



GARLAND

AGENDA

CITY COUNCIL WORK SESSION City of Garland

REMOTE MEETING

Monday, November 9, 2020
6:00 p.m.

DEFINITIONS:

Written Briefing: Items that generally do not require a presentation or discussion by the staff or Council. On these items the staff is seeking direction from the Council or providing information in a written format.

Verbal Briefing: These items do not require written background information or are an update on items previously discussed by the Council.

NOTICE: Due to the COVID-19 emergency, and pursuant to Section 551.125 of the Texas Government Code and the executive orders of Governor Greg Abbott suspending provisions of the Texas Government Code and other applicable laws of the State regarding normal open meetings, the City Council will hold this meeting by internet/telephonic remote means.

The meeting will be broadcast by webinar or telephone at the following URL:

https://garlandtx.zoom.us/webinar/register/WN_4QxvZ1GVStO72AH7wMf3xw

Registration for the online meeting is required. The meeting will be recorded and will be available for viewing the next day at www.garlandtx.gov.

For those without internet access to the meeting, a dial-in option is available. The numbers are:

346-248-7799
470-250-9358
470-381-2552

The Meeting ID is: 934 3963 1678

For participants (online and by phone) who wish to speak, a public comments period is provided as the first item on the agenda. If you desire to address the City Council on a matter that is posted on this agenda, please be prepared to do so at the beginning of the meeting. After the City Council has begun its discussion of the agenda, you will not be recognized to speak. The public comments portion of the meeting is provided for citizen comments. You are invited to offer a comment or make a statement on any item on the agenda. However, please bear in mind that offering comments should not be done in the form of posing questions. Generally, due to legal restrictions, the City Council is not able to answer questions during the public comments portion of the agenda. Your comments must relate to an item on this agenda - non-germane comments are not in order.

If an Executive Session is included as part of the agenda for this meeting, the Executive Session will be conducted by teleconference between and among the members of the City Council and relevant City staff. Public access to that call is prohibited by State law.

COUNCIL HOUSE RULES

- | | |
|--|---|
| 1. Decisions based on issues, goals and vision. | 9. Follow goals, principles and action agenda. |
| 2. Do not take things personal. | 10. Decide, vote and move on. |
| 3. Project a positive attitude. | 11. Avoid ambushes - Council or staff. |
| 4. Focus on issues, not on the person. | 12. Talk to staff before meetings. |
| 5. Be prepared to discuss issues. | 13. Vote our convictions, but be willing to compromise <i>"What is best for Garland."</i> |
| 6. Maintain decorum. | 14. Follow Roberts Rules of Order consistently. |
| 7. Keep your sense of humor. | 15. Agree to disagree. |
| 8. Honor and respect each other; accept each other as individuals. | 16. Be open and honest. |

NOTICE: The City Council may recess from the open session and convene in a closed executive session if the discussion of any of the listed agenda items concerns one or more of the following matters:

(1) Pending/contemplated litigation, settlement offer(s), and matters concerning privileged and unprivileged client information deemed confidential by Rule 1.05 of the Texas Disciplinary Rules of Professional Conduct. Sec. 551.071, Tex. Gov't Code.

(2) The purchase, exchange, lease or value of real property, if the deliberation in an open meeting would have a detrimental effect on the position of the City in negotiations with a third person. Sec. 551.072, Tex. Gov't Code.

(3) A contract for a prospective gift or donation to the City, if the deliberation in an open meeting would have a detrimental effect on the position of the City in negotiations with a third person. Sec. 551.073, Tex. Gov't Code.

(4) Personnel matters involving the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee or to hear a complaint against an officer or employee. Sec. 551.074, Tex. Gov't Code.

(5) The deployment, or specific occasions for implementation of security personnel or devices. Sec. 551.076, Tex. Gov't Code.

(6) Discussions or deliberations regarding commercial or financial information that the City has received from a business prospect that the City seeks to have locate, stay, or expand in or near the territory of the City and with which the City is conducting economic development negotiations; or to deliberate the offer of a financial or other incentive to a business prospect of the sort described in this provision. Sec. 551.087, Tex. Gov't Code.

(7) Discussions, deliberations, votes, or other final action on matters related to the City's competitive activity, including information that would, if disclosed, give advantage to competitors or prospective competitors and is reasonably related to one or more of the following categories of information:

- generation unit specific and portfolio fixed and variable costs, including forecasts of those costs, capital improvement plans for generation units, and generation unit operating characteristics and outage scheduling;
- bidding and pricing information for purchased power, generation and fuel, and Electric Reliability Council of Texas bids, prices, offers, and related services and strategies;
- effective fuel and purchased power agreements and fuel transportation arrangements and contracts;
- risk management information, contracts, and strategies, including fuel hedging and storage;
- plans, studies, proposals, and analyses for system improvements, additions, or sales, other than transmission and distribution system improvements inside the service area for which the public power utility is the sole certificated retail provider; and
- customer billing, contract, and usage information, electric power pricing information, system load characteristics, and electric power marketing analyses and strategies. Sec. 551.086; Tex. Gov't Code; Sec. 552.133, Tex. Gov't Code]

1. Public Comments on Work Session Items

Persons who desire to address the City Council on any item on the Work Session agenda are allowed three minutes to speak. Speakers are taken only at the beginning of the meeting, other than invited testimony.

Speakers are grouped by Work Session item and will be taken in the order of the Work Session agenda. Speakers must submit to the City Secretary a completed speaker's card before the beginning of the meeting. Speaker cards will not be accepted after the Mayor calls the meeting to order. Speaker cards are available in the lobby, at the visitor's side of the Work Session Room, and from members of staff.

Speakers are limited to addressing items on the Work Session agenda – any item relating to a Regular Session agenda item should be addressed at the Regular Session and any item not on an agenda may be addressed during the open microphone at the end of the Regular Session.

2. Consider the Consent Agenda

A member of the City Council may ask for discussion or further information on an item posted as a consent agenda item on the next Regular Meeting of the City Council. The Council Member may also ask that an item on the posted consent agenda be pulled from the consent agenda and considered for a vote separate from consent agenda items on the regular agenda. All discussions or deliberations on this portion of the work session agenda are limited to posted agenda items and may not include a new or unposted subject matter.

3. Written Briefings:

a. Amendment to Chapter 52 "Environmental Waste Services" to Add Penalty for Not Complying with Commercial Franchise Agreement

Council is requested to consider approving an amendment to Chapter 52 of the City Ordinance "Environmental Waste Services" in order to provide a penalty for the collection of commercial waste without first entering a franchise agreement and add enforcement actions for noncompliance. Unless otherwise directed by Council, this item will be scheduled for formal consideration at the December 1, 2020 Regular Meeting.

b. Update on CARES Act Funding

Staff will update Council on the revised \$13.2 million CARES Act budget submitted to Dallas County on October 28, 2020.

4. Verbal Briefings:

a. COVID-19 Response Update and Further Actions

Staff will provide an update to Council and ask for Council direction, if needed, on various matters related to COVID-19 and actions being taken by the City.

b. Water and Wastewater Service to D.R. Horton Tract (Fireside by the Lake)

D.R. Horton owns land adjacent to the corporate limits of Garland, but within the City of Dallas' extra-territorial jurisdiction. D.R. Horton is seeking to develop the area primarily for residential housing, and has requested access to a supply of treated water and treatment of wastewater for the property. Council was previously briefed at the October 21, 2019 Work Session. This item provides Council the final draft of the Memorandum of Understanding (MOU) and water and wastewater contracts to deliver these services to Fireside by the Lake. Unless otherwise directed by Council, this item will be scheduled for formal consideration at the December 1, 2020 Regular Meeting.

c. Overview of Community Development Block Grant (CDBG-CV) and Emergency Solutions Grant (ESG-CV) Funding That Will Be Received from HUD Through Round 3 of the CARES Act

Staff will seek Council's direction on options to enable immediate deployment of new projects utilizing CARES Act funding totaling \$3,698,089. A public hearing has been posted for the November 10, 2020 Regular Meeting to solicit any public input on acceptance or uses of the ESG-CV and CDBG-CV round 3 of funding authorized through the CARES Act that Garland expects to receive.

d. Administrative Services Committee Update

Mayor Pro Tem Robert John Smith, Chair of the Administrative Services Committee, will provide a committee report on the following items:

- Policy for Visiting Dignitaries and Shared Hosting of Events*
- Creation of Additional Orientation Material for New Council Members*
- Consider Research and/or Adoption of other Rules of Order for Council*
- Non-profit (NPO) and Sports Field Use (SFU) Drafts*

e. Public Safety Committee Report

Deputy Mayor Pro Tem Robert Vera, Chairman of the Public Safety Committee, and Chief Jeff Bryan, Staff Liaison to the Committee, will provide a committee report on the following items assigned to the Committee:

- *Consider an ordinance requiring lawn service vehicles to have placards while operating in residential areas*
- *Consider an ordinance to create specific rules for the use of Downtown Square*

5. Announce Future Agenda Items

A member of the City Council, with a second by another member, or the Mayor alone, may ask that an item be placed on a future agenda of the City Council or a committee of the City Council. No substantive discussion of that item will take place at this time.

6. Adjourn



GARLAND POLICY REPORT

City Council Work Session Agenda

3. a.

Meeting Date: November 9, 2020

Item Title: Amendment to Chapter 52 "Environmental Waste Services" to Add Penalty for Not Complying with Commercial Franchise Agreement

Submitted By: Uriel Villalpando, EWS Director

Strategic Focus Areas: Sound Governance and Finances

ISSUE

Consider approving an amendment to Chapter 52 of the City Ordinance "Environmental Waste Services" in order to provide a penalty for the collection of commercial waste without first entering a franchise agreement and add enforcement actions for noncompliance.

OPTIONS

1. Approve request to amend Ch. 52 "Environmental Waste Services."
2. Do not approve the amendment and provide guidance on how to pursue compliance with current EWS ordinance.

RECOMMENDATION

Staff recommends Option 1. Unless otherwise directed by Council, this item will be scheduled for formal consideration at the December 1, 2020 Regular Meeting.

BACKGROUND

Sec. 52.27 of the current City Ordinance prohibits any person from engaging in the collection of solid waste without first entering into a franchise agreement. However, this Section does not have any enforcement actions for those not complying with the franchise fee requirement.

As an open market municipality for commercial waste collection services, an estimated 44 private waste collection companies are currently operating and competing with the City of Garland for waste collection and removal services. Of the estimated 44 private companies, only 13 have a current franchise fee agreement with the City and are paying the required 5% franchise fee. Approving the request to amend Chapter 52 "Environmental Waste Services", will add enforcement actions that will allow the City of Garland to collect an estimated \$100,000 in additional General Fund revenue from franchise fees. For reference, during Fiscal Year 2019/2020, a total of \$214,027 was collected in franchise fees from the registered franchised haulers.

Essential components of this ordinance amendment include the following:

1. Repealing section 52.27
2. Adding Section 52.39 Prohibiting collection of commercial waste without a franchise
3. Adding Section 52.40 Assigning franchise administration duties
4. Adding Section 52.41 Regarding the granting of non-exclusive franchises
5. Adding Section 52.42 Providing for a franchise fee of five percent of the operator's gross revenues
6. Adding Section 52.43 Providing a penalty
7. Providing that a violation subjects the person to audit and is a misdemeanor punishable by a fine
8. Providing a savings clause
9. Providing a severability clause
10. And providing an effective date

The EWS and Financial Services Departments are requesting approval to amend Chapter 52 "Environmental Waste Services" and begin enforcing the franchise fee requirement for private waste collection haulers operating within Garland city limits. An annotated copy of the proposed ordinance changes is attached.

CONSIDERATION

As the economy recovers from the COVID-19 pandemic and more businesses re-open, it is anticipated that the number of private waste collection companies operating in Garland will grow. It is to the benefit of the City of Garland to approve the request to amend Chapter 52 "Environmental Waste Services" and begin enforcing the franchise fee requirement on all private waste collection haulers operating in the City of Garland.

Attachments

EWS Ordinance With Proposed Changes

ORDINANCE NO.

AN ORDINANCE AMENDING CHAPTER 52, "ENVIRONMENTAL WASTE SERVICES", OF THE CODE OF ORDINANCES OF THE CITY OF GARLAND, TEXAS; REPEALING SECTION 52.27; ADDING SECTION 52.39 PROHIBITING COLLECTION OF COMMERCIAL WASTE WITHOUT A FRANCHISE; ADDING SECTION 52.40 ASSIGNING FRANCHISE ADMINISTRATION DUTIES; ADDING SECTION 52.41 REGARDING THE GRANTING OF NON-EXCLUSIVE FRANCHISES; ADDING SECTION 52.42 PROVIDING FOR A FRANCHISE FEE OF FIVE PERCENT OF THE OPERATOR'S GROSS REVENUES; ADDING SECTION 52.43 PROVIDING A PENALTY; PROVIDING THAT A VIOLATION SUBJECTS THE PERSON TO AUDIT AND IS A MISDEMEANOR PUNISHABLE BY A FINE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GARLAND, TEXAS:

Section 1

That Sec. 52.27 of Chapter 52, "ENVIRONMENTAL WASTE SERVICES", of the Code of Ordinances of the City of Garland, Texas, is hereby repealed.

Sec. 52.27 [Repealed]

Section 2

That Sec. 52.39 of Chapter 52, "ENVIRONMENTAL WASTE SERVICES", of the Code of Ordinances of the City of Garland, Texas, is hereby added as follows:

Sec. 52.39 Collection by persons other than City, franchise agreement required

It shall be unlawful for any person to engage in the collection of solid waste, landscape waste, bulky waste, or recycle materials within the City without first entering into a franchise agreement with the City for that purpose.

Section 3

That Sec. 52.40 of Chapter 52, "ENVIRONMENTAL WASTE SERVICES", of the Code of Ordinances of the City of Garland, Texas, is hereby added as follows:

Sec. 52.40 Franchise Administration

Any franchise granted pursuant to this article shall be administered by the Managing Director or his designee, upon such application and rules as the Managing Director may establish, including standards for performance. Such standards for performance may include, but are not necessarily restricted to, the type of vehicle to be used in collection, number of pickups per week required, method and route for transporting said collection, appropriate disposal locations, and identification of vehicles.

Section 4

That Sec. 52.41 of Chapter 52, "ENVIRONMENTAL WASTE SERVICES", of the Code of Ordinances of the City of Garland, Texas, is hereby added as follows:

Sec. 52.41 Granting of Franchise

- (A) After receiving a complete application, the Managing Director may make such investigation as he considers necessary to determine whether the applicant meets the requirements of law and of this Chapter.
- (B) The Managing Director may require the applicant to furnish additional information to assist the Managing Director in his determination.
- (C) After the Managing Director determines whether the applicant meets the requirements of the law and this Chapter, the Managing Director shall either grant or deny the franchise application.
- (D) Each applicant whose franchise application is granted shall enter into a franchise agreement approved by the Managing Director. The franchise agreement shall incorporate the terms of this section and shall address at a minimum the following terms and conditions, which shall be as consistent as practicable between franchises:
 - (1) Definition of gross revenues;
 - (2) Statement that the franchise is not exclusive;
 - (3) Amount and time of payment to the City, including right of the City to inspect the franchisee's records to determine compliance and provision for a late penalty;
 - (4) Requirements for record keeping;

- (5) Requirements for release, indemnification and insurance;
 - (6) Provisions for default and termination, including the opportunity to cure;
 - (7) Payment of liquidated damages to the City;
 - (8) Prohibition against assignment of franchise without consent of the City; and
 - (9) Such other miscellaneous terms and conditions that the Managing Director determines to be necessary, appropriate and consistent with terms and conditions in other city franchises.
- (E) The City shall not grant or renew a franchise unless the Managing Director finds and determines that the public convenience will be served by the issuance of a franchise. The burden of proof shall be upon the applicant to establish by clear and convincing evidence that the public convenience will be served by the granting or renewal of a refuse collection franchise.
- (F) All franchises issued pursuant to the provisions of this section shall be revocable by the Managing Director for good cause as defined in the terms and conditions of the franchise agreement. The Managing Director's revocation of a franchise is appealable to the City Manager or his designee.

Section 5

That Sec. 52.42 of Chapter 52, "ENVIRONMENTAL WASTE SERVICES", of the Code of Ordinances of the City of Garland, Texas, is hereby added as follows:

Sec. 52.42 Franchise Fee

- (A) Any franchise granted pursuant to this chapter shall provide that the commercial solid waste operator shall be liable for an annual franchise fee equal to five percent (5%) of the operator's gross revenues from the collection, hauling, or transporting of solid waste, landscape waste, bulky waste, or recycle materials within the City. The franchise fee shall be payable quarterly, within thirty (30) days of the close of the calendar quarter for which the quarterly payment is calculated. The initial quarterly payment shall cover the period beginning as of the

effective date of the franchise. Any necessary prorations shall be allowed. The operator shall reflect the franchise fee as a separate line item on the invoice from the operator to the customer.

- (B) Franchise fees received more than thirty (30) days after the close of the calendar quarter for which the quarterly payment is calculated are deemed delinquent. Delinquent franchise fees shall be subject to interest at the rate of twelve percent (12%) per annum until the delinquent franchise fees are paid in full. In addition, delinquent franchise fees shall be subject to a late payment penalty of five percent (5%) for each month or portion thereof that the delinquent franchise fees are outstanding. In no event, however, shall the penalties exceed twenty-five percent (25%) of the total delinquent fees nor shall interest charged exceed the maximum rate allowed by law.

Section 6

That Sec. 52.43 of Chapter 52, "ENVIRONMENTAL WASTE SERVICES", of the Code of Ordinances of the City of Garland, Texas, is hereby added as follows:

Sec. 52.43 Penalty

- (A) Without limitation of other remedies available to the City, persons operating in violation of the terms of this chapter shall be subject to an audit by the City and liable to the City for all fees authorized under this chapter dating to the inception of such violation.
- (B) Any person who violates any provision of sections 52.39 through 52.43 of this Code of Ordinances shall be guilty of an offense and upon conviction thereof, shall be punished by a fine of not less than \$150.00 nor more than \$500.00 for each violation.

Section 7

That a violation of any provision of this Ordinance shall be a misdemeanor punishable in accordance with Sec. 10.05 of the Code of Ordinances of the City of Garland, Texas.

Section 8

That Chapter 52, "ENVIRONMENTAL WASTE SERVICES", of the Code of Ordinances of the City of Garland, Texas, as amended, shall be and remain in full force and effect save and except as amended by this Ordinance.

Section 9

That the terms and provisions of this Ordinance are severable and are governed by Sec. 10.06 of the Code of Ordinances of the City of Garland, Texas.

Section 10

That this Ordinance shall be and become effective immediately upon and after its passage and approval.

PASSED AND APPROVED this the _____ day of _____, 2020.

CITY OF GARLAND, TEXAS

Mayor

ATTEST:

City Secretary



GARLAND POLICY REPORT

City Council Work Session Agenda

3. b.

Meeting Date: November 9, 2020
Item Title: Update on CARES Act Funding
Submitted By: Matt Watson, Finance Director
Strategic Focus Areas: Sound Governance and Finances

ISSUE

This item is presented to update Council on the revised \$13.2 million CARES Act budget submitted to Dallas County on October 28, 2020. Staff will be available to discuss this update with Council, if needed.

BACKGROUND

At the June 2, 2020 Regular Meeting, Council authorized the City Manager to execute an inter-local agreement related to the Dallas County CARES Act funding. This agreement provided the City with approximately \$13.2 million in Coronavirus Relief Funds to be used by the City in responding to the COVID-19 public health emergency. As part of the inter-local agreement, the City would have to spend these funds by November 30th, 2020 or be forced to return any unspent funds to the County after this date. After the execution of this agreement, the City allocated significant portions of the CARES Act funds towards programs designed to assist Garland residents and business owners impacted by the COVID-19 pandemic. These programs included a Residential Mortgage/Rental Assistance Program, a COVID-19 Resident Testing Program, and a Small Business Assistance Program. However, as reported by staff at the October 12, 2020 Work Session, a significant portion of the funds allocated towards these programs were unspent and in jeopardy of being returned to the County due to the accelerated deadlines imposed by the County and Federal government.

However, since this report was made to City Council, staff received clarification on guidance issued by both the Treasury Department and the Treasury Department's Office of Inspector General (OIG) that gave the City the opportunity to reallocate funds toward public safety, and public health labor cost budgeted for in FY 2020. Previously, there had been contradictory guidance issued by the Treasury and OIG regarding the reporting requirements and use of CARES funds to cover cost that were already accounted for in the most recently approved budget.

The deadline to notify Dallas County of a budget reallocation was October 31, 2020. Staff submitted a budget reallocation to the County on October 28, 2020 requesting that these unspent funds be reallocated towards public safety and public health payroll cost incurred between June 14, 2020 and August 15, 2020. The timeframe represents the height of new

COVID-19 cases in Garland where public safety and health employees' time was substantially dedicated to responding to the COVID-19 pandemic and totaled approximately \$8.5 million. This reallocation of CARES Act funds would ensure that a minimum amount of funds would need to be returned to the County. In addition, this strategy will provide approximately \$8.5 million in additional General Fund Balance to be used to meet the community's needs beyond the deadlines imposed by the County and Federal government. It should be noted that the budget reallocation submitted to the County also included adding \$200,000 to the Small Business Program to allow for a third round of funding to be distributed and \$18,000 was added to allow for a food truck drop to provide meals to families impacted by COVID-19.

The County approved the Budget reallocation on October 30, 2020, and a summary of changes is presented in the below table. In addition, the detail CARES budget is attached to this agenda item.

Summary of Dallas County CARES Act Budget Changes

Description	Budget as of October 12, 2020 Work Session	Reallocation Submitted to County on October 28, 2020	Change
Internal COVID-19 Response	\$5,000,000	\$10,000,000	\$5,000,000
Residential COVID-19 Testing	\$2,300,000	\$1,700,000	\$(600,000)
Residential Assistance Program	\$5,400,000	\$800,000	\$(4,600,000)
Small Business Assistance Program	\$500,000	\$700,000	\$200,000
Total	\$13,200,000	\$13,200,000	\$0

CONSIDERATION

The United States Department of Treasury and the Department of Treasury Office of Inspector General have issued multiple updates to the guidance and Frequently Asked Questions (FAQ) documents on eligibility requirements for this grant. These updates have, on many occasions, contradicted and/or changed previous statements issued. Due to the frequency of updates and changes in requirements associated with this funding, staff and the City Attorney's Office recommend holding the \$8.5 million of additional General Fund Balance in an escrow account and not program the funds until further information becomes available regarding the audit process and/or additional guidance becomes available from the United States Treasury Department and OIG.

Attachments

Detail CARES Act Budget

Submitted October 28, 2020 to Dallas County

	YTD	Budget	
Revenue			
Coronavirus Relief Funds	\$ 13,174,755	\$ 13,174,755	100%
Interest Earnings	4,213	4,213	100%
Total Revenue	\$ 13,178,968	\$ 13,178,968	100%
City of Garland Programs			
Residential COVID-19 Testing	\$ 1,430,220	\$ 1,681,981	85%
Residential Assistance Program	471,729	799,000	59%
Small Business Assistance Program	270,524	665,524	41%
Food Pantry Program	-	18,000	0%
Sub-Total	\$ 2,172,473	\$ 3,164,505	69%
City of Garland COVID-19 Response			
Public Safety/Health Personnel	\$ 8,471,668	\$ 8,471,668	100%
Library Equipment and Distant Learning Program	-	222,250	0%
Contact Tracers	115,887	225,000	52%
UV Lights for HVAC	-	150,000	0%
Cleaning & Sanitation	164,688	181,679	91%
Signs, Banners, & Public Media Relations	27,739	30,000	92%
Meals and Water for COVID Meetings and Crews	3,612	3,800	95%
Medical Supplies	105,878	142,944	74%
COVID 19 Office Supplies	19,858	25,000	79%
COVID 19 Environmental Waste Temp Labor	834	835	100%
Technology/Teleworking	59,908	70,000	86%
COVID 19 Education and Training	943	943	100%
Personal Protective Equipment	229,767	285,000	81%
Quarantine/Lodging Exp.	7,398	8,000	92%
Facilities Retrofit and Safety Upgrades	65,015	75,000	87%
Temp. Kiosk	117,990	117,991	100%
COVID-19 Testing Public Safety	140	140	100%
Wastewater Testing	600	600	100%
UV Lights and Filtration system on Ambulance	3,613	3,613	100%
Sub-Total	\$ 9,395,538	\$ 10,014,463	94%
Grand Total	\$ 11,568,011	\$ 13,178,968	88%



**GARLAND
CITY COUNCIL ITEM SUMMARY SHEET**

City Council Work Session Agenda

4. a.

Meeting Date: November 9, 2020

Item Title: COVID-19 Response Update and Further Actions

Summary of Request/Problem

Staff will provide an update to Council and ask for Council direction, if needed, on various matters related to COVID-19 and actions being taken by the City.

Recommendation/Action Requested and Justification

Council discussion.



**GARLAND
CITY COUNCIL ITEM SUMMARY SHEET**

City Council Work Session Agenda

4. b.

Meeting Date: November 9, 2020

Item Title: Water and Wastewater Service to D.R. Horton Tract (Fireside by the Lake)

Submitted By: Wes Kucera, Managing Director

Summary of Request/Problem

D.R. Horton owns approximately 263.444 acres of land adjacent to the corporate limits of the City of Garland, but within the City of Dallas' extra-territorial jurisdiction. D.R. Horton is seeking to develop the area primarily for residential housing, and has requested access to a supply of treated water and treatment of wastewater for the property. Council was previously briefed at the October 21, 2019 Work Session.

This item provides Council the final draft of the Memorandum of Understanding (MOU) and water and wastewater contracts to deliver these services to Fireside by the Lake. The MOU provides the agreement, including developer obligations for the property, and the water and wastewater contracts offer the details of supplying each service.

Recommendation/Action Requested and Justification

Unless otherwise directed by Council, this item will be scheduled for formal consideration at the December 1, 2020 Regular Meeting.

Attachments

Draft Wholesale Water Contract Garland-Fireside by the Lake

MOU Garland-Fireside by the Lake

Fireside by the Lake - Cypress Cove Presentation

Draft Wholesale Wastewater Contract Fireside by the Lake

WHOLESALE WATER CONTRACT

STATE OF TEXAS

§

§

COUNTY OF DALLAS

§

This Wholesale Water Contract ("Contract") is made and entered into this ____ day of November, 2020, by and between the City of Garland, Texas, a municipal corporation in Dallas County, Texas, acting under the laws of the State of Texas (hereinafter called "City"), and Dallas County Municipal Utility District No. 4, a municipal utility district operating pursuant to the provisions of Article XVI, Section 59 of the Texas Constitution and Chapters 49 and 54 of the Texas Water Code (hereinafter called "Customer").

RECITALS

The following recitals are (1) true and correct; (2) incorporated as part of this Contract for all purposes; (3) evidence the intent of the Parties in entering into this Contract; and (4) to be used in interpreting this Contract:

WHEREAS, the City owns and operates water distribution and water supply facilities; and,

WHEREAS, Customer is desirous of obtaining up to 400,000 gallons per day ("gpd") of an adequate and dependable water supply; and,

WHEREAS, Customer was created to provide, among other services, water supply service to certain property in Dallas County, Texas to be known as Fireside By The Lake (the "Development"), which Development covers the 263.444 acres of land described in Exhibit "A", attached hereto and made a part hereof (the "Property"); and,

WHEREAS, the City has available potable water quantities hereinafter contracted to be sold by it to Customer, subject to the terms and provisions of this Contract; and,

WHEREAS, the Parties desire to establish provisions for the sale and distribution of treated water by the City to Customer and to establish the rate, duration, metering, and related responsibilities of the Parties.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Parties agree that the City will furnish and Customer will pay for water supply services upon the terms and conditions hereafter set forth, to wit:

AGREEMENT

Article 1. General

1.01 Definitions. The following terms and expressions used in this Contract, unless the context indicates otherwise, shall mean:

Contract means this “Wholesale Water Contract” and any subsequent amendments agreed to in writing by the Parties.

Business Day means any Day other than Saturdays, Sundays and City’s published holiday s.

Day means a 24-hour period from 12:00 a.m. to 11:59 p.m.

Customer’s System means that system by which Customer delivers Treated Water to its retail customers, all of whom must be located within the physical boundaries of the Property as described in Exhibit “A”.

Delivery Point(s) means the point(s) at which City agrees to deliver Treated Water under this Contract. The Delivery Point(s) are located as shown on Exhibit “B”. The Parties may mutually agree upon additional Delivery Points.

Emergency means a bona-fide emergency condition created by unforeseeable mechanical failure, by unprecedented high rate of Treated Water usage (such as might result from a major fire or a major water main break), or by such other circumstances beyond the Parties’ control.

Garland System means the Water supply system owned by Garland located on its side of the Delivery Point.

Meter means the metering facility or device to be installed at the Metering Point to measure the amount of Treated Water delivered to Customer by City, as provided in this Contract. A Meter will not be required to be installed at the Delivery Point which is intended to be closed during normal operations and only opened in the case of an Emergency.

Metering Point means the location at which the Meter shall be installed, as reflected on Exhibit “B”.

NTMWD means the North Texas Municipal Water District.

Party means either the City of Garland (“City”) or Dallas County Municipal Utility District No.4 (“Customer”), and “Parties” means City and Customer, collectively.

Rate means the dollar amount per 1,000 gallons applied to Customer’s metered usage of Treated Water in order to calculate the Volume Charge. The Rate includes the following costs associated with providing Treated Water to Customer:

- a. The cost of water purchased from NTMWD as adjusted for an assumed 2% water loss factor;
- b. The cost of supplemental treatment of Water by the City from NTMWD needed to maintain the quality of water to the Delivery Point;

- c. The cost of transmitting Water from the City's point of delivery from NTMWD to the Customer's Delivery Points;
- d. Applicable general and administrative cost incurred by the City; and,
- e. The Customer's proportional share of infrastructure improvements incurred by the City in order to provide the necessary supply of Water to the Delivery Point.

Rate of Flow means usage on a per minute basis (i.e., gallons per minute ("gpm")).

Regulatory Requirements means all applicable requirements and provisions of federal, state, and county constitutions, laws, statutes, rules, regulations and ordinances enacted or issued from time to time, including, without limitation, all applicable sections of the Texas Water Code and the rules and regulations of the Texas Commission on Environmental Quality ("TCEQ"), Public Utility Commission ("PUC"), and the Texas Administrative Code ("TAC"), and all judicial and administrative orders, judgements, and decrees of any governmental authority having jurisdiction concerning the matters contained herein issued from time to time.

Treated Water or Water means water treated by the North Texas Municipal Water District and distributed by the City so that it is potable water meeting the minimum water quality requirements for human consumption as prescribed by the TCEQ or other appropriate regulatory agency with jurisdiction.

Water Conservation means those practices, techniques, and technologies that will reduce the consumption of Water, reduce the loss or waste of Water, improve efficiency in the use of Water, and/or increase the recycling and reuse of Water.

1.02 Effective Date. The Effective Date shall be the later of the dates this Contract is approved by City, and signed by the authorized representatives of each Party.

1.03 Term. This Contract shall continue in force and effect for a period of twenty (20) years from the Effective Date hereof and shall be subsequently extended automatically for additional ten-year terms until terminated by either Party in accordance with the terms hereof. A Party wishing to terminate this Contract must give the other Party no less than three (3) years advance written notice of its intent to terminate at the end of the current term.

Article 2 Party Responsibilities.

2.01 City. City is responsible for (i) timely providing up to 400,000 gpd of Water to serve the Development, (ii) operating a Water supply system to the extent permitted by available Water supply, (iii) developing cost of service information to support rate changes, and (iv) informing Customer of changes in financial data.

2.02 Customer. Customer is responsible for (i) keeping the City informed concerning its projected Water supply needs and operating requirements, (ii) planning and managing the

Customer's System to promote Water conservation and efficient system operation, and (iii) paying Rates imposed by City pursuant hereto. Customer is also responsible for maintaining pumping and pressure requirements and storage capacity within Customer's System in accordance with rules and regulations set forth by the TCEQ, or its successor agency. Customer has advised the City that upon full development of the Property, Customer may be providing Water up to 400,000 gpd to its retail customers. Within six (6) months of the Effective Date, Customer shall provide the City with a report as to its existing and projected needs for the ensuing five (5) year period. Customer shall continue to provide City a report of Customer's existing and projected needs for the ensuing five-year period every third (3rd) year after the Effective Date of this Contract.

Article 3 Water Quantity; Quality; Price and Terms

A. Unit of Measurement

3.01 Unit of measurement. The unit of measurement for Water delivered under the provisions of this Contract shall be one thousand (1,000) gallons of Water, U.S. Standard Liquid Measure.

B. Water Quality

3.02 Delivery rates. Rates of delivery shall be regulated by a rate of flow controller installed by the Customer. Upon installation, ownership of the rate of flow controller and associated facility shall be transferred to the City, which shall operate, maintain, and have sole right of access to said facility.

3.03 Limitation of usage. The City shall have authority to limit Customer's usage in the event City does not have the availability to provide the usage permitted on the same basis as it is limiting usage to other similarly situated customers inside the corporate limits of the City. City will use its best efforts to remain in a position to furnish Water as herein contracted to be sold to Customer, but the City's obligations shall be limited in accordance with other conditions herein contained.

3.04 Insufficient supply. In the event the total Water supply available to the City shall be insufficient to meet all of the needs of the residents of the City and customers of Customer, the City may prorate the Water available among all customers of the City and Customer. In the event of shortage, Customer shall be furnished Water in a quantity which bears the same proportion to the total Water available to City for use by individual connections as the number of individual connections served by the City.

3.05 Outdoor watering restrictions. Customer may prescribe a schedule of hours covering use of Water for the watering of lawns and gardens by its customers, and require adherence hereto, or prohibit the use of Water for the watering of lawns and gardens, provided that if at any time the total Water supply available to Customer shall be insufficient to meet all the needs of its customers, Water must first be furnished to all customers of Customer sufficient to satisfy their needs for domestic purposes before supplying any Water for the watering of lawns and gardens. Should City impose water restrictions suggested by NTMWD on City residents, Customer shall impose outdoor watering restrictions at least as strict as those of the City on its own customers.

3.06 Local Water use. The Parties acknowledge and agree that, notwithstanding any provisions of this Contract to the contrary, any Water supply made available to Customer hereunder shall be used solely in the Trinity River Basin and shall not be authorized for use outside of the Trinity River Basin.

3.07 Water conservation. Customer shall prepare, formally adopt, and implement a Water conservation and drought contingency plan(s) that is consistent with TCEQ requirements and that is consistent with similar plans adopted by the City. Customer may utilize any Water conservation measure, policy, or practice in order to achieve said Water conservation goals demanded by City. Should City impose Water restrictions suggested by NTMWD on City residents, Customer shall impose Water conservation requirements at least as strict as those of the City on its own customers.

3.08 [Reserved]

3.09 Emergency measures. If an Emergency dictates temporary conservation or rationing requirements for either City or Customer, either Party may implement any measures considered appropriate by it to alleviate the Emergency. If Customer implements measures to alleviate an Emergency, Customer shall notify City in writing within five (5) Days of implementing such measures.

3.10 Surface water impoundments; restrictions. Customer or its customers shall not use Treated Water for the purposes of filling or maintaining the level of surface water impoundments without the express written consent of the City.

3.11 Title to Water. Title to all Water supply to Customer shall be to the City up to the Delivery Point, at which point title shall pass to Customer. The City and Customer shall 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. Notwithstanding anything contained herein to the contrary, the Parties hereto do not waive and hereby expressly retain any and all immunities and defenses, sovereign, legislative, official and otherwise, that each may now or hereafter possess. Nothing contained in this Contract shall be interpreted as conferring any rights to any person not a Party to this Contract.

3.12 Changes in Customer demand. Customer shall provide reasonable notice to City of any anticipated changes in demand requirements in excess of the projections previously supplied to the City. Such notice shall be utilized by City in determining whether construction of additional facilities or utilization of existing system capacity will be required. In the event of a change in demand requirements above 400,000 gpd, Customer shall be responsible for the cost of any additional facilities, or the utilization of existing excess system capacity (even if such utilization of existing capacity does not require additional construction). Payments by Customer contemplated by this section for additional facilities are required prior to the awarding of any construction contracts. Payment by Customer for utilization of existing excess capacity of more than 400,000 gpd must be paid prior to the capacity being provided.

3.13 Limitation on Supply. Customer understands and agrees that City's ability and capacity to provide increases in demand or volume is subject to available supply and ability to deliver Treated Water as may be determined by City through its sole source of such Water, NTMWD.

3.14 Other Contracts. The City reserves the right to enter into Water sale contracts with other entities under the same or similar provisions as contained in this Contract.

B. Quality

3.15 Potable Water. City shall furnish Customer treated Water suitable for human consumption in accordance with all applicable laws, rules, and regulations of this state.

3.16 Limit. The City guarantees the quality of Water provided to Customer only up to the Delivery Point. Customer specifically acknowledges that the quality of Water after passage through the Delivery Point is Customer's sole responsibility.

C. Price and Terms

3.17 Payment. For purposes of this Contract, Customer shall pay the City each month for the Water Supply Services provided under this Contract. The Customer shall be treated as one wholesale customer.

3.18 Rate. The rate per 1,000 gallons to be paid by the Customer will be based on the City's budgeted cost and subject to annual adjustment by the City in accordance with the terms hereof. The Rate shall initially be \$4.08 per 1,000 gallons as detailed in Exhibit "C". Said Rate includes, but may not necessarily be limited to, the Customer's proportionate share of cost including:

- a. The cost of water purchased from NTMWD as adjusted for an assumed 2% water loss factor;
- b. The cost of supplemental treatment of water by the City from NTMWD needed to maintain the quality of Water to the Delivery Point;
- c. The cost of transmitting water from the City's point of delivery from NTMWD to Customer's Delivery Point;
- d. Applicable general and administrative cost incurred by the City; and,
- e. Customer's proportional share of infrastructure improvements incurred by the City, including any additional water towers needed in order to provide the necessary supply of Water to the Development.

Once each year, beginning in the year the Customer's System is connected to the City's System at the Delivery Point, the City may review the Rate and adjust it to reflect the City's additional costs as reflected in the City's then current "cost of service" analysis utilized to set City's generally

applicable water rates. The City's current "cost of service" analysis is attached hereto as Exhibit "C".

3.19 Payment. Payment for Water service charges as calculated above shall be made each year by Customer to the City in monthly installments, each of which shall be based upon the prior month's usage. Each payment shall be due and payable on or before the last business day of the month following Customer's receipt of invoicing by the City.

3.20 Commencement of liability. Customer's liability and responsibility for making such payments, as herein set forth shall commence on the Effective Date of this Contract.

3.21 Failure to pay; consequences. In the event Customer shall fail to make any such monthly payment within the time required, interest on such amount shall accrue at the rate of ten percent (10%) per annum from the date such payment becomes due until paid in full with interest, as herein specified. In the event said payment is not made within sixty (60) days from the date such payment becomes due, the City may, at its option, avail itself of the following remedies:

a. Upon the occurrence of Customer's first failure to pay any amount billed for service under this Contract, which amount remains unpaid for more than sixty (60) days after its due date, Customer agrees to establish a security fund to be held in trust by City in the amount of three (3) month's average billings, from which City may withdraw funds to secure payment of the billing. Customer shall thereafter immediately replenish and restore the account to the required amount and maintain the full balance required in the fund for the remainder of the term of the Contract, notwithstanding City's withdrawals to satisfy billings remaining unpaid for more than sixty (60) days after the due date.

b. In the event that the security fund is not established, at the expiration of sixty (60) days after such amounts are due, Customer shall be in default under this Contract, and the City may invoke the remedies specified in Article 7.

c. The security fund shall be deposited with the Garland City Manager in cash, in the form of an unconditional, irrevocable standby letter of credit, a performance/surety bond, or other instrument or security in a form reasonably acceptable to the Garland City Attorney. The letter of credit, bond, or other instrument shall in no event require the consent of Customer prior to the collection by City of any amounts covered by the letter of credit, bond, or other instrument.

d. In the event that the security fund described herein above is not established at the expiration of ninety (90) days after such amounts are due, Customer agrees to the appointment of a Receiver, chosen solely by City and whose fees shall be paid by the Customer, for the purpose of allocating Customer's ongoing revenue so as to create and fully fund the above-described security fund and bring Customer's account with the City current. Once Customer's account is current and the above-described security fund is fully funded and the Receiver paid for his services, City shall dismiss the Receiver.

e. In the event a Receiver is appointed and the City is not being timely paid, City shall have the right to invoke this Contract's termination provisions.

3.22 No Equity. Customer acknowledges that it will accrue no equity or any other interest in the Garland System or any other assets of Garland as a result of payment or other performance pursuant to this Contract.

3.23 Initial rates; rate changes. Customer agrees that the Rate initially charged by the City and the policies defined in this Contract are just and reasonable, and does not adversely affect the public interest. The Rate charged by the City is subject to modification as provided herein. Customer agrees that any such change in the Rate by City in accordance with the provisions hereof is just and reasonable and does not adversely affect the public interest. Notwithstanding any provision to the contrary, Customer does not waive the right to file and pursue an appeal of any increase in Rate proposed or adopted by the City that is not in conformance with the terms of this Contract.

3.24 Rate modification. The Rate established by this Contract may be modified by the City Council of the City annually, or more frequently if the rate charged to the City by NTMWD is changed. Customer will be notified of any Rate modification at least sixty (60) days prior to the effective date of the new Rate.

3.25 Expenses. Customer shall have the right to challenge any change in the Rate in violation of this Contract before the PUC; however, if the PUC states that the Rate violates the public interest, City shall have, if exercised within six (6) months of the PUC decision, the immediate right to invoke the termination provisions of this Contract. If Customer initiates or participates in any proceeding regarding the Water rate and City's policies under this Contract and advocate a position that is adverse to City, and City prevails, Customer shall reimburse City for its reasonable expenses, including attorneys' fees in the proceeding, within thirty (30) days after City's demand for payment.

3.26 Customer's retail rates. Customer will determine and charge its retail water customers such rates as are determined by Customer. Customer represents and has determined that the wholesale water service to be obtained from City hereunder is absolutely necessary and essential to the present and future operation of Customer's water system, and accordingly all payments required by this Contract to be made by Customer shall constitute reasonable and necessary operating expenses of Customer's water system, with the effect that the obligation to make such payments from revenues of such water system shall have priority over any obligation to make payments from such revenues, whether of principal, interest, or otherwise, with respect to all bonds heretofore or hereafter issued by Customer, and all indebtedness undertaken by Customer unless this obligation is inconsistent with Customer's obligations under existing debt instruments as of the Effective Date, if any. Customer agrees throughout the term of this Contract to continuously operate and maintain its water system and to fix and collect such rates and charges for water services to be supplied by its water system as will produce revenues in an amount equal to at least all of its payments under this Contract.

3.27 Resale, connection outside Customer's service area prohibited. Customer agrees that it will not, during the term of this Contract, resell any of the treated water it purchases from City hereunder to any wholesale or other customer other than retail customers located within its boundaries, without prior written consent by the City Council of the City of Garland, Texas, based on a formal action of the Council. Customer shall not contract with individual or entity located outside Customer's boundaries to connect to Customer's System without City's prior written approval.

3.28 Impact Fees. Except as specifically provided herein, no other fees shall be due and payable by Customer to the City for water service. In particular, neither customer nor any retail customer located within the Property shall be required to pay to the City any "impact" or "capital recovery fee" related to water conveyance or treatment capacity or service.

Article 4 Point(s) of Delivery; Measuring Equipment

A. Delivery Point(s)

4.01 General. The Delivery Point(s) of water to Customer from the Garland System shall be the locations identified in Exhibit "B", unless otherwise agreed by City and Customer.

4.02 Meter. Customer shall install a flow meter and a rate of flow controller to be set according to the contracted amount of water contained herein at the Delivery Point. All flow meters installed after the date of this Contract shall be equipped with Supervisory Control and Data Acquisition ("SCADA") transmission devices compatible with the City's existing system infrastructure. Upon installation and City approval of the flow meter and rate of flow controller, Customer shall transfer ownership of said equipment and facilities in which the equipment is installed to City at no cost.

4.03 Air Gap. Customer must provide an air gap prior to any connections of service between the City and the Customer. The City shall approve the air gap system. City reserves the right to inspect the air gap system.

4.04 Delivery of Water. City agrees to deliver at the Delivery Point(s) the quantities of Water herein contracted for, said Water to be delivered at the prevailing pressure which is maintained in the Garland System, it being specifically understood that the City is under no obligation to furnish pressurized treated Water to any connection between the Delivery Point and Customer's facilities for sustaining and/or increasing pressure, nor is the City responsible for the pressurization of Water after it passes through the Delivery Point. The City is under no obligation to provide the Customer with a sufficient amount of treated Water for the Customer to meet its retail customers' instantaneous demand, or to meet any minimum production, storage, service and pump requirements, or any other requirements imposed on the City by any Regulatory Requirements.

4.05 TCEQ compliance. Customer agrees that it shall take all reasonable measures to insure all lines and equipment installed or owned by its customers shall comply with the requirements of the TCEQ, as the same now exist or as they may be modified hereafter.

4.06 Connection facilities. Cost of all connection facilities from the Delivery Point to the Customer's facilities shall be borne by Customer. Customer shall be responsible for the design, contracting, construction, and financing of all connection facilities and acquisition of any right-of-way for delivery of the Water from the applicable Delivery Point to Customer's facilities. Notwithstanding the preceding, the City shall allow the Customer to utilize any water easements or rights-of-way dedicated to the City in order for Customer to extend Customer's System to the Delivery Point(s). All plans for connecting Customer's System to Garland's System at the Delivery Point shall be submitted to the City for written approval with all designs, materials and specifications conforming to the City's requirements prior to construction. The City shall have the right to make periodic inspections during construction and shall have final approval of the Delivery Point(s). On the Effective Date, or, if the connection facilities have not been constructed as of the Effective Date, on such later date as the construction and installation of the connection facilities are complete, Customer shall transfer ownership of all connection facilities on the City's side of the Meter, including the Meter and the Vault in which the Meter is located, to City at no cost.

4.07 Facility improvements. Should the quantities desired by the Customer exceed 400,000 gpd and require improvements to the Garland System, or require the utilization of existing excess system capacity (even if such utilization of existing capacity does not require additional construction), Customer shall be responsible for their proportionate share of the cost of those improvements or any above described excess capacity utilization. Payments by Customer contemplated by this section for additional facilities are required prior to the awarding of any construction contracts and for the utilization of existing excess capacity payments must be made prior to such excess capacity being provided. Customer shall have no ownership interest in any such facility improvements.

4.08 Relocation of Delivery Points. Requests to relocate a Delivery Point shall be submitted in writing by the requesting Party. If the Parties mutually agree to relocate a Delivery Point, the Party requesting relocation will be responsible for funding all costs related to constructing the improvements, unless the Parties agree on a division of costs based on mutual benefit.

a. For any costs attributable to the Customer for improvements constructed by the City, the Customer shall be responsible for reimbursing the City, as agreed upon in writing, for the cost of such improvements including, but not limited to, the acquisition of any easements or right-of-way. Prior to construction, the Parties will enter into a written agreement to specify the manner and timeframe for such reimbursement to the City and the time for and costs of construction.

b. If the Customer is to construct the necessary improvements for a relocated Delivery Point, the Customer will submit to documents to acquire rights-of-way and will submit plans for the construction of the improvements to the City for approval prior to commencing construction. If the City approves the documents and plans submitted, the City will give Customer notice of said approval in writing within a commercially reasonable time. During the construction, City may, but is not obligated to, inspect improvements under construction, at its sole cost. All costs for the construction of the improvements, including the costs for any easements and/or rights-of-way, shall be borne as agreed upon in writing. City may, but is not obligated to make a final inspection and

approval, at its sole cost, after construction of the improvements is completed and before the improvements are approved, by the City, for use; provided, however, such approval shall not be unreasonably withheld or delayed. Customer shall transfer ownership of all facilities constructed for the relocated Delivery Point to City upon completion.

4.09 Additional Delivery Points. It is anticipated that Customer may request an additional delivery point(s) and/ or delivery line(s). Such request(s) shall be made in writing by Customer and City shall provide a written response within a commercially reasonable amount of time after receipt of such request. If additional Delivery Point(s) and/or line(s) are mutually agreed upon, the Parties shall, prior to and as a condition of any binding agreement regarding such matters, agree in writing as to the responsibility, whether shared or assigned to one Party, for the costs associated therewith.

a. For any costs attributable to Customer for improvements constructed by the City, Customer shall reimburse the City for the entire cost of the improvements, including the acquisition of any easements or rights-of-way. Prior to beginning construction, the Parties will enter into a written agreement for the City (i) to approve the amount of anticipated construction costs, and (ii) to specify the manner and timeframe for such reimbursements to the City and the time for construction.

b. If the Customer is to construct the necessary improvements for an additional Delivery Point(s) and/or delivery line(s), the Customer will submit documents to acquire rights-of-way and/or easements and will submit plans for the construction of the improvements to the City for approval prior to construction commencing; provided, however, such approval shall not be unreasonably withheld or delayed. If the City approves the documents and plans submitted, the City will give the Customer notice of said approval in writing. During the construction of such improvements, the City may, but is not obligated to, inspect improvements, the City may, but is not obligated to, inspect improvements under construction at its sole cost. All cost for the construction of the improvements, including the costs for any easements and/or rights-of-way, shall be borne by the Customer. The City may, but is not obligated to, make a final inspection and approval, at its sole cost after construction of the improvements are completed and before the City approves the improvements for use; provided, however, such approval shall not be unreasonably withheld or delayed. Customer shall transfer ownership of all facilities constructed for the relocated Delivery Points to City upon completion of construction.

4.10 Delivery Point improvements. If the Customer requests that improvements be made to a Delivery Point(s), the Customer shall submit the request in writing to the City. If the City approves the request, the Parties will then decide whether the City or the Customer will be responsible for constructing the improvements and shall follow the procedures set forth in Section 4.09; provided, however, such approval shall not be unreasonably withheld or delayed. Customer shall transfer ownership of any such improvements to the City upon completion and acceptance by the City.

4.11 Water release valves. All valves releasing Water from the Garland System to Customer shall be solely owned, operated and maintained by the City. Customer shall not obstruct or block access to those valves.

4.12 Easements; right-of-ways; ownership of improvements. Any acquired easements or right-of-way shall name the City as a grantee for the portion of the easement or right-of-way on the City's side of the Delivery Point. Upon the completion of construction and final approval by the City of any new, relocated or improved Delivery Point and/or Metering Point, Customer shall transfer ownership of the constructed improvements and metering device and appurtenances on the City's side of the Delivery Point to the City.

4.13 Interruption of service for maintenance. Notwithstanding anything in this Contract or in the requirements of any regulatory agency to the contrary, City shall be entitled at any and all times to install, repair, maintain, and replace such equipment or devices or to take any other action under an Emergency (including reduction or cessation of water service to Customer) as necessary or appropriate to allow City at all times to maintain a minimum pressure as required by applicable law or regulation at all retail service locations directly served by City. The City shall use commercially reasonable efforts to work with Customer to install, repair, maintain, and replace such equipment and devices at a time to minimize the impact on Customer's System. The City shall make every reasonable effort to expedite the restoration of service in a timely manner.

B. Transmission lines

4.14 Customer Transmission Lines. Customer shall be responsible for the construction and associated construction costs of any additional water transmission line on Customer's side of the Meter. Customer shall maintain ownership of said water transmission line for the term of this Contract and shall be responsible for the maintenance and repair of said water transmission line.

4.15 City Transmission Lines. Customer understands that in order for the City to deliver 400,000 gpd of Water to the Delivery Point(s) reflected on the attached **Exhibit "B,"** the City will be required to make the improvements to the City's Transmission Lines reflected in the attached **Exhibit "B"**. Customer agrees that prior to the initial delivery of Water to the Delivery Point(s), the City, at the sole cost of Customer, shall make the improvements to the City's Transmission Lines reflected in the attached **Exhibit "B"**.

4.16 Temporary Water Service. At such time as the developer of the Development initiates the construction of infrastructure to serve the Property, the City shall authorize such developer and its contractors to obtain temporary water service from the City in the same manner and under the same conditions as such temporary water service is made available to contractors working within the City..

4.17 [Reserved].

C. Measuring Equipment

4.18 Installation. Customer shall furnish and install, at its own expense, at the Delivery Point the Meter(s), as approved by the City, for measuring properly the quantity of Water delivered under this Contract. Such facilities shall be conveyed to the City upon completion.

4.19 Maintenance; calibration. City shall operate and maintain the Meter(s) and shall read each Meter monthly. City will also cause the Meter(s) to be tested and calibrated at intervals of not more than every twelve (12) months. The cost of testing will be borne solely by City, provided however, that if any special test is made at the request of the Customer and shall disclose that the meter is recording accurately, Customer shall bear the cost for such test. Customer will be notified in writing of the planned Meter testing and calibration and will be invoiced for said testing and calibration on the invoice following the performance of the service. Once notified, Customer's representative may request to be present when such testing and calibration is performed.

4.20 Meter accuracy; corrections. Meters registering not more than one and one-half percent (1.5%) above or below normal shall be deemed accurate. Any Meter readings which testing has found to be inaccurate shall be corrected for the ninety (90) days preceding the test in according with the percentage of inaccuracy found. Should any Meter fail to register for any period, the amount payable shall be based upon the Water delivered in the corresponding period immediately prior the failure, unless the City and Customer shall agree to the amount of Water furnished during such period.

4.21 Meter readings. The Meter(s) used under this Contract shall be read on the last day of each calendar month by the City's operator and shall be available for checking and verification by a representative of Customer during normal business hours of the City.

D. Access

4.22 Delivery Point(s). Customer shall not impede City access to any of the City-owned equipment, facilities, or Delivery Points. Customer shall obtain all necessary easements for access prior to transferring ownership to City. City shall have the sole right to secure and control access to the City-owned equipment, facilities, and Delivery Points. Customer may request access to inspect the City-owned equipment, facilities, and Delivery Points contemplated by this Contract by presenting such request, in writing, to the Director during normal business hours. City shall provide access within 72 hours of receiving the request for access from Customer. City shall have the right to oversee these inspections.

Article 5 Force Majeure

5.01 No Default. No Party hereto shall be considered to be in default in the performance of any of the obligations hereunder (other than obligations of either Party to pay costs and expenses) if such failure of performance shall be due to circumstances beyond the reasonable control of the Parties, including but not limited to, the failure of facilities, flood, earthquake, tornado, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, labor dispute and action or non-action by a failure to obtain the necessary authorizations and approvals from any governmental agency or authority or the electorate, labor or material shortage, sabotage, or restraint by a court

order or public authority, which by the exercise of due diligence and foresight the Party could not have reasonably been expected to avoid and which by exercise of due diligence it shall be unable to overcome. Either Party rendered unable to fulfill any obligation by reason of an uncontrollable force shall exercise due diligence to enable fulfillment of its obligations under this Contract.

5.02 Temporary Interruption of Service. In the event the proper operation of the Garland System, as a result of the above, requires Garland to temporarily interrupt all or part of the services to Customer, Customer shall not recover any damages from Garland arising from or related to the temporary interruption of services, including, but not limited to, any direct or consequential damages.

Article 6 Dispute resolution

6.01 Disputes other than Rate or Fee disputes; abatement. In accordance with the provisions of Subchapter I, Chapter 271, Tex. Local Gov't. Code, the Parties agree that, prior to instituting any lawsuit or other proceeding arising from a dispute under this Contract, the Parties will first attempt to resolve the dispute by taking the following steps:

- a. The dissatisfied Party shall deliver a written notice substantially describing the nature of the dispute to the other Party, requesting the other Party to deliver a written response within five days after receipt of the notice of dispute;
- b. If the response does not, in the opinion of the dissatisfied Party, reasonably resolve the dispute, the dissatisfied Party shall notify the other Party in writing. Each Party shall then appoint a person having authority over the activities of the respective Parties who shall promptly meet, in person, in an effort to resolve the dispute; and
- c. If those persons cannot or do not resolve the dispute, then the Parties shall each appoint a person from the highest tier of managerial responsibility within each respective Party, who shall then promptly meet, in person, in an effort to resolve the dispute.

Any suit filed prior to performing these steps shall be abated pending completion of this step process. This Section shall not apply to any disputes regarding rates or fees City charges Customer.

6.02 Rate or Fee Disputes. Customer agrees that, as a condition precedent to instituting any lawsuit or other proceeding arising from a rate or fee dispute (including any surcharges City may assess) under this Contract, Customer shall first attempt to resolve the dispute by taking the following steps:

- a. Customer shall deliver a written notice substantially describing the nature of and reasons for the dispute to City;
- b. City shall respond to the dispute notification in writing within ten (10) business days after receipt of the notice of dispute;

c. If Customer does not believe City's response reasonably resolves the dispute, Customer may, within ten (10) business days after receipt of City's response, request, in writing, that the Garland City Council consider the rate or fee dispute; and

d. City shall, within ten business days of receipt of Customer's written request that the Garland City Council consider the dispute, and place the matter on the Garland City Council agenda for either a regular or special meeting.

6.03 Presentation of Rate dispute. Customer shall appear before and have one (1) hour to present any evidence and arguments it has regarding any Rate or fee dispute to the Garland City Council. The Garland City Council shall issue a written final decision regarding the Rate or fee dispute within ten (10) business days after Customer's appearance.

6.04 Condition precedent. The provisions of this Article 6 are a condition precedent to the filing of any other action or complaint with any regulatory authority, governing body, or state or federal court.

Article 7 Breach of Contract / Remedies

7.01 Termination and Material breach. Any material breach of the duties or the obligations of this Contract, or failure to faithfully keep and perform any of the terms, conditions and provisions hereof shall be subject to the remedies provided herein, including but not limited to termination. The non-breaching Party shall provide the breaching Party ninety (90) days written notice of its intention to terminate this Contract if the breaching Party fails to cure the material breach. The written notice shall include a reasonable description of the breach. If the Customer is the breaching Party, and fails or refuses to cure the breach, then City shall have the right, with three (3) years advance written additional notice to Customer and without any liability whatsoever on the part of City, to declare this Contract terminated. In the event of termination of this Contract, all rights, powers, and privileges of Customer shall cease and terminate and Customer shall make no claim of any kind whatsoever against City, its agents or representatives, by reason of such termination or any act incident thereto. In any event, the non-breaching Party shall advise the alleged breaching Party in writing immediately upon acceptance of the cure of any default. The following shall, without limitation, be considered to be a material breach:

- a. Customer's failure to adopt and enforce policies or standards necessary to enforce any applicable City ordinances, or any applicable state or federal laws or regulations;
- b. Customer's failure to pay any bill, charge or fee as provided for in this Contract;
- c. Customer's failure to provide City ingress and egress for purposes of sampling and operation and maintenance of any metering or any sampling facility;
- d. Customer's failure to provide City rights-of-way as required herein;

e. City's failure to timely provide water to Customer in an amount sufficient to serve the existing customers of the Customer as well as new customers seeking water service, up to the maximum amount set forth in Article 2, as may be subsequently modified pursuant to Section 3.12.

7.02 Failure to provide notice of breach is not waiver - City. City's failure to provide a notice of breach or acceptance of any benefits under this Contract for any period of time after Customer's material breach, default or failure is not a waiver by City of any rights relative to any subsequent material breach, default or failure.

7.03 Failure to provide notice of breach is not waiver - Customer. Customer's failure to provide a notice of breach or acceptance of any benefits under this Contract for any period of time after City's breach, default or failure is not a waiver by Customer of any rights relative to any subsequent material breach, default or failure.

7.04 Remedies. If a Party is in default under this Contract, then the non-defaulting Party shall be entitled to all remedies available under applicable law including, but not limited to, specific performance, injunctive relief, mandamus relief, damages; and termination as provided in Section 7.01.

Each Party hereto acknowledges that this Contract is for the providing of goods and services and, pursuant to Section 271.151, Texas Local Government Code, each has waived its immunity from suit solely for the purpose of the other Party enforcing the express terms, conditions, and obligations of this Contract.

Article 8 Hold Harmless

Customer hereby agrees to hold the City whole and harmless from any claims or damages to Customer's Water mains or Water system resulting from the rate of flow or quantity of Water delivered, from any claims or damages arising as a result of the chemical or bacteriological content of Water provided, unless such damages resulting from the chemical or bacteriological content of the Water are caused by the negligence of the City, and from any act or omission of any representative, agent, customer, employee, or invitee of Customer, including any and all other claims for damages, cost, and expenses, including reasonable attorney's fees and costs of court, if any, that may arise out of, or be occasioned by, this Contract or any of its activities unless such damages result from the gross negligence or willful misconduct of the City.

Article 9 Miscellaneous

9.01 Waiver. No covenant or condition of this Contract may be waived without the express written consent of the waiving Party. No failure by any Party to insist upon the strict or timely performance of any covenant, duty, agreement, term or condition of this Contract shall constitute a waiver of any such covenant, duty, agreement, term or condition. It is further agreed that one (1) or more instances of forbearance by any Party in the exercise of its respective rights under this Contract shall in no way impair such right or constitute a waiver of such right or a waiver of any breach theretofore or thereafter occurring.

9.02 Enforcement; venue. In addition to any other remedy as may be provided by law, this Contract shall be specifically enforceable by the Parties hereto. Venue for any action shall be in Dallas County, Texas.

9.03 Severability. It is agreed that, in the event any term or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of such term or provision shall in no way affect any other term or provision contained herein; further, this Contract shall then continue as if such invalid term or provision had not been contained herein.

9.04 Assignment. Neither this Contract nor any of the rights or obligations hereunder may be assigned by Customer to any other party without the express written consent of the City Council of the City of Garland.

9.05 Regulatory bodies. This Contract shall be subject to all valid rules, regulations, and law applicable hereto, passed or promulgated by the United State of America, the State of Texas, or any government body or agency thereof having lawful jurisdiction, or any authorized representative or agency of any of them.

9.06 Legislative changes. Customer agrees to abide by any changes in this Contract made necessary by any amendment or revision to state or federal regulations.

9.07 Statutory interpretation. In each instance herein where reference is made to a federal or state regulation or statute or to the Garland Code of Ordinances, it is the intention of the Parties that, at any given time, the then current federal or state regulation or statute or Garland ordinance shall apply. If a publication or reference work referred to herein is discontinued or ceases to be the generally accepted work in its field, or if conditions change, or new methods or processes are implemented by Garland, new standards shall be adopted that are in compliance with state and federal laws and any valid rules and regulations pursuant thereto.

9.08 Federal grants and assistance. City shall comply with all federal, state and local government requirements necessary to obtain grants and assistance for system design, system construction and studies. Customer agrees to assist City in compliance by setting adequate rates, establishing proper user charges and complying with governmental requirements.

9.09 Headings not binding. Section or article headings in this Contract are for convenience only and do not purport to accurately or completely describe the contents of any section or article. Such headings are not to be construed as a part of this Contract or any way defining, limiting or amplifying the provisions hereof.

9.10 Sole agreement. This Contract represents the entire and integrated Wholesale Water Contract between City and Customer, and supersedes all prior negotiations, representations or agreements, either written or oral, with regard to the subject matter hereof. This Contract may be amended and modified only by written instrument signed by all Parties. There are no oral agreements between the Parties.

9.11 Third-party beneficiaries. This Contract shall inure only to the benefit of the Parties hereto and third persons not privy hereto shall not, in any form or manner, be considered a third-party beneficiary of this Contract. Each Party hereto shall be solely responsible for the fulfillment of its customer's contracts or commitments, and City shall not be construed to be responsible for Customer's contracts or commitments by virtue of this Contract or any provision contained herein.

9.12 Inspection and audit of records. Complete records and accounts shall be maintained by each Party for a minimum period of five (5) years or such longer period of time as may be required by applicable law. Each Party shall at all times, upon notice, have the right at reasonable times to examine and inspect records and accounts relating to this Contract during normal business hours; and further, if required by any law, rule or regulation, make the records and accounts available to federal and state auditors.

9.13 Adopting resolution; copies. Each Party shall provide the other Party with a copy of the minute action, order, ordinance or resolution authorizing the execution of this Contract.

9.14 Strict interpretation. This is a negotiated document. Should any part of this Contract be in dispute, the Parties agree that the terms and provisions of this Contract shall not be construed more favorably for or strictly against any Party.

9.15 Notice. All notices or communications provided for herein or necessary in connection with this Contract shall be in writing and hand delivered or sent certified mail, postage prepaid, return receipt requested to:

Bryan Bradford, City Manager
City of Garland
200 N. Fifth Street
Garland, Texas 75040

Dallas County Municipal Utility District No. 4
c/o Coats|Rose P.C.
Attn: Mindy Koehne
14755 Preston Road, Suite 600
Dallas, Texas 75254

Either Party may change its address by providing written notice to the other Party.

Article 10 Exhibits

10.01 The following Exhibits are attached to and made a part of this Contract, and are incorporated by reference for any and all purposes wherever reference is made to same:

Exhibit "A" – The legal description of the Property.

Exhibit "B" – The Basin Map, including the location of the initial Approved Delivery Points at the time this Contract is executed and required improvements to City Transmission Lines.

Exhibit “C” – The calculation of initial Rate approved by the Garland City Council and methodology for future Rate increases.

IN WITNESS WHEREOF, the parties hereto have executed this Contract in duplicate originals on the date first written above, which date shall also be the effective date hereof.

Executed on this _____ day of _____, 2020

CITY OF GARLAND

Bryan Bradford
City Manager

Executed on this _____ day of _____, 2020

Dallas County Municipal Utility District No. 4

President DCMUD No.4

EXHIBIT A
THE PROPERTY

EXHIBIT B

DELIVERY POINT(S) AND REQUIRED IMPROVEMENTS TO CITY TRANSMISSION LINES

EXHIBIT C

CALCULATION OF CURRENT CITY RATE AND METHODOLOGY FOR CALCULATING COST OF SERVICE

AGREEMENT REGARDING CYPRESS COVE DEVELOPMENT

This Agreement Regarding Extension of Water and Sewer Service ("Agreement") is made between the City of Garland, Texas ("City"), a home rule municipality, and D.R. Horton – Texas, Ltd., a Texas limited partnership ("Developer") (collectively, the "Parties") effective as of the date specified in Section 3 (the "Effective Date").

RECITALS:

WHEREAS, Garland is a home rule municipality operating under and governed by the laws and Constitution of the State of Texas, with its corporate limits extending into portions of Dallas and Collin Counties, Texas; and

WHEREAS, Developer is a Texas limited partnership in the business of acquiring and developing real property for the purpose of constructing residential subdivisions and homes; and

WHEREAS, Developer owns approximately 263.444 acres of land located adjacent to the corporate limits of the City, but within the City of Dallas' extra-territorial jurisdiction and more particularly described in Exhibit "A-1" ("Property"); and

WHEREAS, Developer seeks to develop the Property primarily for residential housing and generally as shown on Exhibit "A-2"; and

WHEREAS, Developer is seeking access to a supply of treated water and facilities for the collection and treatment of wastewater for the Property, and has requested the City of Garland provide wholesale water and wastewater services to the Property; and

WHEREAS, on August 30, 2019, the Texas Commission on Environmental Quality ("TCEQ") created Dallas County Municipal Utility District No. 4 (the "MUD") to provide municipal services, including owning, operating, and maintaining a water distribution system and wastewater collection and transmission system to serve customers residing within the Property; and

WHEREAS, Developer applied to the TCEQ, Docket No. 2019-1474-MWD, seeking Permit No. WQ0015686001, which would allow Developer to build a wastewater treatment facility within the Property ("STP Permit") which the MUD could use to serve customers located within the Property; and

WHEREAS, the City owns, operates, and maintains facilities for the storage, treatment, and transmission of treated water, and has a supply of treated water it can supply for the full development of the Property; and

WHEREAS, the City owns, operates, and maintains facilities for the collection, storage, and treatment of wastewater, and has the capacity to accept the projected levels of wastewater from the full development of the Property; and

WHEREAS, the City has filed a formal request for a contested case hearing regarding Developer's STP Permit; and

WHEREAS, the City is willing to provide wholesale water supply and wastewater treatment service to the MUD for the full development of the Property, subject to, among other things, the Developer agreeing to develop and improve the Property in accordance with certain construction and development standards; and

WHEREAS, the City and Developer have agreed that the development will comply with Garland Development Standards for any multifamily construction in the Development; and

WHEREAS, prior to the City committing to providing wholesale water to the MUD, (i) the City must obtain the consent of the North Texas Municipal Water District ("NTMWD") to providing water to the Property because the Property is outside the City's ETJ, (ii) Developer must terminate its application for the STP Permit, and (iii) Developer must agree to certain development and construction standards related to the Property; and

WHEREAS, the City desires the right to review and approve certain aspects of the Development, as provided herein; and

WHEREAS, prior to Developer committing to such development and construction standards, the City and the MUD must enter into agreements for the provision of wholesale water to the Property and accept wastewater from the Property for treatment in City facilities; and

WHEREAS, the Parties desire to enter into this Agreement to provide the terms under which the City shall provide wholesale water supply and wastewater service for the full development of the Property and the Developer shall agree to certain construction and development standards for the development of the Property.

AGREEMENT

NOW, THEREFORE, pursuant to the covenants, conditions and undertakings hereinafter described, and subject to each and every term and condition of this Agreement, the Parties contract, covenant and agree as follows:

1. Recitals. The foregoing recitals are (1) true and correct; (2) incorporated as part of this Agreement for all purposes; (3) evidence the intent of the Parties in entering into this Agreement; and (4) is to be used in interpreting this Agreement.

2. Developer obligations. Beginning the Effective Date and extending throughout the term of this Agreement, Developer shall develop and improve the Property as provided herein:

- a. Comply with all City construction and development standards which apply in its ETJ, unless such construction and development standards conflict with the standards of the City of Dallas, in which case the City of Dallas construction and development standards shall apply, unless construction or development

standards set forth herein conflict with the construction and development standards of the City of Garland or the City of Dallas, in which case the construction and development standards set forth in this document shall control;

b. City of Dallas water, sewer, drainage, street, and erosion control standards shall be used in the development;

c. Ensure that any single family residential development in the Property meets the following minimum requirements:

- (1) Streets shall have a 56' right of way, 37' of which shall be paved (including curb);
- (2) Blocks within the subdivision shall be no more than 1200' in length;
- (3) Streets ending in a cul-de-sac shall be no longer than 600';
- (4) The subdivision shall be screened from thoroughfares by a 6' masonry wall with canopy trees at 35' centers in a 15' buffer strip;
- (5) Individual lots shall contain a minimum of 6,600 square feet and
 - i. shall be no less than 60' wide (70' for corner lots and any lots adjacent to homes or lots along Crawfish Lane or Clamdigger Way),
 - ii. shall be at least 110' deep,
 - iii. shall have a front yard setback of at least 20',
 - iv. shall have a side yard setback of at least 5' (10' if the side yard is adjacent to a street)
 - v. shall have a rear yard setback of at least 10'
 - vi. contain at least 2 3" large canopy trees, as identified in the Garland Development Code, one of which must be placed in the front yard
- (6) No more than 55% of the lot shall be covered by improvements;
- (7) Houses in the Development shall
 - i. be at least 1,600 square feet in size
 - ii. be clad in at least 80% masonry materials as that term is defined in the current GDC
 - iii. have a front facing garage with the face to be flush with or behind the front façade of the house (alternatively, the garage may be in a J-drive orientation)
 - iv. have paneled garage doors with accent hardware
 - v. have a roof pitch of 6:12

- (8) At least 30% of houses shall have natural stone accents;
- (9) The front elevation of houses shall not be duplicated within 4 lots on the same side of the street or within 3 lots on the opposite side of the street;
- (10) All yards shall
 - i. be 100% turfed
 - ii. be fully irrigated
 - iii. contain a planting bed along the front of the house with a minimum of 10 1-gallon shrubs
- d. Developer agrees the City shall not be responsible for providing regular police, emergency medical and trash collection services to the Property.
- e. Developer has performed a traffic study to determine the development's impact to traffic on Bobtown Road, Lyons Road, and Zion Road (the "TIA"). Developer agrees to pay to the City a road impact fee equal to the City's road impact fee in effect as of June 1, 2020 (the "Road Impact Fees"). In the event City desires Developer to make improvements in Bobtown Road, Lyons Road or Zion Road, or other roads outside of the Property, recommended in the TIA. Developer shall construct such road improvements. Any monies spent on the requested road improvements shall be credited against the Road Impact Fees otherwise due; provided, however, in no event shall Developer be required to expend more on such road improvements than its projected Road Impact Fees for the full development of the Property.
- f. Developer shall develop at least thirty (30) acres of green space as walking trails with sidewalks and seating.
- g. The development shall have an amenity center containing at least a swim center with pool or splash pad, shade structures, bathrooms and playground.

3. Effective Date: This Agreement shall take effect on the date the following have occurred and the Developer and City have executed the Addendum attached hereto as Exhibit "D" acknowledging that the actions contemplated in (a) – (d) below have occurred and agreeing upon the Effective Date. Upon the Parties executing such Addendum, the City shall record this Agreement in the Real Property Records of Dallas County:

- a. City receiving approval from the NTMWD for the sale of wholesale water to the MUD for the full development of the Property;
- b. the negotiation and execution of an agreement between the City and the MUD by which the City shall provide water to the MUD for the full development of the Property. A current draft of such proposed agreement is attached as Exhibit "B"; and

c. the negotiation and execution of an agreement between the City and the MUD by which the City shall accept wastewater from the MUD for treatment at the City facilities for the full development of the Property. A current draft of such proposed agreement is attached as Exhibit "C"; and

d. Developer withdrawing its application to the TCEQ for the STP Permit.

4. Early Termination: In the event for any reason the Addendum has not been executed by the Parties and recorded in the Real Property Records of Dallas County, Texas, by December 31, 2020, this Agreement shall terminate and be of no effect.

5. Agreement running with the Property. Upon the conditions contained in Section 3 being satisfied, the Addendum being executed and this Agreement being recorded in the Real Property Records of Dallas County, Texas, the provisions contained in Section 2 shall run with the Property and be applicable to every subsequent owner of the Property.

6. Amendments and Modifications: This Agreement may be amended, supplemented or modified only by a written instrument duly executed by both Parties.

7. Assignment: Neither Party shall be permitted to assign this Agreement or any rights or obligations hereunder without the prior written consent of the other Party.

8. Breach and Remedies: No Party shall be in default under this Agreement until notice of the alleged failure of such Party to perform has been given (which notice shall set forth in reasonable detail the nature of the alleged failure) and until such Party has had a reasonable time to cure the alleged failure (such reasonable time determined based on the nature of the alleged failure). In addition, no Party shall be in default under this Agreement if within the applicable reasonable cure period the Party to whom the default notice was given begins performance and thereafter uses its good faith efforts to diligently and continuously pursue performance until the alleged failure has been cured. If a Party is in default under this Agreement, then the non-defaulting Party shall be entitled to all remedies available under applicable law including, but not limited to, specific performance, injunctive relief, mandamus relief, and damages. The failure of any Party to insist, in one or more instances, upon performance by another Party of any provision of this Agreement shall not be construed as a waiver of future performance of such provision.

To the maximum extent allowed by law, the City has waived its immunity from suit solely for the purpose of Developer enforcing this Agreement.

9. Governing Law; Venue: This Agreement will be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflict of laws principles thereof. Venue for any dispute arising from this Agreement shall be in any district court of Dallas County, Texas.

10. Entire Agreement: This Agreement supersedes all prior communications and agreements, oral or written, between Developer and the City regarding the subject matter contemplated in this Agreement;

11. Counterparts: This Agreement may be executed in any number of counterparts, each of which is an original, but all of which together constitute one and the same agreement. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic means will for all purposes be treated as the equivalent of delivery of a manually executed counterpart of this Agreement.

12. No Partnership or Joint Venture: Each Party acknowledges and agrees that nothing herein is intended to, or shall be deemed to create a partnership or joint venture.

13. Parties in Interest: This Agreement shall be for the sole and exclusive benefit of the City and Developer and shall not be construed to confer any benefit or right upon any other party. There are no third-party beneficiaries to this Agreement and no third-party beneficiaries are intended by implication or otherwise.

14. Anti-boycott Verification. Pursuant to Section 2271.002 of the Texas Government Code, to the extent this Agreement is a contract for goods or services, Developer hereby represents that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and, subject to or as otherwise required by applicable Federal law, Developer agrees not to boycott Israel during the term of this Agreement. For purposes of this Section, "boycott Israel" shall have the meaning given such term in Section 808.001, Texas Government Code. Developer understands "affiliate" as used in this Section to mean an entity that controls, is controlled by, or is under common control with Developer and exists to make a profit.

15. Prohibition on Contracts with Certain Companies. Developer and the person or persons executing this Agreement on behalf of Developer, or representing themselves as executing this Agreement on behalf of Developer (collectively, the "Signing Entities"), hereby acknowledge that (a) the Signing Entities do not engage in business with Iran, Sudan or any foreign terrorist organization and (b) the Signing Entities are not named on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer's internet websites:

<https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>,
<https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>, or
<https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>.

16. No Waiver of Immunity or Defense. To the extent, if any, that this Agreement imposes an obligation on the City to make a payment or other expenditure of any sort, such payment or expenditure shall be payable solely from current revenues that are immediately available for such purposes, and no debt is or is intended to be created by reason of this Agreement. All obligations of the City under this Agreement are payable solely from the City's gross revenues

and no ad valorem tax revenue or other revenues of the City shall in any manner be pledged or be deemed to have been pledged to the payment of any amounts under this Agreement, nor shall any other Party have the right to demand payment of any amounts under this Agreement be paid from funds raised or to be raised from ad valorem taxation. The obligations under this Agreement shall never be construed to be a debt or pecuniary obligation of the City of such kind as to require the City to levy and collect ad valorem taxes to discharge its obligations and no obligation of the City to make a payment or other expenditure under this Agreement shall be payable through funds raised by taxation. The City has not created and is not required to create any sort of sinking fund to secure the obligations of payment or other expenditure under this Agreement. To the extent not otherwise covered in this Agreement, the City retains its governmental and sovereign immunities and its limitations of liability. The Parties agree that the City is entering into this Agreement in its governmental capacity and the subject and nature of this Agreement are governmental rather than proprietary. In any event, the procedures and limitations of Chapter 271, Texas Local Government Code apply.

17. Non-Collusion. Developer represents and warrants that Developer has not given, made, promised or paid, nor offered to give, make, promise or pay any gift, bonus, commission, money or other consideration to any person as an inducement to or in order to obtain the work to be provided to the City under this Agreement. Developer further agrees that Developer shall not accept any gift, bonus, commission, money, or other consideration from any person (other than from the City under this Agreement) for any of the services performed by Developer under or related to this Agreement. If any such gift, bonus, commission, money, or other consideration is received by or offered to Developer, Developer shall immediately report that fact to the City and, at the sole option of the City, the City may elect to accept the consideration for itself or to take the value of such consideration as a credit against the compensation otherwise owing to Developer under this Agreement.

18. Open Records Contracting Information. If this Agreement is executed on or after January 1, 2020, and the Agreement is a contract within the scope of Section 552.371, Texas Government Code, then the following shall apply: (a) the requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and Developer agrees that this Agreement may be terminated if Developer knowingly or intentionally fails to comply with a requirement of that subchapter and (b) without limiting the foregoing, Developer agrees to comply with the requirements of Section 552.372, Texas Government Code, including Section 552.372(a)(3)(B), Texas Government Code.

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IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the Effective Date.

D.R. HORTON – TEXAS, LTD.,
a Texas limited partnership

CITY OF GARLAND, TEXAS

By: D.R. Horton, Inc., a Delaware corporation

By: _____

Name: _____

Title: _____

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

THE STATE OF TEXAS §

§

COUNTY OF _____ §

This instrument was acknowledged before me on this the _____ day of _____, 2020, by _____, _____ of D.R. Horton, Inc., a Delaware corporation, Authorized Agent of D.R. Horton – Texas, Ltd., a Texas limited partnership, on behalf of said limited partnership.

Notary Public, State of Texas

(NOTARY SEAL)

THE STATE OF TEXAS §

§

COUNTY OF _____ §

This instrument was acknowledged before me on this the _____ day of _____, _____, by _____ of the City of Garland, a _____, on behalf of said City.

Notary Public, State of Texas

(NOTARY SEAL)

EXHIBIT A-1
THE PROPERTY

DALLAS COUNTY MUD. NO. 4
263.444 ACRES
BALES OC POUND SURVEY, ABSTRACT NO. 1143
BALES OC POUND SURVEY, ABSTRACT NO. 1168
CITY OF DALLAS ETJ, DALLAS COUNTY, TEXAS

LEGAL DESCRIPTION

BEING all that parcel of land located in the City of Dallas ETJ, being in Dallas County, Texas, a part of the Balis OC Pound Survey, Abstract No. 1143, a part of the B.O.C. Pound Survey, Abstract No. 1168, being a part of that called 326.422 acres tract of land described in a Special Warranty Deed to D.R. Horton-Texas, Ltd., recorded in Document No. 200503632072, Official Public Records of Dallas County, Texas, and being further described as follows:

COMMENCING at a one-half inch iron rod found at the southeast corner of said 326.422 acre tract of land and said point being in the centerline of Barnes Bridge Road (a variable width right-of-way;

THENCE North 21 degrees 05 minutes 46 seconds East, 10.70 feet along the east line of said 326.422 acre tract of land to a point in the northerly line of the City of Dallas's city limit line and being the POINT OF BEGINNING of this tract of land;

THENCE along the northerly line of said City of Dallas's city limit line as follows:

North 89 degrees 47 minutes 53 seconds West, 1,274.59 feet to a point for corner;

North 89 degrees 26 minutes 30 seconds West, 56.76 feet to a point found in the west line of said 326.422 acre tract of land and being in the centerline of Bobtown Road (a variable width right-of-way);

THENCE along the west line of said 326.422 acre tract of land and along the centerline of Bobtown Road as follows:

North 01 degrees 35 minutes 31 seconds West, 55.19 feet to a one-half inch iron rod found for corner;

Northwesterly, 205.37 feet along a non-tangent curve to the left having a radius of 997.98 feet, a central angle of 11 degrees 47 minutes 27 seconds, a tangent of 103.05 feet, and whose chord bears North 05 degrees 22 minutes 21 seconds West, 205.01 feet to a one-half inch iron rod found for corner;

Northwesterly, 115.24 along a compound curve to the left having a radius of 938.20 feet, a central angle of 07 degrees 02 minutes 15 seconds, a tangent of 57.69 feet, and whose chord bears North 14 degrees 18 minutes 26 seconds West, 115.16 feet a point in the southerly line of the City of Garland's city limit line;

SHEET 1 OF 11

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DALLAS COUNTY MUD. NO. 4
263.444 ACRES
BALES OC POUND SURVEY, ABSTRACT NO. 1143
BALES OC POUND SURVEY, ABSTRACT NO. 1168
CITY OF DALLAS ETJ, DALLAS COUNTY, TEXAS

THENCE North 52 degrees 23 minutes 17 seconds East, 37.52 feet along the southerly line of the City of Garland's city limit line to a point for corner;

THENCE along the easterly line of the City of Garland's city limit line as follows:

Northwesterly, 43.67 feet along a non-tangent curve to the right having a radius of 984.93 feet, a central angle of 02 degrees 32 minutes 25 seconds, a tangent of 21.84 feet, and whose chord bears North 20 degrees 54 minutes 05 seconds West, 43.67 feet to a one-half inch iron rod found for corner;

North 22 degrees 10 minutes 18 seconds West, 166.66 feet to a point for corner;

Northwesterly, 358.40 feet along a tangent curve to the right having a radius of 924.30 feet, a central angle of 22 degrees 13 minutes 00 seconds, a tangent of 181.48, and whose chord bears North 11 degrees 03 minutes 48 seconds West, 356.16 feet to a point for corner;

North 00 degrees 02 minutes 42 seconds East, 1,651.80 feet to a point found in a southerly line of the City of Dallas's city limit line;

THENCE along the southerly line of the City of Dallas's city limit line as follows:

South 89 degrees 47 minutes 53 seconds East, 1,312.71 feet to a point for corner;

North 00 degrees 03 minutes 51 seconds East, 2,129.89 feet to a point for corner;

South 89 degrees 06 minutes 14 seconds East, 36.69 feet to a point for corner;

South 88 degrees 15 minutes 38 seconds East, 62.48 feet to a point for corner;

North 87 degrees 06 minutes 47 seconds East, 58.54 feet to a point for corner;

North 84 degrees 54 minutes 17 seconds East, 184.63 feet to a point for corner;

South 75 degrees 36 minutes 30 seconds East, 20.35 feet to a point for corner;

South 75 degrees 22 minutes 54 seconds East, 38.93 feet to a point for corner;

North 22 degrees 58 minutes 06 seconds East, 38.64 feet to a point for corner;

North 82 degrees 21 minutes 06 seconds East, 175.75 feet to a point for corner;

North 88 degrees 38 minutes 06 seconds East, 147.23 feet to a point for corner;

SHEET 2 OF 11

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DALLAS COUNTY MUD. NO. 4
263.444 ACRES
BALES OC POUND SURVEY, ABSTRACT NO. 1143
BALES OC POUND SURVEY, ABSTRACT NO. 1168
CITY OF DALLAS ETJ, DALLAS COUNTY, TEXAS

South 65 degrees 54 minutes 54 seconds East, 118.04 feet to a point for corner;
South 05 degrees 12 minutes 53 seconds East, 8.95 feet to a point for corner;
South 65 degrees 37 minutes 17 seconds East, 59.31 feet to a point for corner;
North 01 degrees 30 minutes 58 seconds West, 50.23 feet to a point for corner;
South 79 degrees 32 minutes 07 seconds East, 42.16 feet to a point for corner;
North 68 degrees 41 minutes 01 seconds East, 47.94 feet to a point for corner;
South 71 degrees 32 minutes 54 seconds East, 81.51 feet to a point for corner;
North 37 degrees 17 minutes 54 seconds East, 55.00 feet to a point for corner;
North 18 degrees 47 minutes 23 seconds West, 95.16 feet to a point for corner;
North 21 degrees 16 minutes 08 seconds East, 44.16 feet to a point for corner;
South 43 degrees 24 minutes 59 seconds East, 48.04 feet to a point for corner;
North 86 degrees 34 minutes 34 seconds East, 97.97 feet to a point for corner;
North 14 degrees 09 minutes 08 seconds West, 62.44 feet to a point for corner;
North 41 degrees 02 minutes 42 seconds East, 30.05 feet to a point for corner;
South 60 degrees 52 minutes 00 seconds East, 25.68 feet to a point for corner;
North 53 degrees 17 minutes 13 seconds East, 136.99 feet to a point for corner;
South 83 degrees 04 minutes 09 seconds East, 297.96 feet to a point for corner;
North 03 degrees 35 minutes 32 seconds East, 243.43 feet to a point for corner;
South 87 degrees 21 minutes 51 seconds East, 279.10 feet to point for corner;
South 01 degrees 45 minutes 28 seconds West, 279.69 feet to a point for corner;
South 82 degrees 00 minutes 36 seconds East, 317.63 feet to a point for corner;

SHEET 3 OF 11

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DALLAS COUNTY MUD. NO. 4
263.444 ACRES
BALES OC POUND SURVEY, ABSTRACT NO. 1143
BALES OC POUND SURVEY, ABSTRACT NO. 1168
CITY OF DALLAS ETJ, DALLAS COUNTY, TEXAS

South 37 degrees 37 minutes 07 seconds East, 513.25 feet to a point for corner;

South 78 degrees 33 minutes 37 seconds East, 183.43 feet to a point found in the east line of said 326.422 acre tract of land and being in the west line of that tract of land conveyed to the City of Dallas recorded in Volume 67048, Page 649, Deed Records Dallas County, Texas;

THENCE along the east line of said 326.422 acre tract of land as follows:

South 41 degrees 47 minutes 13 seconds East, 405.66 feet to a concrete monument found for corner;

South 27 degrees 42 minutes 20 seconds East, 40.47 feet to a concrete monument found for corner;

South 00 degrees 28 minutes 25 seconds West, 408.96 feet to a point for corner;

South 46 degrees 07 minutes 49 seconds West, 1,273.54 feet to a five-eighths iron rod with yellow cap stamped "Cotton Surveying" found for corner;

South 11 degrees 40 minutes 40 seconds West, 278.55 feet to a five-eighths iron rod with yellow cap stamped "Cotton Surveying" found for corner;

South 11 degrees 41 minutes 07 seconds West, 95.45 feet to a five-eighths iron rod with yellow cap stamped "Cotton Surveying" found for corner;

South 10 degrees 33 minutes 03 seconds West, 44.77 feet to a five-eighths iron rod with yellow cap stamped "Cotton Surveying" found for corner;

South 65 degrees 51 minutes 45 seconds West, 36.23 feet to a five-eighths iron rod with yellow cap stamped "Cotton Surveying" found for corner;

South 65 degrees 57 minutes 13 seconds West, 654.22 feet to a five-eighths iron rod with yellow cap stamped "Cotton Surveying" found for corner;

South 66 degrees 06 minutes 48 seconds West, 293.77 feet to a five-eighths iron rod with yellow cap stamped "Cotton Surveying" found for corner;

South 65 degrees 52 minutes 04 seconds West, 209.91 feet to a five-eighths iron rod with yellow cap stamped "Cotton Surveying" found for corner;

South 21 degrees 04 minutes 05 seconds West, 538.06 feet to a five-eighths iron rod with yellow cap stamped "Cotton Surveying" found for corner;

South 21 degrees 10 minutes 36 seconds West, 285.82 feet to a five-eighths iron rod with yellow cap stamped "Cotton Surveying" found for corner;

South 21 degrees 05 minutes 20 seconds West, 365.34 feet to a five-eighths iron rod with yellow cap stamped "Cotton Surveying" found for corner;

South 20 degrees 59 minutes 37 seconds West, 311.73 feet to a five-eighths iron rod with yellow cap stamped "Cotton Surveying" found for corner;

SHEET 4 OF 11

Drawing: H:\Projects\MOE206-Cypress Cove\dwg\SURVEY\263.444 ac - Boundary Edg.dwg Saved by: cbsch

DALLAS COUNTY MUD. NO. 4
263.444 ACRES
BALES OC POUND SURVEY, ABSTRACT NO. 1143
BALES OC POUND SURVEY, ABSTRACT NO. 1168
CITY OF DALLAS ETJ, DALLAS COUNTY, TEXAS

South 21 degrees 05 minutes 54 seconds West, 290.42 feet to a five-eighths iron rod with yellow cap stamped "Cotton Surveying" found for corner;

South 21 degrees 05 minutes 46 seconds West, 285.09 feet to the POINT OF BEGINNING and containing 11,475,640 square feet or 263.444 acres of land.

Bearings based on monuments found along the east line of that called 326.422 acre tract of land described in a Special Warranty Deed to D.R. Horton-Texas, Ltd., recorded in Document No. 200503632072, of the Official Public Records of Dallas County, Texas.

"This document was prepared under 22 TAC 663.23, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared."

E. S. BACAK

EDWARD SCOTT BACAK,
R.P.L.S. #6248
Dated: October 15, 2018

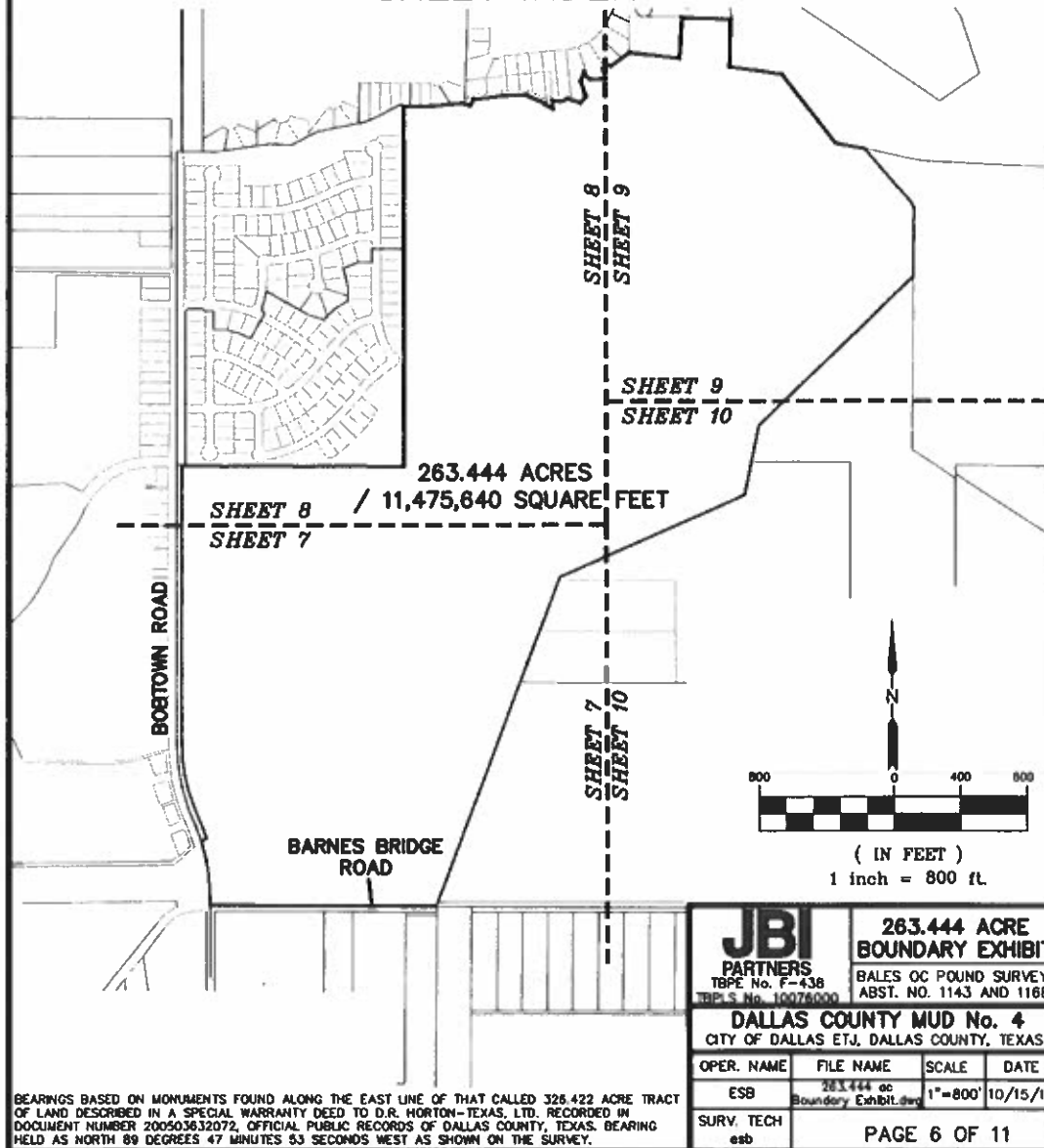


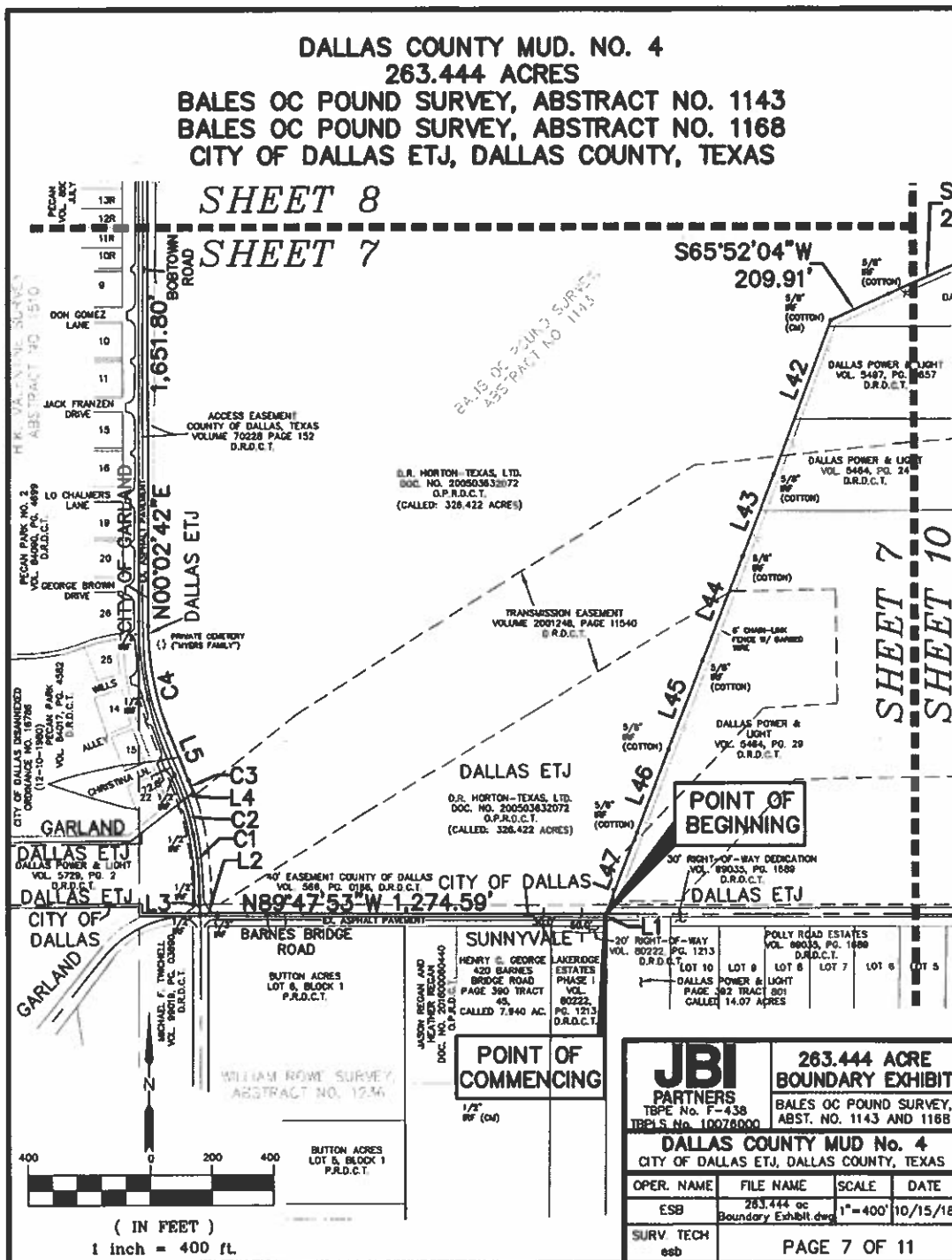
SHEET 5 OF 11

Drawing: H:\Projects\MOE286-Cypress Cove\dwg\SURVEY\263.444 ac - Boundary Exhibit.dwg Saved By: aback

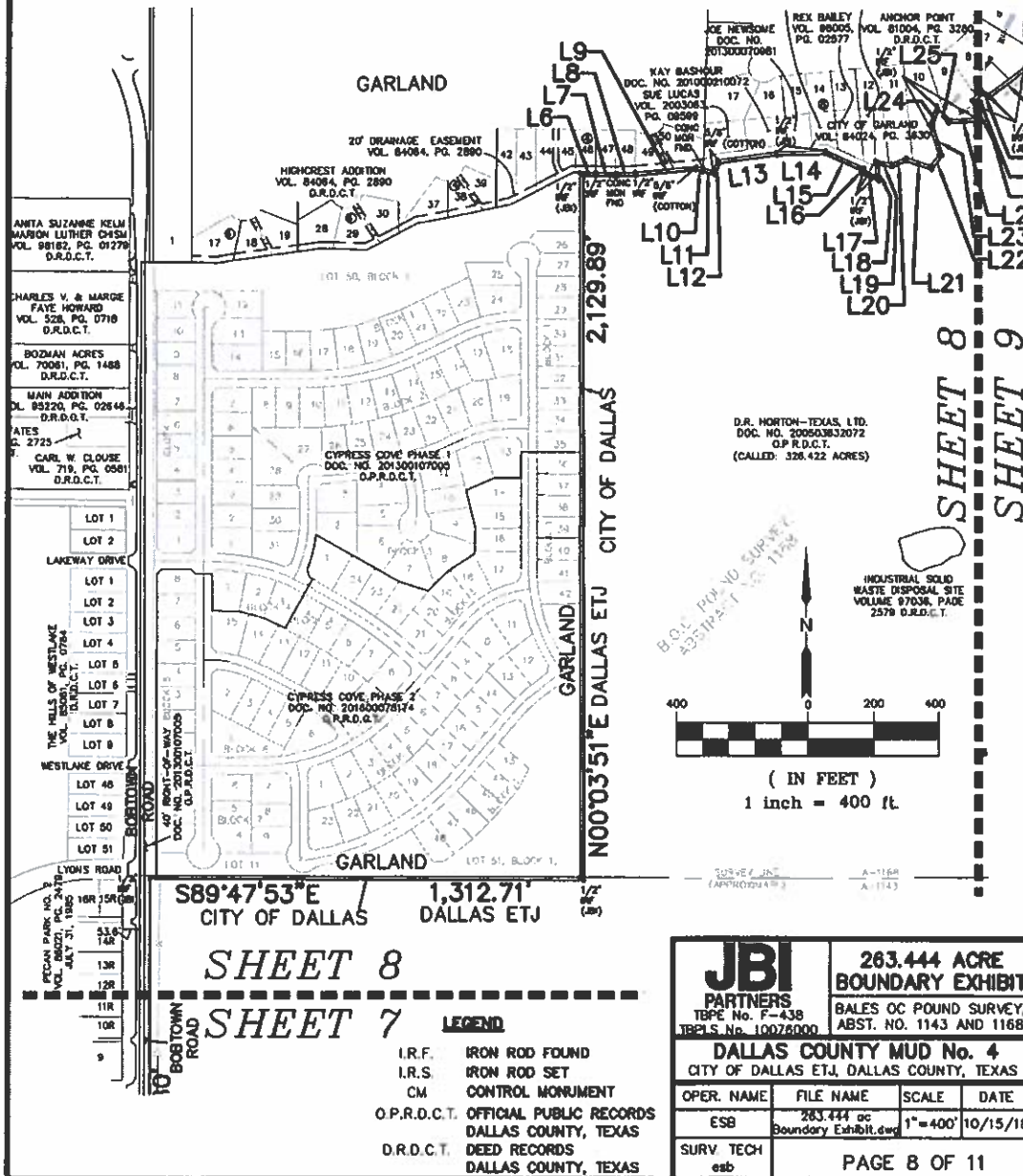
**DALLAS COUNTY MUD. NO. 4
263.444 ACRES
BALES OC POUND SURVEY, ABSTRACT NO. 1143
BALES OC POUND SURVEY, ABSTRACT NO. 1168
CITY OF DALLAS ETJ, DALLAS COUNTY, TEXAS**

SHEET INDEX



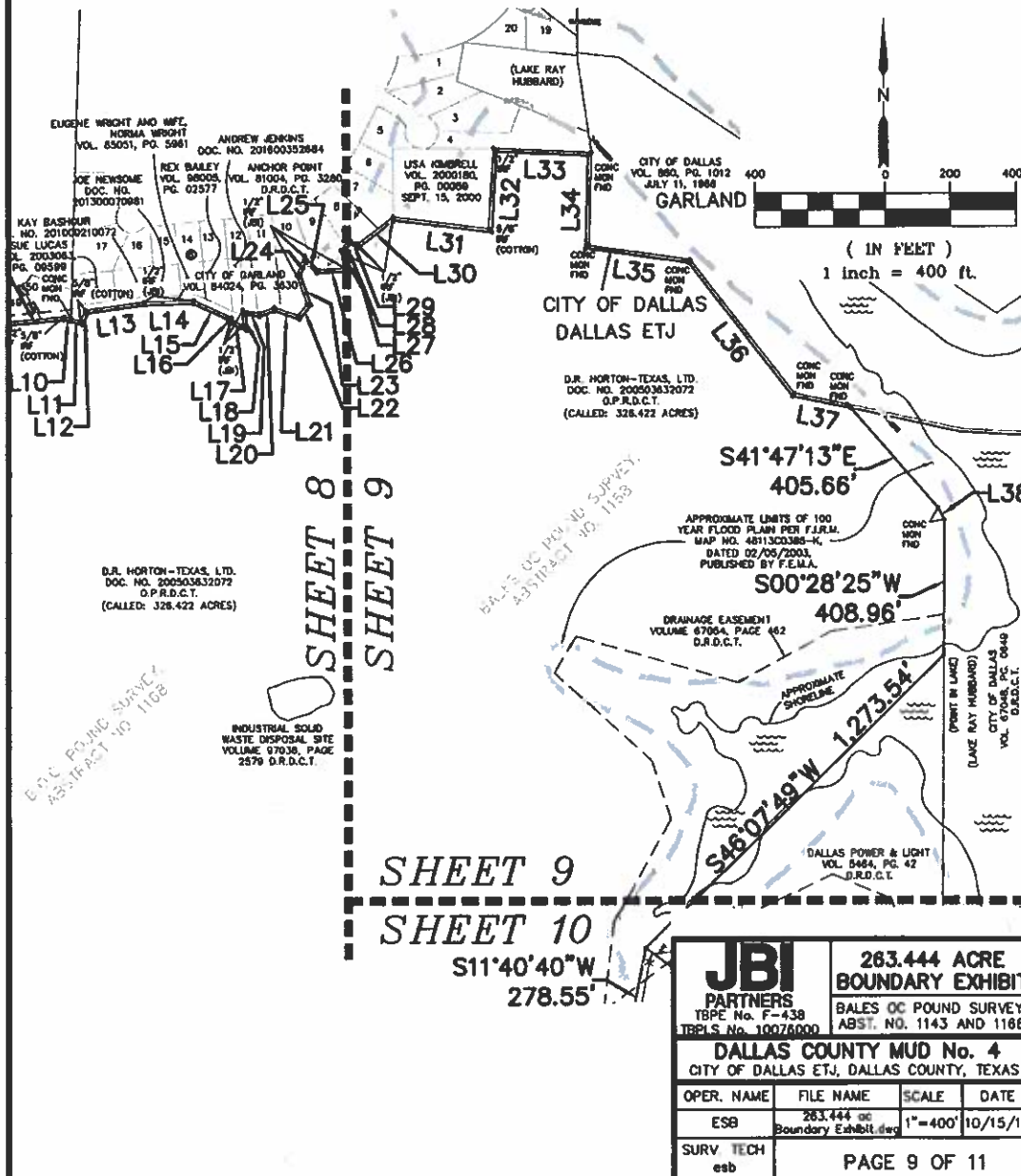


DALLAS COUNTY MUD. NO. 4
263.444 ACRES
BALES OC POUND SURVEY, ABSTRACT NO. 1143
BALES OC POUND SURVEY, ABSTRACT NO. 1168
CITY OF DALLAS ETJ, DALLAS COUNTY, TEXAS



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**DALLAS COUNTY MUD. NO. 4
263.444 ACRES
BALES OC POUND SURVEY, ABSTRACT NO. 1143
BALES OC POUND SURVEY, ABSTRACT NO. 1168
CITY OF DALLAS ETJ, DALLAS COUNTY, TEXAS**



JB		263.444 ACRE BOUNDARY EXHIBIT	
PARTNERS		BALES OC POUND SURVEY, ABST. NO. 1143 AND 1168	
TBPE No. F-438 TRPLS No. 10076000		DALLAS COUNTY MUD No. 4 CITY OF DALLAS ETJ, DALLAS COUNTY, TEXAS	
OPER. NAME	FILE NAME	SCALE	DATE
ESB	263.444 ac Boundary Exhibit.dwg	1"=400'	10/15/18
SURV. TECH	PAGE 9 OF 11		
esb			

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SHEET 9

SHEET 10

SHEET 7

SHEET 10

DALLAS POWER & LIGHT
VOL. 5466, PG. 42
D.R.D.C.T.

LAKE RAY HARBOR

5/8" SF (COTTON)

5/8" SF (COTTON)

5/8" SF (COTTON)

5/8" SF (COTTON)

5/8" SF (COTTON)

L39

L40

L41

S11°40'40"W
278.55'

S66°06'48"W
293.77'

S65°57'13"W
654.22'

DALLAS POWER & LIGHT
VOL. 598, PG. 0782
D.R.D.C.T.

DALLAS POWER & LIGHT
VOL. 5497, PG. 0657
D.R.D.C.T.

DALLAS POWER & LIGHT
VOL. 5484, PG. 24
D.R.D.C.T.

(IN FEET)
1 inch = 400 ft.

JB		263.444 ACRE BOUNDARY EXHIBIT	
PARTNERS		BALES OC POUND SURVEY	
TRPE No. F-438		ABST. NO. 1143 AND 1168	
TRPLS No. 10076000			
DALLAS COUNTY MUD No. 4			
CITY OF DALLAS ETJ, DALLAS COUNTY, TEXAS			
OPER. NAME	FILE NAME	SCALE	DATE
ESB	263.444 ac Boundary Exhibit.dwg	1"=400'	10/15/11
SURV. TECH	esb	PAGE 10 OF 11	

DALLAS COUNTY MUD. NO. 4
263.444 ACRES
BALES OC POUND SURVEY, ABSTRACT NO. 1143
BALES OC POUND SURVEY, ABSTRACT NO. 1168
CITY OF DALLAS ETJ, DALLAS COUNTY, TEXAS

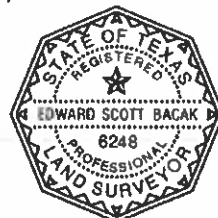
LINE TABLE		
NO.	BEARING	LENGTH
L1	N21°05'46"E	10.70'
L2	N89°28'30"W	56.76'
L3	N01°35'31"W	55.19'
L4	N52°23'17"E	37.52'
L5	N22°10'18"W	166.66'
L6	S89°06'14"E	36.69'
L7	S88°15'38"E	62.46'
L8	N87°06'47"E	58.54'
L9	N84°54'17"E	184.63'
L10	S75°36'30"E	20.35'
L11	S75°22'54"E	38.93'
L12	N22°58'06"E	38.64'
L13	N82°21'06"E	175.75'
L14	N88°38'06"E	147.23'
L15	S65°54'54"E	118.04'
L16	S05°12'53"E	8.95'
L17	S65°37'17"E	59.31'
L18	N01°30'58"W	50.23'
L19	S79°32'07"E	42.16'
L20	N68°41'01"E	47.94'

LINE TABLE		
NO.	BEARING	LENGTH
L21	S71°32'54"E	81.51'
L22	N37°17'54"E	55.00'
L23	N18°47'23"W	95.16'
L24	N21°16'08"E	44.16'
L25	S43°24'59"E	48.04'
L26	N86°34'34"E	97.97'
L27	N14°09'08"W	62.44'
L28	N41°02'42"E	30.05'
L29	S80°52'00"E	25.68'
L30	N53°17'13"E	136.99'
L31	S83°04'09"E	297.96'
L32	N03°35'32"E	243.43'
L33	S87°21'51"E	279.10'
L34	S01°45'28"W	279.89'
L35	S82°00'36"E	317.63'
L36	S37°37'07"E	513.25'
L37	S78°33'37"E	183.43'
L38	S27°42'20"E	40.47'
L39	S11°41'07"W	95.45'
L40	S10°33'03"W	44.77'

LINE TABLE		
NO.	BEARING	LENGTH
L41	S65°51'45"W	36.23'
L42	S21°04'05"W	538.06'
L43	S21°10'36"W	285.82'
L44	S21°05'20"W	365.34'
L45	S20°59'37"W	311.73'
L46	S21°05'54"W	290.42'
L47	S21°05'46"W	285.09'

E.S. BACAK

EDWARD SCOTT BACAK, R.P.L.S. #6248
Dated: October 15, 2018



CURVE TABLE						
NO.	LENGTH	DELTA	RADIUS	TANGENT	CHORD BEARING	CHORD
C1	205.37'	011°47'27"	997.98'	103.05'	N05°22'21"W	205.01'
C2	115.24'	007°02'15"	938.20'	57.69'	N14°18'28"W	115.16'
C3	43.67'	002°32'25"	984.93'	21.84'	N20°54'05"W	43.67'
C4	358.40'	022°13'00"	924.30'	181.48'	N11°03'48"W	356.16'

JB PARTNERS TBPE No. F-438 TBPLS No. 10074000		263.444 ACRE BOUNDARY EXHIBIT	
		BALES OC POUND SURVEY, ABST. NO. 1143 AND 1168	
DALLAS COUNTY MUD No. 4 CITY OF DALLAS ETJ, DALLAS COUNTY, TEXAS			
OPER. NAME	FILE NAME	SCALE	DATE
ESB	263.444 ac Boundary Exhibit.dwg	N/A	10/15/18
SURV. TECH	PAGE 11 OF 11		
esb			

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EXHIBIT A-2

Current Concept Plan for the Property



CONCEPT B **JB**
DALLAS COUNTY, TEXAS **IPARTNERS**



GARLAND
TEXAS MADE HERE

D.R. Horton Property

Cypress Cove / Fireside by the Lake

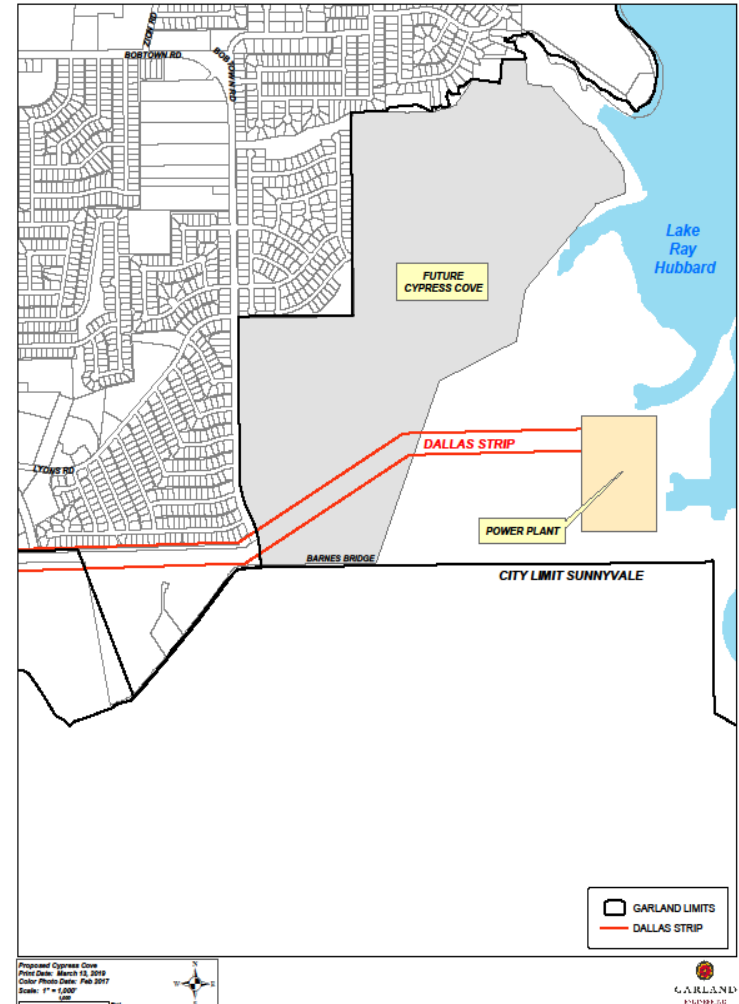
November 09, 2020 Council Work Session



GARLAND
TEXAS MADE HERE

Property Description

- Dallas County – Between City of Garland and Town of Sunnyvale
- Tract was disannexed by Dallas and is currently within the City of Dallas Extraterritorial Jurisdiction (ETJ)
- The tract cannot be annexed without approval from the City of Dallas
- Approximately 263.444 acres





Previous Discussion Summary

- D.R. Horton applied to the TCEQ to build a 400gpd wastewater treatment facility on site. The TCEQ Executive Director made the decision that the permit meets the requirements of applicable law. The decision does not authorize construction or operation of any proposed facilities. The permit was not issued but meets technical requirements.
- D.R. Horton also petitioned the City of Garland to provide water and wastewater services to the site. Water services would require permission and a formal agreement with the District to supply water.
- In recent meetings with D.R. Horton, staff has determined that providing wastewater and water services to this development is acceptable from an operational standpoint. To alleviate the water quality concern for the City, an air-gap system will be implemented by Horton.
- For wastewater services, once an agreement is in place with the City, D.R. Horton will no longer require the need for a treatment facility on location, and will cancel the application with the TCEQ.
- D.R. Horton has created the Dallas County Municipal Utility District No. 4 (MUD) which will provide municipal services including water, wastewater, drainage, police, fire, EMS, and trash collection.



GARLAND
TEXAS MADE HERE

Previous Discussion Summary

- Zoning and Development standards must meet or exceed all City of Garland zoning, construction, and development standards. A mandatory HOA will be created.
- At the October 21, 2019 work session, Council agreed to move forward with negotiations for water and wastewater services contracts based on a concept plan that includes the following:
 - 600 lots total
 - All houses developed on 60' wide lots with 70' wide lots adjacent to Cypress Cove eastern border
 - Development similar to current Cypress Cove (Garland City limits) standards
 - Average price \$299,000



GARLAND
TEXAS MADE HERE

Fireside by the Lake Conceptual Plan



0 100 200 400
1"=200'
SEPT 27, 2017
HCE/STW

FIRESIDE BY THE LAKE

CONCEPT B **JB**
DALLAS COUNTY, TEXAS **BI**
PARTNERS



- A Memorandum of Understanding (MOU) has been written and agreed upon by both parties.
- The MOU highlights are as follows:
 - Ensure any single family residential development in the Property meets the minimum requirements as set forth in Conceptual plan,
 - Developer agrees the City shall not be responsible for providing regular police, emergency medical, fire and trash collection services,
 - A traffic study has been performed and developer agrees to pay road impact fees, or construct roadway improvements as if they were within Garland city limits.
 - At least thirty (30) acres of green space will be developed which includes walking trails, sidewalks and seating,
 - The development will have an amenity center containing a swim center with pool or splash pad, shade structures, restrooms, and playground,
 - Developer will withdraw its application to the TCEQ to build the wastewater treatment facility.



GARLAND
TEXAS MADE HERE

Current Status

- The water and wastewater agreements are in draft form and included for your review.
- Approval of the water supply contract by the NTMWD Board of Directors will be on their November 19, 2020 regular agenda.
- Staff seeks the Council approval of the MOU including both water and wastewater agreements.
- Staff will submit for formal Council adoption at the regular meeting on December 01, 2020.



GARLAND

TEXAS MADE HERE

Questions



WHOLESALE WASTEWATER CONTRACT

This Wholesale Wastewater Contract (the "Contract") is made and entered into on this, the _____ day of _____, 2020, (the "Effective Date") by and between the City of Garland, Texas, a Texas home-rule municipality ("Garland"), and Dallas County Municipal Utility District No. 4, a political subdivisions of the State of Texas, ("Customer").

RECITALS

The following recitals are (1) true and correct; (2) incorporated as part of this Agreement for all purposes; (3) evidence the intent of the Parties in entering into this Agreement; and (4) to be used in interpreting this Agreement.

WHEREAS, Customer is a municipal utility district created pursuant to the provisions of Article XVI, Section 59 of the Texas Constitution and operating under the provisions of Chapters 49, and, 54 of the Texas Water Code, as amended;

WHEREAS, Customer was created to provide, among other services, Wastewater service to certain property in Dallas County, Texas known as Fireside By The Lake (the "Development"), which Development covers the 263.444 acres of land described in Exhibit "A", attached hereto and made a part hereof (the "Property");

WHEREAS, in order to provide Wastewater treatment to serve the Development, Customer will need a source of wholesale Wastewater treatment capacity; and

WHEREAS, Garland has the capability to provide wholesale Wastewater treatment capacity adequate to serve full development of the Property.

NOW, THEREFORE, Garland and Customer, in consideration of the terms, covenants and conditions herein contained, hereby agree as follows.

AGREEMENT

Article 1. Definitions

When used in this Contract, the following terms, when capitalized, shall be defined as follows. In the event a definition in this Contract conflicts with the same definition in Article VIII, "Industrial Wastes", Section 22.140 (C) of the City of Garland Code of Ordinances, as amended, the definition in the Code of Ordinances will prevail.

1.01 "Act" or "the Act" - the Federal Water Pollution Control Act, also known as the Clean Water Act ("CWA"), as amended (33 U.S.C. 1251, et seq.).

1.02 “Approved Connection Point(s)” - the Point(s) of Entry identified in Exhibit “B” through which Customer is authorized to discharge Wastewater into the Garland System.

1.03 “Basin Map” - the map attached hereto as Exhibit “B”, identifying the service area under this Contract and the Approved Connection Points.

1.04 “Biochemical Oxygen Demand (BOD)” - the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure, five (5) days at 20 degrees centigrade expressed in terms of mass and concentration [milligrams per liter (mg/l)].

1.05 “Calibration” - verification of primary measuring device and secondary instrumentation accuracy utilizing then-current standard primary device calibration procedures and signals recognized as acceptable within the industry or a separate flow measurement instrument.

1.06 “Capital Improvements” - construction of or improvements to any Garland facilities that provide services and benefits common to all users of the Garland System and that have a life expectancy of three or more years, whether such capital improvements are located within Garland, within the Property or elsewhere, including but not limited to Wastewater treatment facilities, metering and sampling facilities, control systems and appurtenances, and all collectors and interceptors and lift stations, if any, associated therewith.

1.07 “Composite Sample” - the sample resulting from the combination of individual Wastewater samples taken at selected intervals based on an increment of either flow or time.

1.08 “Customer System” or “Customer’s System” - the Customer’s facilities used for pretreatment, collection or transportation of Wastewater to a Point of Entry.

1.09 “Delivery Facilities” or “Delivery Facility” - all facilities necessary for the transmission of Wastewater to the Garland System that are on the Customer’s side of the Point of Entry.

1.10 “Director” - the designee appointed or authorized by the Garland City Manager to act on Garland’s behalf.

1.11 “Facility Expansion” - the expansion of the capacity of an existing facility that serves the same function as an otherwise necessary new Capital Improvement, in order that the existing facility may serve new or existing developments.

1.12 “Flow” – the collective total of all Wastewater, Industrial Wastes, Inflow, Infiltration, Liquid Waste, Suspended Solids, and any other matter transmitted from Customer’s System through all Approved Connection Point(s), collectively.

1.13 “Garland Expense” - expenses incurred by Garland related to the Wastewater utility, such expenses to be allocated as a System Cost if so determined in future cost-of-service studies.

1.14 “Garland System” or “Garland’s System” - Garland’s Wastewater collection and treatment system, which is a “Publicly Owned Treatment Works” under Section 307 of the Act. For purposes of this Contract, the Garland System includes all Wastewater treatment plants of Garland as a unified system.

1.15 “General Benefit Capital Facilities” - Wastewater facilities that provide utility services and benefits common to all customers including, without limitation, Wastewater treatment facilities, metering and sampling facilities, control systems and appurtenances, and all collectors and interceptors of eighteen (18) inches or greater in diameter.

1.16 “Industrial User” - a source of non-standard discharge.

1.17 “Industrial Waste” – non-domestic sewage that may include water-borne solids, liquids or gaseous substances resulting from industrial, manufacturing or food processing operations, or from the development of a natural resource, or any mixture of these with water or domestic sewage.

1.18 “Infiltration” - water that has migrated from the ground into the Wastewater system.

1.19 “Inflow” - water other than sewage that enters a Wastewater system (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary catch basins, cooling towers, storm waters, surface runoff, street wash waters or drainage. Inflow does not include, and is distinguished from, Infiltration.

1.20 “Liquid Waste” - the water-borne solids, liquids, and gaseous substances typically stored temporarily in a container and derived from sources including, but not limited to, grease traps, septic tanks, chemical toilet waste, and sand trap waste.

1.21 “Metering and Sampling Facility” or “Metering and Sampling Facilities” - the meter, meter vault, and all metering and telemetry equipment needed to measure or sample the Flow from the Customer’s System at the Point of Entry or other such locations as the Parties mutually agree upon in writing.

1.22 “Non-metered Area” – areas located within the Customer's boundaries that generate Wastewater that enters Garland's System by whatever means other than through an approved Metering and Sampling Facility.

1.23 “Non-Standard Discharge” – any discharge that exceeds the quality parameters outlined in Sections 7.3 – 7.5.

1.24 “Non-Standard Discharge Account” - those accounts under which Wastewater is Non-Standard Discharge is being introduced to the Garland System including, but not limited to, Industrial Waste and Liquid Waste.

1.25 “Party” or “Parties” - Garland and Customer may also be referred to in the singular as “Party” and in the plural as “Parties.”

1.26 “Point of Entry” - any points at which the Customer's Wastewater enters the Garland System, by whatever means, whether metered or unmetered.

1.27 “Pretreatment” - the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in Wastewater prior to or in lieu of introducing those pollutants into a Publicly Owned Treatment Works generally, but not exclusively, relating to Non-Standard Discharges and Prohibited Discharges. The reduction or alteration of pollutants or the nature of pollutants may be obtained – if not by elimination - by physical, chemical or biological processes, by process changes, or by other means, except by diluting the concentration of the pollutants (unless allowed by an applicable Pretreatment Standard).

1.28 “Pretreatment Requirement” - a substantive or procedural requirement related to Pretreatment imposed on an Industrial User, other than a Pretreatment Standard.

1.29 “Pretreatment Standard” or “Pretreatment Standards” - prohibitive discharge standards, categorical pretreatment standards, and local limits.

1.30 “Prohibited Discharge” – any discharge prohibited by 40 C.F.R. 403.5.

1.31 “Publicly Owned Treatment Works” (“POTW”) – a treatment works as defined by Section 212 of the Act (33 U.S.C. 1292) owned or operated by a governmental entity including Customer's System and Garland's System.

1.32 “Significant Industrial User” - any of the following:

- a. An Industrial User subject to categorical Pretreatment Standards; and
- b. Any other user that:

- (i) Discharges an average of 25,000 gpd or more of process wastewater;
- (ii) Contributes a process waste stream which makes up five percent (5%) or more of the hydraulic or organic loading of the treatment plant; or
- (iii) Is designated as significant by Garland on the basis that the user has a reasonable potential for adversely affecting the operation of a Publicly Owned Treatment Works or for violating any Pretreatment Standard or requirement.

1.33 "Standard Discharge Accounts" - those accounts under which Wastewater is being discharged that does not exceed the quality parameters outlined in Sections 7.3-7.5.

1.34 "Standard Methods" - those testing or analysis procedures as prescribed in the then current edition of "Standard Methods for Examination of Water and Wastewater," published by the American Public Health Association or the U.S. Environmental Protection Agency Manual of Methodologies for the Examination of Water and Wastewaters, or as will otherwise comply with procedures specified in state and federal discharge permits held by Garland.

1.35 "Strength" - the concentration of dissolved and suspended matter in Wastewater, as indicated by biochemical oxygen demand or suspended solids.

1.36 "Suspended Solids" - the total suspended matter that floats on the surface of, or is suspended in, water, Wastewater, or other liquid, and which is removable by laboratory filtering.

1.37 "System Cost" - operating expenses and capital-related costs incurred by Garland pursuant to the provision of Wastewater collection and treatment service to the wholesale class of sewer customers including, without limitation, all costs identified whether specifically or by implication as System Costs under this Contract. Such costs are to be collected by Garland as a component of the annual cost of providing wholesale Wastewater service.

1.38 "Wastewater" - water containing other liquid and water-carried wastes and sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, which are contributed to a Publicly Owned Treatment Works.

Article 2. Connection to the Garland System

2.01 Garland hereby grants to Customer, conditioned upon compliance with the terms and conditions contained herein, permission to connect Customer's System to the Garland System for the term of this Contract and provided that Customer is not in material breach of any provision of this Contract.

2.02 Garland agrees to accept all conforming and lawfully acceptable Wastewater delivered by Customer in accordance with this Contract to all Approved Connection Point(s), collectively, and at such additional points as the Parties may mutually agree upon, in writing, at a later time. Customer agrees to deliver all of its Wastewater flows from the area depicted in the Basin Map, attached as Exhibit "B", to Garland unless otherwise approved in writing by Garland. Customer acknowledges the need to this limited exclusivity in order to reduce the number of small-volume "package plants" and so that Garland may adequately plan capacity needs for Garland, Customer, and other customers or users of the Garland System. Customer further acknowledges that this limited exclusivity does not create or evidence monopolistic power on the part of or by Garland.

2.03 The cost of all Delivery Facilities necessary to convey Wastewater to the designated Approved Connection Points, whether shown on Exhibit "B" or mutually agreed upon at a later date by the Parties, together with the cost of connection of the Customer System to the Garland System, shall be borne by Customer, including the cost of acquisition of any necessary rights-of-way and easements to and from such Delivery Facilities; provided, however, City does hereby consent to Customer installing any portion of Customer's System in right-of-way or wastewater system easements granted to the City. In the event Garland requests Customer to increase the size of any such Delivery Facility, the difference in the cost of the Delivery Facilities that would be necessary to convey Wastewater to the designated Approved Connection Points, and the cost of the Delivery Facilities as requested by Garland, shall be at Garland's expense.

2.04 Unless mutually agreed to, in writing, by Garland and Customer, Customer shall be responsible for the design, construction, and financing of Delivery Facilities including the cost of and acquisition of any necessary rights-of-way and easements to and from such facilities. All designs, materials, and specifications shall, at a minimum, conform to the City of Dallas' requirements in all material respects. Plans and specifications for any Delivery Facility connecting to the Garland System shall be submitted to the Director for written approval, which approval shall not be unreasonably withheld. Without limiting the foregoing, no construction of any portion of Customer's System that may be located on Garland's property may begin until the Director has approved the plans and specifications for the work. Customer agrees that Garland has the right to make periodic inspections during the construction phase of the Delivery Facilities. Final acceptance of each facility is subject to the inspection by and written approval of the Director.

2.05 Customer agrees not to provide service to any user or users that, singly or in combination, would discharge more than 25,000 gallons per day into the Garland System or that would cause Customer's daily flow to Garland to exceed 310,000 gallons per day (monthly average) without first providing written notice to Garland and receiving written approval in advance from Garland. Garland shall not unreasonably withhold its approval. For purposes of this Article 2, "new development" does not include the residential or commercial development planned within the boundaries of the Property before the Effective Date but would include any expansion or increase in proposed densities.

Article 3. Maintenance of Customer System

3.01 Customer agrees to maintain Customer's System in good and working condition and to make all necessary repairs in a timely manner. Garland shall not have any responsibility or liability for the operation of the Customer's System, it being Customer's responsibility to provide adequate facilities to deliver its Wastewater to the Garland System. Customer shall also promptly comply with any permit requirements, environmental regulations, and any other laws or regulations, whether state or federal, applying to Customer's System.

Article 4. Metering and Sampling Facilities

4.01 Unless otherwise agreed to in writing, Garland shall have the option to construct Customer Metering and Sampling Facilities not in existence as of the Effective Date. Upon exercising this option, Garland shall inform Customer, and Customer shall acquire a site reasonably acceptable to Garland. All reasonable construction costs incurred by Garland, including, but not limited to, site preparation, design and engineering, construction, and equipment for such facilities, together with the costs of necessary easements and rights of way, shall be a System Cost. Any costs incurred by Garland associated with any necessary modifications of a Metering and Sampling Facility to accommodate a complete initial installation satisfactory to Garland shall also be a System Cost.

4.02 On the Effective Date, or, if the Metering and Sampling Facilities have not been constructed as of the Effective Date, on such later date as the construction and installation of the Metering and Sampling Facilities are complete, Customer shall transfer ownership of all Customer Metering and Sampling Facilities to Garland at no cost.

4.03 If additional Points of Entry are added by Customer to deliver Customer's Wastewater to the Garland System and Garland declines to exercise its option to construct additional Metering and Sampling Facilities for same, Customer shall construct Metering and Sampling Facilities for each such Point of Entry.

4.04 The Metering and Sampling Facilities shall be designed and engineered in a manner satisfactory to Garland. Customer shall transfer ownership of such newly constructed facilities at no cost to Garland.

4.05 Customer shall provide Garland with all necessary access easements and rights of way in a form satisfactory to Garland. Customer shall provide Garland a perpetual route of ingress and egress to Metering and Sampling Facilities, which shall be accessible by Garland without notice.

4.06 Garland shall have the right to inspect and approve the Metering and Sampling Facilities prior to accepting the transfer. Garland's approval and acceptance of the Metering and Sampling Facilities shall not be unreasonably withheld. In the event Garland rejects the transfer, it shall provide Customer a written notice of the deficiency Customer must correct before proceeding with the transfer of the Metering and Sampling Facility in question.

4.07 Upon accepting the transfer of a Metering and Sampling Facility, Garland shall have the sole authority and exclusive right and license to enter, use, operate, and maintain the Metering and Sampling Facilities. Garland shall thenceforth be solely responsible for the operational and maintenance responsibilities associated with these facilities. Garland also shall have the discretion to construct improvements, expansions, and replacements to the Metering and Sampling Facilities as a System Cost and at the timing of Garland's needs, provided, however, that Garland shall permit Customer to review proposed construction, expansion, and replacement plans. Customer will grant and provide to Garland such permits or easements as are necessary for the continuous operation and maintenance of all Metering and Sampling Facilities. All such costs incurred by Garland for the operation, maintenance, construction, expansion or replacement of Customer Metering and Sampling Facilities shall be considered System Costs.

4.08 Expenses incurred by Garland for the operation and maintenance of Customer Metering and Sampling Facilities are System Costs and shall include, without limitation, the following:

- a. Cost of electricity at the facilities;
- b. Cost of the installation and maintenance of the telemetry service at the facilities and to the control center and all costs of maintaining connectivity, including access or lease charges;
- c. Cost of calibration and field measured velocity profiles;
- d. Cost of parts, materials and supplies required for repairs, calibrations, and upgrading of the facilities;

- e. Labor cost plus fringe benefits and indirect costs for repairs, calibrations, and upgrading of the facilities;
- f. Maintenance costs of ingress and egress and meter facility site;
- g. Administrative costs, including record and book keeping, overhead, and rate setting costs; and
- h. Any additional monitoring to ensure compliance with state and federal regulations governing Wastewater treatment.

4.09 Replacement of facilities described in this Article 4 or equipment therein occasioned as a result of obsolescence due to age, excessive maintenance, growth or other reasons as determined by the Director shall be a System Cost. Any replacement facility or equipment therein shall comply with Garland's standards and specifications.

4.10 Garland shall have the sole right to secure the Metering and Sampling Facilities in order to prevent tampering or other interference with the facility. Garland shall have the sole right to control access the facilities.

4.11 Customer may request permission, in writing, to inspect a particular Metering and Sampling Facility once per month. Garland shall, upon receiving a written request from Customer, coordinate with Customer to set an appointment during normal business hours and within three (3) business days after receiving the written notice. At the appointed date and time, Garland will accompany and allow Customer enter and inspect the Metering and Sampling Facilities.

4.12 Customer may request that Garland test the accuracy of each meter once per quarter; otherwise, Garland shall test each meter at least once per year. Any reading, calibration or adjustment to such metering equipment shall be done by employees or agents of Garland. Garland shall notify Customer at least seventy-two (72) hours in advance of the date and time for any testing, reading, calibration or adjustment, and Customer may have personnel present to observe, if so desired, by sending Garland written notice of its intention to do so. Garland shall, upon receiving a written notice from Customer, coordinate with Customer to set an appointment during normal business hours and within ten (10) business days after receiving the written notice. At the appointed time, Garland will allow Customer's personnel to enter and observe Garland's employees or agents conduct the appropriate tests to measure the accuracy of the meter. Garland shall have the right to conduct its own tests or Calibration without notice and at any time it deems appropriate.

4.13 Customer must present any complaint or request for adjustment based on meter accuracy in writing to Garland no later than fifteen (15) days after the test was completed

or any such complaint or request is waived. If Customer fails to test or request a test of a meter during a given quarter, Customer waives any complaints, disputes, or claims regarding meter accuracy for that quarter and all preceding quarters.

Article 5. Rights-of-Way

5.01 Customer shall grant, without charge to Garland, such easements, rights-of-way or other necessary property rights along public streets, alleys or other property owned by Customer, to the extent lawful and as reasonably necessary, to construct or maintain facilities to provide Wastewater collection. Whenever it is deemed necessary by Garland to remove, alter, change, adapt or conform any portion of Customer's System located on property owned by Garland, such alterations shall be made by Customer at Customer's expense within thirty (30) days from the issuance of written notice to Customer to make the alterations unless a different schedule has been approved by Garland. All work done by or on behalf of a Party under this paragraph will be performed in accordance with specifications equal to those applying to work of a similar nature performed by such Party, but neither Party will be required to restore the other's property to a condition exceeding its original condition, unless otherwise mutually agreed upon in writing. Garland and Customer agree to coordinate the location of the mains and facilities in the other's easements and rights-of-way in order to prevent conflicts insofar as reasonably practicable.

Article 6. Metering and Sampling

6.01 All Flow discharged into the Garland System by Customer shall be metered, except as provided below in Section 6.02. If the Parties agree in writing that metering is not possible in one (1) or more areas on the Basin Map, the agreed-upon method for determining the discharge volume for such area shall be deemed to include an adjustment for Infiltration and Inflow.

6.02.1 If, in the judgment of the Director, the Wastewater generated within one or more areas shown on the Basin Map cannot be accurately measured by Metering and Sampling Facilities approved or provided by Garland, then the charge for Wastewater service within that drainage area will be based on 80% of water usage within Customer's service area as shown on the Basin Map. Garland shall have the right to audit Customer's water usage records for such purposes and Customer shall produce them to Garland within ten business days of Garland's written request.

6.02.2 The charge for any unmetered Flow (other than that described in 6.02.1) originating from the Property or entering Garland's System through Customer's System including, without limitation, Flow entering Garland's System other than through an approved Point of Entry will be based on 99% of water usage within Customer's service area as shown on

the Basin Map plus additional surcharges under Article 7, if applicable. Garland shall have the right to audit Customer's water usage records for such purposes and Customer shall produce them to Garland within ten (10) business days of Garland's written request. In no event shall acceptance of payment for unmetered Flow under the provisions of this section be construed as an approval of the means of delivery of the Flow to Garland's System or a waiver of any of Garland's rights or Customer's obligations under this Contract. The Parties intend that all Flow from Customer's System into Garland's System shall be through an approved Point of Entry.

6.03 Garland shall enter all readings of meters into data collection systems that Garland shall maintain. Customer shall have access to such records during reasonable business hours and shall be furnished with monthly totalizer readings for each Point of Entry Metering and Sampling Facility.

6.04 Garland shall calibrate and service the meters no less than once during each twelve (12) month period. Copies of the results of such calibration and all related information will be provided to Customer on request.

6.05 Subject to the provisions of Section 4.13, after a calibration is completed, if it is determined that a meter is under-metering or over-metering Flow by more than 5%, the registration of the Flow as determined by the meter shall be corrected for a period extending back to the time such inaccuracy began, if such time is ascertainable; or, if such time is not ascertainable, then for a period extending back one-half of the time elapsed since the date of the last calibration, but in no event further back than a period of twelve months.

6.06 If any meter used to determine volume from Customer is out of service or out of repair or otherwise incapable of providing any information that would allow the Parties to ascertain or compute the amount of Flow, the Flow delivered through the period such meter is out of service, out of repair or otherwise incapable of providing Flow information shall be the average Flow of the last twelve (12) months plus three percent, divided by three-hundred and sixty-five, and the result multiplied by the number of days the meter is out of service or out of repair.

6.07 Garland shall periodically determine the quality of the Wastewater at the Metering and Sampling Facilities or other agreed upon sampling points for the purposes of billing for the Strength of the Wastewater. The sampling and testing shall occur on a random basis once per month. To determine the quality of the Wastewater, Garland shall collect twenty-four (24) hour time-weighted or flow-weighted composites for a period of not less than one twenty-four (24) hour period per month for a total of twelve (12) sampling periods per year. If, at the request of Customer or as directed by the Director, more extensive monitoring is desired, such additional monitoring shall be paid for by the Party making the request and shall be done as provided in this section. If Customer requests such additional monitoring, Garland shall invoice Customer for the costs of collecting and testing the additional

samples. Customer shall pay for the additional sampling, including additional monitoring, collecting and testing samples, within ten days after receipt of the invoice. Garland shall analyze the samples collected in accordance with Standard Methods and will provide analysis reports to the Customer, if requested.

6.08 If in the opinion of the Director, further monitoring of the Wastewater is desirable to ensure ongoing compliance with state and federal regulations, the Director may order that additional monitoring be performed with or without prior notice to Customer. Compliance monitoring is in addition to the periodic sampling set forth in Section 6.7. All information obtained as a result of such compliance monitoring shall be provided to the Customer upon request. Garland will provide notice of such compliance monitoring to Customer within a reasonable time after obtaining the results of testing.

6.09 All costs incurred by Garland under this Article are System Costs.

Article 7. Rates, Charges, and Surcharges

7.01 Wastewater rates established hereunder will be determined based upon cost-of-service analysis to be performed by or on behalf of Garland annually using the methodologies and principals generally accepted within the industry and detailed further herein, as applicable, and which are generally being utilized by the City to set the rate for wholesale wastewater service to municipal customers located outside the corporate limits of the City. The cost of such analysis is a System Cost.

7.02 The Parties agree that the methodologies and principals used to conduct a cost-of-service analysis shall be those generally accepted within the industry as promulgated by the Water Environment Federation within the *WEF Manual of Practice No. 27, Financing and Charges for Wastewater Systems*, as revised, and which are generally being utilized by the City to set the rate for wholesale wastewater service to municipal customers located outside the corporate limits of the City. Notwithstanding the forgoing, the Parties agree the following methodologies and principals will apply until agreed otherwise in writing:

- a. The cost of service for the service class shall include allocated reasonable and necessary operation and maintenance expenses based on the then-adopted and approved budget for the Garland System, budgeted debt service including principal and interest payments, capital outlay and budgeted funds necessary to comply with Garland's established financial policies such as, but not limited to, operating cash reserves, externally required or internally adopted debt coverage requirements, repair and replacement reserves, and any other reserve requirements that may be necessary to maintain the financial stability of the Garland's System.

b. To determine the allocation and distribution of costs to the service class, the analysis shall consider at least the following factors: total volume, rate of flow, Wastewater quality, metering, and customer-related costs such as accounting, billing, and monitoring.

c. Capital-related costs will consist of budgeted cash capital outlays as well as budgeted debt service payments including principal and interest and debt service coverage as may be required.

7.03 The initial rates for this Contract shall be those adopted by the Garland City Council as of the Effective Date and reflected in Exhibit "C" hereto. The cost of service analysis used by the City to determine such rate is also attached hereto as Exhibit "C."

7.04 Any challenge to a rate, surcharge or fee established by the Garland City Council must be brought within ninety (90) days of its adoption by submitting a written objection to the City in accordance with Article 25 of this Contract.

7.05 An additional charge shall be due for any discharge through Point of Entry that exceeds the maximum Strength allowed to Customer. The surcharge for each mg/l of BOD in excess of 250 mg/l and for each mg/l of total suspended solids ("TSS") in excess of 250 mg/l shall be assessed. The excess Strength determination will be based on monthly sampling.

7.06 Customer agrees that the Garland City Council has the right to revise, by ordinance, the allowable discharge Strengths, consistent with applicable state and federal laws and regulations and applicable permit requirements (provided that the strength allowed shall be no less than the strength generated from a typical single family residence). At the effective date of this Contract, the allowable discharge Strength is 250 mg/l for BOD and 250 mg/l for TSS.

7.07 Customer shall pay a surcharge to Garland for concentrations of BOD exceeding 250 mg/l and TSS exceeding 250 mg/l at the rate provided in Article II "Utility Rates and Fees," Chapter 50 of the Code of Ordinances of the City of Garland, subject to increase or decrease without formal amendment of this Contract as the surcharge is amended by ordinance from time to time. The surcharge will be calculated each month. It will be based on the rate of Non-Standard Discharge for that month. The surcharge will be assessed the entire month for each portion of the month that discharges from Customer exceed applicable limits, whether classified as Non-Standard Discharges or otherwise.

7.08 Bills for Wastewater service are submitted to Customer on a monthly basis. Amounts billed are due and payable not more than thirty (30) days after the billing date. Bills will show current charges, as well as past-due charges, if any. Current charges is the amount due for service provided since the prior billing period. Past-due charges is the

total amount unpaid from all prior billings as of the current billing date. Payments received by Garland shall first be applied to the past-due charges, if any, and thereafter to the current charges. Any challenge to a billing must be submitted, in writing, to Garland within sixty (60) days of the billing date, or any objection to the billing is waived.

7.09 If Customer disputes a bill, it shall nevertheless continue to promptly make the disputed payment or payments. Dispute of a bill is not grounds for non-payment. Notwithstanding the provisions of Chapter 2251 of the Texas Government Code, in the event a payment is not paid as specified in this Contract, a finance charge of the lower of 10%, per annum, or the maximum rate allowed by law, per annum, will be calculated from the date that the payment was required to be made. In the event the amount finally determined to be due is less than the full amount of the disputed bill, then the amount found to be in excess of the amount due will be credited to the Customer's account together with any interest Garland assessed Customer for the balance of the disputed bill.

7.10 The Parties agree that this Contract is a contract for goods or services under the provisions of Subchapter I, Chapter 271, Tex. Local Gov't. Code and that services obtained pursuant to this Contract are essential and necessary to the operation of Customer's waterworks and Wastewater facilities. The Parties agree that all payments made by Customer constitute reasonable and necessary operating expenses of Customer's waterworks and Wastewater systems. Customer waives any immunity from suit or liability relating to this Contract.

7.11 Customer agrees, throughout the term of this Contract, to continuously operate and maintain its waterworks system, and to fix and collect such rates and charges for Wastewater service as will produce revenues in an amount equal to at least (i) all of its operation and maintenance expenses of such system, including specifically its payments under this Contract; and (ii) all other amounts as required by law and the provisions of the its revenue bonds or other debt obligations now or hereafter outstanding, including the amounts required to pay all principal of and interest on such bonds and other obligations.

7.12 The Parties agree that the rates established in accordance with this Contract are reasonable and in the public interest, and that any change in the Contract price is necessary (1) to avoid impairing the ability of Garland to continue providing Wastewater service, (2) to avoid casting an excessive burden on other customer or users of the Garland System, and (3) to avoid being unduly discriminatory to or among customer classes. Customer acknowledges that it has entered into this Contract willingly after determining, after considering alternative sources and methods of providing for its Wastewater needs, that entering into this Contract is in the best interests of Customer and its constituent users.

7.13 Customer represents and covenants that all payments made by it under this Contract shall constitute reasonable and necessary operating expense of its Customer System and that all such payments will be made from the revenues of its System. Customer represents

and has determined that the Wastewater service to be obtained from the System is absolutely necessary and essential to the present and future operation of its Wastewater system. Accordingly, all payments required by this Contract to be made by Customer shall constitute reasonable and necessary operating expense of its respective system as described herein, 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 debt obligations heretofore or hereafter issued by Customer.

7.14 Upon the occurrence of Customer's first failure to pay any amount billed for service under this Contract, which amount remains unpaid for more than sixty (60) days after its due date, Customer agrees to establish a security fund to be held in trust by Garland in the amount of three (3) month's average billings, from which Garland may withdraw funds to secure payment of the billing. Customer shall thereafter immediately replenish and restore the account to the required amount and maintain the full balance required in the fund for the remainder of the term of the Contract, notwithstanding Garland's withdrawals to satisfy billings remaining unpaid for more than sixty (60) days after the due date.

7.14.1 In the event that the security fund is not established, at the expiration of sixty (60) days after such amounts are due, Customer shall be in default under this agreement, and the City may invoke the remedies specified herein or otherwise available by law.

7.15 The security fund described in Section 7.14 shall be deposited with the Garland City Manager in cash, in the form of an unconditional, irrevocable standby letter of credit, a performance/surety bond, or other instrument or security in a form acceptable to the Garland City Attorney. The letter of credit, bond, or other instrument shall in no event require the consent of Customer prior to the collection by Garland of any amounts covered by the letter of credit, bond, or other instrument.

7.16 Customer acknowledges that it will accrue no equity or any other interest in the Garland System or any other assets of Garland as a result of payment or other performance pursuant to this Contract.

7.17 Except as specifically provided herein, no other fees shall be due and payable by Customer to the City for wastewater service. In particular, neither Customer nor any retail customer located within the Property shall be required to pay to the City any "impact" or "capital recovery fee" related to wastewater conveyance or treatment capacity or service.

Article 8. Industrial Connection and Monitoring

8.01 Customer agrees that it will, at the time of execution and throughout the term of this Contract, identify and locate all possible Significant Industrial Users and report them to

Garland. Any compilation, index or inventory of Significant Industrial Users shall be made available to the United States Environmental Protection Agency, Texas Commission on Environmental Quality, or its any successor agencies, and Garland upon request.

8.02 Customer agrees that it will not permit any Significant Industrial User within its jurisdiction to connect directly or indirectly either to Customer's System or to the Garland System without at least thirty days' prior written notification to the Director of such intent to connect. Such notification shall provide the Director with information pertaining to volume and composition of Flow from the Significant Industrial User, and further information as may be requested by the Director.

8.03 Customer agrees to conduct all monitoring, sampling, and inspection of Customer's System and Significant Industrial Users as necessary to ensure that Industrial Waste introduced into Customer's System meets the quality standards set out in Article 9 of this Contract. Upon request to Customer, a representative of Garland will be permitted to observe Customer's collection of samples from Significant Industrial Users. Customer agrees to furnish Garland separate duplicate samples for independent testing and shall provide the Director the sample analysis results and pretreatment records within fifteen days of receipt of laboratory reports from a Significant Industrial User.

8.04 Customer agrees that Garland shall have the right to sample Wastewater at all Points of Entry and such other locations as may be necessary to determine the volume and quality of Wastewater entering the Garland System. Garland shall have sole authority to determine whether sampling at a location other than a Point of Entry is necessary. Customer agrees to disconnect from its system any of its users found to be in violation of allowable discharges or who refuses access to facilities for the purpose of sampling Wastewater being discharged into the Customer System or who is otherwise suspected of making a Prohibited Discharge or other unauthorized or illegal discharge; provided, however, that the disconnected user shall be afforded the same rights, privileges of appeal, and deficiency cure periods as are Significant Industrial Users operating within Garland's jurisdiction.

8.05 Following notice to Customer by Garland, Customer grants to Garland the right to enter Customer's jurisdiction if Garland determines that questionable discharges or Prohibited Discharges are entering the Garland System from the Customer System. Customer agrees to assist Garland in locating and eliminating any Prohibited Discharge or otherwise illegal discharge.

Article 9. Wastewater Quality

9.01 As a condition of receiving and continuing to receive Wastewater treatment services under this Contract, Customer agrees that, prior to connecting to the Point of Entry to the Garland System, it shall enact and enforce such ordinances, rules, orders or other lawful

means of enabling Customer to enforce within its jurisdiction regulations governing Industrial Waste which are at least as stringent as the provisions of Chapter 22 of the Garland Code of Ordinances (regarding Wastewater) and any amendments thereto, and any applicable state or federal regulations relating to (1) discharged substances; (2) Prohibited Discharge; (3) Pretreatment Requirements; (4) industrial discharge permitting systems; and (5) industrial self-monitoring reports. The operation of Customer's System shall in all respects comply with federal and state laws applicable generally to Publicly Owned Treatment Works and with all terms and conditions contained in any permit issued by a federal or state authority regarding Customer's System.

9.02 Articles VI and VII of Chapter 22 of the Garland Code of Ordinances are incorporated into this Contract as if fully set forth herein. Garland shall endeavor to provide Customer with a copy of any proposed amendments to those provisions at least sixty days prior to the presentation of such amendments to the Garland City Council, if reasonably possible, during which time Customer shall have an opportunity to review such amendments and provide written comments to Garland. On or before the effective date of any such amendments, Customer shall adopt appropriate conforming ordinances, rules, orders or other lawful means of enabling Customer to enforce within its jurisdiction Articles VI and VII of Chapter 22 of the Garland Code of Ordinances, as amended.

9.03 Customer agrees that the quality of the Wastewater discharged into the Customer System shall be equal to or better than the quality standards established by Garland's Code of Ordinances, including amendments thereto, or any applicable state or federal law or regulation or permit requirements applicable now or in the future to Garland's System, whichever quality standards are more stringent. Customer shall indemnify, defend and hold Garland harmless to the extent Customer's failure to ensure the quality of Wastewater discharged into Customer's System falls below these quality standards or otherwise causes the Garland System to be in noncompliance with any federal, state or local statutes, rules, regulations or permit requirements. If Customer's System causes the Garland System to be in noncompliance, Customer further agrees to assume responsibility for any repairs, remediation, or other actions necessary to bring the Garland System back into compliance. Customer agrees that, prior to connecting to the Point of Entry to the Garland System, Customer shall secure a general liability insurance policy acceptable to and approved, in writing, by Garland. This insurance policy must be in the amount of at least \$5 million and shall cover any costs necessary to bring Garland back into compliance, including payment of any fines, penalties, surcharges or other fees imposed by any state or federal regulatory agency, statute, law, or regulation, should Customer fail to maintain the requisite Wastewater quality standards.

9.04 Customer shall require all Significant Industrial Users within its jurisdiction that ultimately discharge into the Garland System to apply for and obtain a permit from Customer allowing such discharge. Such permit shall require Significant Industrial Users, at a minimum, to abate any of the substances described in Garland Code of Ordinances §

22.141 as a condition to discharging Wastewater into the Customer System. The permit application shall contain, as a minimum, the following:

- a. Name and physical address of the Significant Industrial User;
- b. A description of activities, facilities, and plant processes on the premises of the Significant Industrial User, including a list of all raw materials and chemicals used or stored at the facility which are, or could accidentally or intentionally be, discharged to the POTW;
- c. The number and type of employees, hours of operation, hours of discharge and proposed or actual hours of operation of the Significant Industrial User;
- d. Each product produced by type, amount, process or processes, and rate of production;
- e. A map of the property showing accurately all sewers and drains;
- f. The site plans, floor plans, mechanical and plumbing plans, and details to show all sewers, floor drainages, and appurtenances by size, location, and elevation, and all points of discharge;
- g. Time and duration of all the discharges;
- h. Any other information as may be deemed necessary by the Director to evaluate the Wastewater discharge permit application; and,
- i. Plans and specifications sealed by a registered professional engineer detailing all pretreatment facilities and processes including any grease, oil, or sand interceptors and control manholes.

Customer shall provide Garland a copy of these applications and any permits issued within fifteen days after the permit is issued.

9.05 Customer shall take all necessary steps to mitigate any odors from Customer's System not attributable to Garland, including but not limited to any odors emitted by air release valves in Customer's System. Customer shall submit plans and specifications for odor control to Garland for approval prior to constructing a Wastewater line. Customer shall thereafter maintain the odor control as approved. Customer may seek Garland's approval to modify the odor control mechanisms as better odor control options become available.

Article 10. Infiltration and Inflow

10.01 Customer agrees that it has an obligation to prevent Infiltration and Inflow into Customer's System, and to prevent same from entering the Garland System. Customer further agrees that all connections within its jurisdiction which ultimately enter into the Garland System will be constructed in accordance with specifications and standards at least equal to those of the City of Dallas technical specifications and construction standards. Customer covenants and agrees to maintain strict supervision and maintenance of its System to prevent connections through which surface drainage can enter Customer's System, in order to prevent such drainage from ultimately being deposited into the Garland System. Customer shall not make, nor shall it permit to be made, any connection which will contribute storm water run-off from rainwater spouts, rainwater areas, streets, gutter drains or other Inflow, Infiltration or other non-Wastewater source of Flow into Customer's System.

10.02 Customer agrees that no discount, deduction, allowance or offset shall be provided for any Inflow or Infiltration into Customer's System, regardless of the source or cause of such Inflow or Infiltration. Customer stipulates that the provisions of this Article may not be waived for any cause, including but not limited to (a) the actions of any third Party that cause or contribute to Inflow or Infiltration; (b) any unusual weather patterns, including any significant changes in rainfall or temperatures; (c) any Acts of God, or (d) any force majeure of any nature whatsoever that causes, contributes to, or otherwise allows Infiltration or Inflow into the Customer's System.

10.03 Customer agrees that, for the purposes of metering, calculating and billing, all Flow, of whatever kind and from whatever source, including any Infiltration, Inflow, Liquid Waste, and Industrial Wastes, with or without any Suspended Solids, entering the Garland System from Customer's System shall be treated as Wastewater for which a charge will be made to Customer. Customer agrees that all billing calculations will be based on the total Flow without regard to whether the Flow consists wholly of Wastewater, or contains Inflow, Infiltration, Liquid Waste, or Industrial Waste, with or without any Suspended Solids.

Article 11. Sludge Disposal

11.01 Customer recognizes the importance of processing and disposing of sludge in a timely and proper manner. Customer will cooperate with Garland in any environmentally sound sludge processing and disposal program meeting federal and state standards within the area served by Customer.

Article 12. Waste haulers

12.01 Customer shall not introduce nor cause, suffer or permit to be introduced, and shall prohibit the introduction of, Liquid Waste into the Customer System by liquid waste haulers, either directly or indirectly.

Article 13. Reports and Records

13.01 Customer shall provide to Garland the following data on a quarterly basis:

- a. The actual number of Customer's accounts discharging directly or indirectly into the Garland System or Customer System within its service area;
- b. A classification of domestic and nondomestic accounts within Customer's service area by number and percentage of accounts discharging directly or indirectly into the Customer System; and,
- c. Additional data which may assist Garland in developing methodology for cost-of-service studies, planning studies for analyzing federal grants, and system access fees; provided, however, that Garland shall not request data that will require Customer to incur unreasonable expenses in providing such data or the production of confidential information.

Article 14. Notices

14.01 Any notice, communication, request, reply or advice herein provided or permitted to be given, made or accepted by either Party to the other Party must be in writing to:

City of Garland: Bryan Bradford, City Manager
City of Garland
200 N. Fifth Street
Garland, Texas 75040

Customer: Dallas County Municipal Utility District No. 4
c/o Coats|Rose P.C.
Attn: Mindy Koehne
14755 Preston Road, Suite 600
Dallas, Texas 75254

Each party shall provide written notification to the other of any change in address.

Article 15. Inspection and Audit of Records

15.01 Complete records and accounts shall be maintained by each Party for a minimum period of five years or such longer period of time as may be required by applicable law. Each Party shall at all times, upon notice, have the right at reasonable times to examine and inspect records and accounts relating to this Contract during normal business hours; and further, if required by any law, rule or regulation, make the records and accounts available to federal and state auditors.

Article 16. Consent

16.01 Whenever, under the terms of this Contract, Garland is permitted to give its written consent or approval, Garland, in its discretion, may give or may refuse such written consent or approval and, if given, may restrict, limit or condition such consent or approval in any manner it shall deem advisable; however, consent will not be unreasonably withheld. Garland's consent must be provided in writing and from a person authorized to act on Garland's behalf.

Article 17. Breach of Contract/Remedies

17.01 Any material breach of the duties or the obligations of this Contract, or failure to faithfully keep and perform any of the terms, conditions and provisions hereof shall be subject to the remedies provided herein, including but not limited to termination. The non-breaching Party shall provide the breaching Party ninety (90) days written notice of its intention to terminate this Contract if the breaching Party fails to cure the material breach. The written notice shall include a reasonable description of the breach. If the Customer is the breaching Party, and fails or refuses to cure the breach, then City shall have the right, with three (3) years advance written additional notice to Customer and without any liability whatsoever on the part of City, to declare this Contract terminated. In the event of termination of this Contract, all rights, powers, and privileges of Customer shall cease and terminate and Customer shall make no claim of any kind whatsoever against City, its agents or representatives, by reason of such termination or any act incident thereto. In any event, the non-breaching Party shall advise the alleged breaching Party in writing immediately upon acceptance of the cure of any default. The following shall, without limitation, be considered to be a material breach:

- a. Customer's failure to adopt and enforce policies or standards necessary to enforce any applicable Garland ordinances, or any applicable state or federal laws or regulations;

- b. Customer's failure to pay any bill, charge or fee as provided for in this Contract;
- c. Customer's making any connection to the Garland System at any point except as provided in Section 2.02;
- d. Customer's failure to provide Garland ingress and egress for purposes of sampling and operation and maintenance of any metering or any sampling facility;
- e. Customer's failure to provide Garland rights-of-way as required herein;
- f. Customer's failure to permit any sampling of Wastewater as provided for herein;
- g. Customer's failure to disconnect Customer's Industrial Users pursuant to Section 8.04;
- h. Customer's failure to abide by Significant Industrial User requirements outlined in Article 8;
- i. Customer's failure to maintain the quality of discharge required by Article 9; or
- j. Customer's failure to comply with Article 19 of this Contract.
- k. City's failure to timely provide the necessary Wastewater service to serve the existing customers of the Customer as well as new customers seeking Wastewater service, up to the limit of Flow set forth in Section 2.05.

17.02 Failure to provide notice of breach is not waiver - City. City's failure to provide a notice of breach or acceptance of any benefits under this Contract for any period of time after Customer's material breach, default or failure is not a waiver by City of any rights relative to any subsequent material breach, default or failure.

17.03 Failure to provide notice of breach is not waiver - Customer. Customer's failure to provide a notice of breach or acceptance of any benefits under this Contract for any period of time after City's breach, default or failure is not a waiver by Customer of any rights relative to any subsequent material breach, default or failure.

17.04 Remedies. If a Party is in default under this Contract, then the non-defaulting Party shall be entitled to all remedies available under applicable law including, but not limited to, specific performance, injunctive relief, mandamus relief, and damages; and termination

as provided in Section 17.01. If either Party hereto is the prevailing Party in any legal proceedings against the other brought under or with relation to this Contract, such prevailing Party shall additionally be entitled to recover court costs and reasonable attorney's fees from the non-prevailing Party to such proceedings.

Each Party hereto acknowledges that this Contract is for the providing of goods and services and, pursuant to Section 271.151, Texas Local Government Code, each has waived its immunity from suit solely for the purpose of the other Party enforcing the express terms, conditions, and obligations of this Contract.

Article 18. Ownership and Liability

18.01 No provision of this Contract shall be construed to create any type of joint or equity ownership of any property, any partnership or joint venture, nor shall same create any other rights or liabilities. Customer payments (whether past, present, or future) will not be construed as granting Customer partial ownership of, pre-paid capacity in, or equity in the Garland System.

18.02 Liability for damages arising out of the transportation, delivery, reception, treatment, and disposal of all Wastewater discharged into the Garland System shall remain with the Customer, together with title and ownership thereto, until such Wastewater passes through the Point of Entry to the Garland System, at which time title, ownership and liability for such damage shall pass to Garland, save and except that title to any Prohibited Discharge and any liability therefor shall not pass to Garland unless such Prohibited Discharge originated in the Garland System. Any effluent produced by and discharged by Garland from any treatment plants owned or operated by Garland shall be owned by Garland, regardless of originating source of Wastewater.

18.03 Contracts made and entered into by either Customer or Garland for the construction, reconstruction or repair of any delivery facility shall include the requirements that the independent contractor must provide adequate insurance protecting both the Customer and Garland as insureds. Such contracts must also provide that the independent contractor covenant to indemnify, hold harmless and defend both the Customer and Garland against any and all suits or claims for damages of any nature arising out of the performance of such contracts, and include any other provisions required by federal, state, or local laws or regulations.

Article 19. Compliance with Permit Conditions

19.01 Customer acknowledges that Garland is the holder of discharge permits issued by the United States and the State of Texas. Customer agrees that it will comply with all such

permit conditions in any way relating to the System and the discharge into the System. **Customer agrees that in the event a fine is assessed against Garland for any violation of any permit condition, and the violation is the result of any act of omission or commission by Customer, the amount of the fine will be assessed to Customer and Customer shall pay to Garland the amount of such fine.** If such fine is not attributable to a specific customer, such fine shall be considered a System Cost and allocable to the Customer in accordance with the provisions of this Contract.

Article 20. Term of Contract

20.01 This Contract shall continue in force and effect for a period of twenty (20) years from the Effective Date hereof and shall be subsequently extended automatically for additional ten-year terms until terminated by either Party in accordance with the terms hereof. A Party wishing to terminate this Contract must give the other Party no less than three (3) years advance written notice of its intent to terminate at the end of the current term.

Article 21. Force Majeure

21.01 No Party hereto shall be considered to be in default in the performance of any of the obligations hereunder (other than obligations of either Party to pay costs and expenses) if such failure of performance shall be due to circumstances beyond the reasonable control of the Parties, including but not limited to, the failure of facilities, flood, earthquake, tornado, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, labor dispute and action or non-action by a failure to obtain the necessary authorizations and approvals from any governmental agency or authority or the electorate, labor or material shortage, sabotage, or restraint by a court order or public authority, which by the exercise of due diligence and foresight the Party could not have reasonably been expected to avoid and which by exercise of due diligence it shall be unable to overcome. Either Party rendered unable to fulfill any obligation by reason of an uncontrollable force shall exercise due diligence to enable fulfillment of its obligations under this Contract.

21.02 As noted in Article 10 of this Contract, this Force Majeure provision shall not be applicable to any claims by Customer regarding Inflow or Infiltration.

21.03 In the event the proper operation of the Garland System, as a result of the above, requires Garland to temporarily interrupt all or part of the services to Customer, Customer shall not recover any damages from Garland arising from or related to the temporary interruption of services, including, but not limited to, any direct or consequential damages..

Article 22. Effective Date

22.01 This Contract, together with all terms and conditions and covenants, shall take full force and effect on the later of the dates this Contract is approved by the City and signed by the authorized representative of each Party.

Article 23 Miscellaneous

23.01 This Contract is subject to all applicable federal and state laws and any applicable permit requirements, ordinances, or amendments adopted pursuant to Article 9, and all applicable rules, orders, and regulations of any 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, or of any right to appeal any decision or ruling by same.

23.02 Customer agrees to abide by any changes in this Contract made necessary by any amendment or revision to state or federal regulations.

23.03 In each instance herein where reference is made to a federal or state regulation or statute or to the Garland Code of Ordinances, it is the intention of the Parties that, at any given time, the then current federal or state regulation or statute or Garland ordinance shall apply. If a publication or reference work referred to herein is discontinued or ceases to be the generally accepted work in its field, or if conditions change, or new methods or processes are implemented by Garland, new standards shall be adopted that are in compliance with state and federal laws and any valid rules and regulations pursuant thereto.

23.04 Garland shall comply with all federal, state and local government requirements necessary to obtain grants and assistance for system design, system construction and studies. Customer agrees to assist Garland in compliance by setting adequate rates, establishing proper user charges and complying with governmental requirements.

23.05 All exhibits to this Contract are incorporated herein by reference for all purposes wherever reference is made to the same.

23.06 Section or article headings in this Contract are for convenience only and do not purport to accurately or completely describe the contents of any section or article. Such headings are not to be construed as a part of this Contract or any way defining, limiting or amplifying the provisions hereof.

23.07 This Contract constitutes the sole and only agreement between Customer and Garland and supersedes any prior understanding or oral or written agreements between Customer and Garland with respect to the subject matter of this Contract.

23.08 This Contract shall inure only to the benefit of the Parties hereto and third persons not privy hereto shall not, in any form or manner, be considered a third-party beneficiary of this Contract. Each Party hereto shall be solely responsible for the fulfillment of its customer's contracts or commitments, and Garland shall not be construed to be responsible for Customer's contracts or commitments by virtue of this Contract or any provision contained herein.

23.09 Customer shall neither assign any of the rights or obligations of this Contract nor contract with individual or entity located outside Customer's boundaries to connect to Customer's System without Garland's prior written approval.

23.10 Each Party shall provide the other Party with a copy of the minute action, order, ordinance or resolution authorizing the execution of this Contract.

Article 24. Step Dispute Resolution

24.01 Disputes other than Rate or Fee disputes. In accordance with the provisions of Subchapter I, Chapter 271, Tex. Local Gov't. Code, the Parties agree that, prior to instituting any lawsuit or other proceeding arising from a dispute under this Contract, the Parties will first attempt to resolve the dispute by taking the following steps: (1) a written notice substantially describing the nature of the dispute shall be delivered by the dissatisfied Party to the other Party, which notice shall request a written response to be delivered to the dissatisfied Party, which notice shall request a written response to be delivered to the dissatisfied Party not less than five days after receipt of the notice of dispute; (2) if the response does not reasonably resolve the dispute, in the opinion of the dissatisfied Party, the dissatisfied Party shall give notice to that effect to the other Party whereupon each Party shall appoint a person having authority over the activities of the respective Parties who shall promptly meet, in person, in an effort to resolve the dispute; and (3) if those persons cannot or do not resolve the dispute, then the Parties shall each appoint a person from the highest tier of managerial responsibility within each respective Party, who shall then promptly meet, in person, in an effort to resolve the dispute. Any suit filed prior to performing these steps shall be abated pending completion of this step process. This Section shall not apply to any disputes regarding rates or fees Garland charges Customer.

24.02 Rate or Fee Disputes. Customer agrees that, as a condition precedent to instituting any lawsuit or other proceeding arising from a rate or fee dispute (including any surcharges Garland may assess) under this Contract, Customer shall first attempt to resolve the dispute by taking the following steps:

- a. Customer shall deliver a written notice substantially describing the nature of and reasons for the dispute to Garland;
- b. Garland shall respond to the dispute notification in writing within ten business days after receipt of the notice of dispute;
- c. if Customer does not believe Garland's response reasonably resolves the dispute, Customer may, within ten business days after receipt of Garland's response, request, in writing, that the Garland City Council consider the rate or fee dispute; and
- d. Garland shall, within ten business days of receipt of Customer's written request that the Garland City Council consider the dispute, and place the matter on the Garland City Council agenda for either a regular or special meeting.

24.03 Customer shall appear before and have one hour to present any evidence and arguments it has regarding the rate or fee dispute to the Garland City Council. The Garland City Council shall issue a written final decision regarding the rate or fee dispute within ten business days after Customer's appearance.

Article 25. Exhibits

25.01 The following Exhibits are attached to and made a part of this Contract, and are incorporated by reference for any and all purposes wherever reference is made to same:

Exhibit "A" – The legal description of the Property.

Exhibit "B"– The Basin Map, including the location of the initial Approved Connection Points at the time this Contract is executed.

Exhibit "D– The initial Rates approved by the Garland City Council and Methodology for Calculating Costs of Service.

Executed on this ____ day of _____, 2020

CITY OF GARLAND

Bryan Bradford
City Manager

Executed on this ____ day of _____, 2020

Dallas County Municipal Utility District No. 4

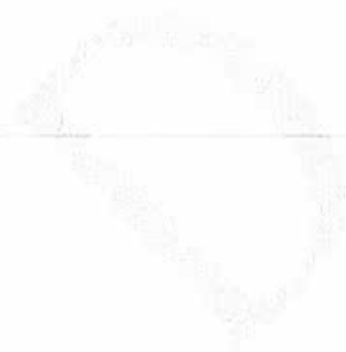
President, Board of Directors

EXHIBIT A
THE PROPERTY

EXHIBIT B

BASIN MAP, INCLUDING APPROVED CONNECTION POINTS

EXHIBIT C



**CURRENT RATES FOR WHOLESALE WASTEWATER SERVICE
AND METHODOLOGY FOR CALCULATING COSTS OF SERVICE**



**GARLAND
CITY COUNCIL ITEM SUMMARY SHEET**

City Council Work Session Agenda

4. c.

Meeting Date: November 9, 2020

Item Title: Overview of Community Development Block Grant (CDBG-CV) and Emergency Solutions Grant (ESG-CV) Funding That Will Be Received from HUD Through Round 3 of the CARES Act

Submitted By: Mona Woodard, Neighborhood Services Administrator

Summary of Request/Problem

Staff will seek Council's direction on options to enable immediate deployment of new projects utilizing CARES Act funding totaling \$3,698,089

Options:

1. Approve or deny immediate acceptance and deployment of ESG-CV and CDBG-CV funds;
2. Approve or deny modified approach to budgeting ESG-CV and CDBG-CV funds;
3. Approve or deny proposed projects and funding for City Sponsored CDBG-CV funds.

Recommendation/Action Requested and Justification

Staff recommends approving Options 1, 2, and 3.

Attachments

CARES Act Round 3 Funding (1)



GARLAND
**HOUSING AND
COMMUNITY SERVICES**



Round Three of ESG-CV and CDBG-CV Funding

Purpose

The City of Garland has been notified that round 3 of CARES Act funding will authorize a reservation of additional Emergency Solutions Grant (ESG-CV) and Community Development Block Grant (CDBG-CV) funding to be used to respond to COVID-19.

A Public Notice has been posted soliciting citizen input and a formal Public Hearing is scheduled for November 10, 2020 during the regular City Council meeting.

Staff is seeking Council direction on options that enable the immediate deployment of new projects utilizing CARES Act funding.

Round 3 of CARES Act ESG-CV and CDBG-CV Reservations	
ESG – CV	\$2,004,381
CDBG – CV	\$1,693,708
Cumulative Total	\$3,698,089

Timeline

Round 3 of CARES Act ESG-CV and CDBG-CV Timeline	
Council Authorization Categorical of Approach	November 9, 2020 – Work Session
Public Hearing to Solicit Comments on Acceptance of Funding	November 10, 2020 – Regular Council Meeting
RFQ – Notice of Funding Availability Posted for 2-Week Period	November 11, 2020
Council Discussion to Approve Use of Funding	December 14, 2020 – Work Session
Formal Approval of Funding	December 15, 2020 – Regular Council Meeting
Submission to HUD – Formal Approval from HUD	December 16, 2020
Start Date for Approved Programs	January 1, 2020

CARES Act – ESG-CV

• **ESG-CV Anticipated Funding** **\$2,004,381**

- **Administration** **\$200,438**
 - Temporary Staff \$100,000
 - City Office Space Rental \$36,000 (\$1,500 per month for 2 years)
 - General Administrative Costs \$64,438
- **Street Outreach Activities** **\$200,000**
 - Assistance providing Identification documents
 - Providing transportation services (bus/train passes)
 - PPE for clients and workers and hygiene packages
 - Costs associated with obtaining VA or SSI benefits
- **Rapid Re-Housing /Emergency Shelter-35 persons over 2 year period** **\$1,260,000**
 - Housing assistance for homeless individuals for 12 months
 - Assistance would be for up to \$1,500 per month
 - Case Management would be required to receive assistance
- **Emergency Shelter Services** **\$300,000**
 - Additional Shelter Hotline and Counseling Services
 - Additional cleaning services for Shelter and PPE equipment
 - Emergency Motel Vouchers
- **Data Collection Services** **\$43,943**
 - Licensing Fees for HMIS Data Collection Services

CARES Act – CDBG-CV

• **CDBG-CV Anticipated Funding** **\$1,693,708**

- **Administration – City Sponsored** **\$338,741**
 - Temporary Staff
 - General Administrative Costs

- **Workforce Training** **\$500,000**
 - Workforce training for citizens impacted by COVID-19
 - Solicitation of applicants would be posted

- **Parkland Health Clinic Renovation City Sponsored Project** **\$135,000**
 - Project approved by Council to begin FY20/21 (\$500,000)
 - Total costs of the project is (\$635,000)
 - The additional repairs are to address COVID-19 issues

- **City Facility Upgrades - City Sponsored Project** **\$719,967**
 - City Library facility upgrades/services to accommodate social distancing

Discussion/Questions



GARLAND
CITY COUNCIL ITEM SUMMARY SHEET

City Council Work Session Agenda

4. d.

Meeting Date: November 9, 2020

Item Title: Administrative Services Committee Update

Summary of Request/Problem

Mayor Pro Tem Robert John Smith, Chair of the Administrative Services Committee, will provide a committee report on the following items:

- Policy for Visiting Dignitaries and Shared Hosting of Events
- Creation of Additional Orientation Material for New Council Members
- Consider Research and/or Adoption of other Rules of Order for Council
- Non-profit (NPO) and Sports Field Use (SFU) Drafts

Recommendation/Action Requested and Justification

Discussion only.



**GARLAND
CITY COUNCIL ITEM SUMMARY SHEET**

City Council Work Session Agenda

4. e.

Meeting Date: November 9, 2020

Item Title: Public Safety Committee Report

Submitted By: Jeffrey Bryan, Chief of Police

Summary of Request/Problem

Deputy Mayor Pro Tem Robert Vera, Chairman of the Public Safety Committee, and Chief Jeff Bryan, Staff Liaison to the Committee, will provide a committee report on the following items assigned to the Committee:

- Consider an ordinance requiring lawn service vehicles to have placards while operating in residential areas
- Consider an ordinance to create specific rules for the use of Downtown Square

Recommendation/Action Requested and Justification

Council discussion.

Attachments

Door Hanger-English/Spanish

Door Hanger-English/Vietnamese

Grass Clippings-Website-English

Grass Clippings-Website-Spanish

Grass Clippings-Website-Vietnamese



Allowing the release of yard waste into the street, gutter or storm drain is not only unsightly and bad for our waterways, it is in violation of the City of Garland Code of Ordinance. This could result in a fine up to \$2,000.

Please do your part to keep our neighborhoods healthy, clean and beautiful. Pick up yard waste and/or request your lawn maintenance provider to remove excess yard waste and dispose of it properly in bagged containers. The property owner is ultimately responsible for the condition of their property.

For more information, call the
Stormwater Hotline at 972-205-2180



GARLAND
STORMWATER MANAGEMENT



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Asegúrese de hacer su parte para mantener nuestros vecindarios saludables, limpios y hermosos. Recoja los desechos del jardín y / o solicite a su proveedor de mantenimiento del césped que elimine el exceso de desechos del jardín y deséchelos correctamente en contenedores en bolsas. El dueño de la propiedad es el responsable del estado de su propiedad.

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Vui lòng dọn dẹp sạch rác của mình để giữ cho cảnh quan được sạch đẹp. Nhặt rác trong sân vườn và/hoặc yêu cầu bên cung cấp dịch vụ quét dọn bãi cỏ của quý vị loại bỏ rác thừa trong sân vườn, và xử lý đúng cách như bỏ rác vào trong túi đựng rác. Chủ sở hữu chịu trách nhiệm cuối cùng về tình trạng rác thải của mình.

Để biết thêm thông tin, hãy gọi Đường dây nóng về Nước mưa tại **972-205-2180**



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GARLAND
STORMWATER MANAGEMENT



Permitir la liberación de desechos de jardín en la calle, alcantarilla o desagüe pluvial no solo es antiestético y malo para nuestras vías fluviales, sino que también viola el Código de Ordenanzas de la Ciudad de Garland. Esto podría resultar en una multa de hasta \$2,000.

Asegúrese de hacer su parte para mantener nuestros vecindarios saludables, limpios y hermosos. Recoja los desechos del jardín y / o solicite a su proveedor de mantenimiento del césped que elimine el exceso de desechos del jardín y deséchelos correctamente en contenedores en bolsas. El dueño de la propiedad es el responsable del estado de su propiedad.

Para más información, por favor llame a
Stormwater Hotline a 972-205-2180



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Không cho phép xả rác ở sân vườn ra đường phố, rãnh nước hay cống thoát nước mưa. Đó là hành vi gây mất cảnh quan và ảnh hưởng xấu đến hệ thống dẫn nước của chúng ta. Ngoài ra hành động đó còn vi phạm đến Bộ Luật Của Thành Phố Garland. Điều này có thể dẫn đến hình phạt lên đến \$2,000.

Vui lòng dọn dẹp sạch rác của mình để giữ cho cảnh quan được sạch đẹp. Nhặt rác trong sân vườn và/hoặc yêu cầu bên cung cấp dịch vụ quét dọn bãi cỏ của quý vị loại bỏ rác thừa trong sân vườn, và xử lý đúng cách như bỏ rác vào trong túi đựng rác. Chủ sở hữu chịu trách nhiệm cuối cùng về tình trạng rác thải của mình.

Để biết thêm thông tin, hãy gọi Đường dây nóng về Nước mưa tại **972-205-2180**



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