FWSD's needs, District agrees to sell such water on FWSD's behalf to other Customers, if any, of the System.
7. If FWSD desires that the District construct delivery facilities to a Point of Entry other than the one planned by the District, the District will design and construct such facility upon mutual approval by the District and FWSD of the engineering plans and upon FWSD depositing with the District funds to cover the estimated actual increase in cost.
8. In conjunction with the non-potable water service to be provided by the District to FWSD, there may be an opportunity to construct storage tanks or other facilities jointly with the District or others. If the District and FWSD agree that such joint facilities are mutually beneficial, a separate agreement will be executed.