

RESOLUTION NO. 44-2020

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, AUTHORIZING THE ACQUISITION AND TRANSFER OF THE MARKOUT WATER SUPPLY CORPORATION (“MARKOUT”) WATER SYSTEM AND CUSTOMERS TO THE CITY OF MESQUITE, TEXAS (“MESQUITE”); AUTHORIZING THE CITY MANAGER TO EXECUTE SUCH DOCUMENTS AND TO TAKE SUCH ACTIONS AS NECESSARY OR REQUESTED TO COMPLETE THE ACQUISITION AND TRANSFER OF THE MARKOUT WATER SYSTEM AND CUSTOMERS TO MESQUITE; AUTHORIZING THE CITY MANAGER TO FINALIZE, EXECUTE AND ADMINISTER A MEMORANDUM OF UNDERSTANDING BETWEEN MESQUITE AND THE CITY OF FORNEY, TEXAS (“FORNEY”) DEFINING THE EXPECTATIONS AND RESPONSIBILITIES OF BOTH CITIES RELATED TO THE ACQUISITION BY MESQUITE OF THE MARKOUT WATER SYSTEM AND CUSTOMERS AND THE DIVISION OF THE MARKOUT WATER SYSTEM INCLUDING, WITHOUT LIMITATION, THE TRANSFER TO FORNEY OF THE RIGHTS TO PROVIDE WATER SERVICE TO THE GRAYHAWK SUBDIVISION LOCATED IN FORNEY.

WHEREAS, Markout Water Supply Corporation (“**Markout**”) provides retail water service to over 1000 customers in Kaufman County, Texas; and

WHEREAS, Markout’s customers are located in the city limits and extraterritorial jurisdiction of the City of Forney, Texas (“**Forney**”), and in the city limits and extraterritorial jurisdiction of the City of Mesquite, Texas (“**Mesquite**”); and

WHEREAS, Markout obtains treated water from Forney pursuant to a May 2, 2006 Wholesale Water Contract, as amended by a June 22, 2006 Amendment # 1 to the Wholesale Water Contract (the original contract, as amended, being hereinafter collectively referred to as the “**Wholesale Contract**”); and

WHEREAS, Markout’s Board of Directors has requested that Mesquite acquire Markout’s water supply system and customers, and provide water service to the area and customers currently served by Markout; and

WHEREAS, Forney desires the right to provide water service to the Grayhawk Subdivision in Forney, a current subdivision within the Markout service area and being more particularly identified in the Memorandum of Understanding between Mesquite and Forney, attached hereto as Exhibit A and made a part hereof for all purposes (“**Transfer Area**”); and

WHEREAS, until Mesquite has designed and constructed facilities to extend and connect Mesquite’s water system to Markout’s water system, Mesquite will need to transport treated water from the North Texas Municipal Water District through Forney’s water system to Markout’s water system; and

WHEREAS, before the transfer of the Markout water system to Mesquite may occur, the members of Markout must vote to approve the transfer at a membership meeting, and the Public Utility Commission of Texas (“PUC”) must approve the transfer of the system and customers to Mesquite; and

WHEREAS, the transfer of the Transfer Area to Forney cannot occur until Mesquite completes a feasibility study which will not be finalized before the transfer of the Markout system, if approved, to Mesquite; and

WHEREAS, Mesquite and Forney desire to define the expectations and responsibilities of both Mesquite and Forney related to: (i) the acquisition by Mesquite of the Markout water system and customers; and (ii) the division of the Markout water system; and

WHEREAS, Mesquite and Forney desire to enter into a Memorandum of Understanding, a copy of which is attached hereto as Exhibit A and made a part hereof for all purposes (the “MOU”) to, *inter alia*, (i) outline the steps both Mesquite and Forney will take to evaluate and transfer the rights to provide water service to the Transfer Area from Mesquite to Forney; (ii) provide consent to the assignment of the current Wholesale Contract to Mesquite; and (iii) provide for the termination of the Wholesale Contract; and

WHEREAS, the MOU is an interlocal agreement between Mesquite and Forney under Chapter 791 of the Texas Government Code; and

WHEREAS, upon full review and consideration of the MOU and all matters attendant and related thereto, the City Council finds that the acquisition by Mesquite of the Markout water system and customers and the MOU will accomplish a public purpose and is in the best interest of Mesquite and its citizens.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. The facts, recitations and findings contained in the preamble of this resolution are hereby found and declared to be true and correct and are incorporated and adopted as part of this resolution for all purposes.

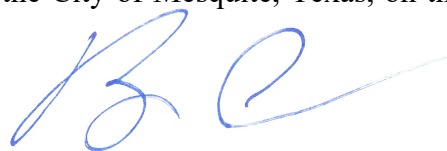
SECTION 2. The City Council hereby approves the acquisition by Mesquite of the Markout water system and customers, and authorizes the City Manager to: (i) execute and file with the PUC a Sale, Transfer or Merger Application relating to the acquisition and transfer of the Markout water system and customers to Mesquite; and (ii) take all other actions and execute all other documents necessary or requested to complete the acquisition and transfer of the Markout water system and customers to Mesquite including, but not limited to, a Management Agreement and Water System Asset Transfer Agreement with Markout and an Agreement Designating Retail Water Service Territory and Transferring Facilities and Customers with Forney.

SECTION 3. The City Council hereby approves the MOU and authorizes the City Manager to finalize and execute the MOU and take all actions and execute all documents necessary or requested to consummate the transactions contemplated by the MOU.

SECTION 4. The City Manager is further hereby authorized to administer the MOU on behalf of Mesquite including, without limitation, the City Manager shall have the authority to: (i) finalize and execute the assignment of the Wholesale Contract to Mesquite; (ii) finalize and execute any termination of the Wholesale Contract; (iii) finalize and execute an agreement between Mesquite and Forney pursuant to Texas Water Code §13.248 substantially in the form attached as Exhibit B to the MOU transferring the Transfer Area and customers within the Transfer Area to Forney; (iv) execute and file all documents with the PUC and take all actions and execute all other documents necessary or requested to complete the transfer of the Transfer Area to Forney; (v) provide any notices required or permitted by the Agreement; (vi) approve amendments to the Agreement provided such amendments, together with all previous amendments approved by the City Manager, do not increase expenditures by Mesquite under the Agreement in excess of \$50,000; (vii) consent to the assignment of the Agreement under the terms and pursuant to any assignment provisions of the Agreement; (viii) approve or deny any matter in the Agreement that requires the consent of Mesquite provided, however, notwithstanding the foregoing, any provision of the Agreement that requires the consent of the City Council pursuant to the terms of the Agreement shall require the approval of the City Council; (ix) approve or deny the waiver of performance of any covenant, duty, agreement, term or condition of the Agreement; (x) exercise any rights and remedies available to Mesquite under the Agreement; and (xi) execute any notices, amendments, approvals, consents, denials and waivers authorized by this Section 4, provided, however, notwithstanding anything contained herein to the contrary, the authority of the City Manager pursuant to this Section 4 shall not include the authority to take any action that cannot be delegated by the City Council or that is within the City Council's legislative functions.

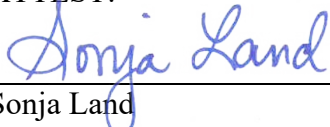
SECTION 5. The sections, paragraphs, sentences, clauses and phrases of this resolution are severable and, if any phrase, clause, sentence, paragraph or section of this resolution should be declared invalid, illegal or unenforceable by the final judgment or decree of any court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of any of the remaining phrases, clauses, sentences, paragraphs and sections of this resolution and such remaining provisions shall remain in full force and effect and shall be construed and enforced as if the invalid, illegal or unenforceable provision had never been included in this resolution.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 8th day of September 2020.



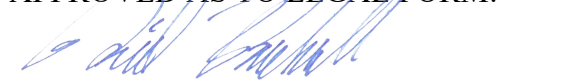
Bruce Archer
Mayor

ATTEST:



Sonja Land
City Secretary

APPROVED AS TO LEGAL FORM:



David L. Paschall
City Attorney

EXHIBIT A

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF MESQUITE AND THE CITY OF FORNEY**

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF MESQUITE AND THE CITY OF FORNEY**

For

**THE PURPOSE OF DEFINING EXPECTATIONS AND RESPONSIBILITIES OF THE
PARTIES RELATED TO THE ACQUISITION OF
MARKOUT WATER SUPPLY CORPORATION WATER SYSTEM AND CUSTOMERS
AND THE DIVISION OF THAT SYSTEM**

This Memorandum of Understanding (“MOU”) is made by and between the City of Mesquite (“Mesquite”) and the City of Forney (“Forney”) (collectively the “Cities” or “Parties”), pursuant to the Interlocal Cooperation Act, Chapter 791, Texas Government Code, to be effective on the date of the last signatory to this MOU (“Effective Date”).

1. Background and Objectives

- A. Markout Water Supply Corporation (“Markout”) provides retail water service to over 1000 customers in Kaufman County, Texas. Markout’s customers are located inside the city limit and extraterritorial jurisdiction of Forney, and in the city limits and extraterritorial jurisdiction of Mesquite. Markout operates its system under Certificate of Convenience and Necessity (CCN) No. 10846. Markout obtains treated water from Forney pursuant to the May 2, 2006 Wholesale Water Contract, as amended by the June 22, 2006 Amendment # 1 to the Wholesale Water Contract (“Wholesale Contract”).
- B. Markout’s Board of Directors has requested that Mesquite acquire Markout’s water supply system and customers, and provide water service to the area and customers currently served by Markout. Mesquite has agreed to work with Markout to transfer the Markout water system and customers to Mesquite. Before the transfer of the system may occur, the members of Markout must vote to approve the transfer at a membership meeting, and the Public Utility Commission of Texas (“PUC”) must approve the transfer of the system and customers to Mesquite.
- C. It is Mesquite’s and Forney’s intent to transfer to Forney the rights to provide water service within the Grayhawk subdivision and adjacent vacant land constituting an approximate 52 acres currently in the city limits of Forney (Kaufman County Property ID Nos. 9528 and 9529), the location of which is set out in *Exhibit A* of this MOU (“Transfer Area”). However, the transfer of the Transfer Area to Forney cannot occur without Mesquite first completing the feasibility study currently underway, which will not be finalized before the transfer of the Markout water system, if approved, to Mesquite.

- D. Until Mesquite has designed and constructed facilities to extend Mesquite's water system to the Markout water system and connected the Markout water system to Mesquite's water system, Mesquite will need to obtain treated water through Forney's water system. For this reason, the Parties agree to negotiate in good faith a water transportation agreement or a wholesale water supply agreement, which will become effective upon the closing of the transfer of the Markout water system to Mesquite. If, at the time of closing, Forney and Mesquite have entered into a water transportation agreement or a wholesale water supply agreement, the Wholesale Contract will be assigned to Mesquite and terminated upon the closing of the transfer of the Markout water system to Mesquite.
- E. Mesquite and Forney, in negotiating a water transportation or wholesale water supply agreement, agree to set rates for the transportation of Mesquite water or the supply of wholesale water to the Markout water system at a rate that will afford the Markout water system a rate reduction over the current rate charged under the Wholesale Contract.
- F. The purpose of this MOU is to (1) outline the steps the Parties will take to evaluate and transfer the rights to provide water service to the Transfer Area from Mesquite to Forney, (2) provide consent to the assignment of the Wholesale Contract to Mesquite, and (3) provide for the termination the Wholesale Contract.

2. **Agreement Regarding Assignment and Transfer of Transfer Area**

- A. Forney hereby consents to the assignment of the Wholesale Contract to Mesquite. Forney further agrees to support Mesquite's Sale, Transfer, Merger Application to be filed with the PUC to transfer the Markout water system and customers to Mesquite, and to not file any protests or other objections to such Application. Upon the assignment of the Wholesale Contract to Mesquite, the Wholesale Contract shall terminate.
- B. Within thirty (30) days after the closing of the transfer of the Markout water system to Mesquite (or such later date as agreed to by the parties), Mesquite and Forney shall execute an agreement pursuant to the Texas Water Code § 13.248 transferring the Transfer Area and customers within the Transfer Area to Forney ("Texas Water Code § 13. 248 Agreement"), the form of which is attached hereto as *Exhibit B*. In accordance with the Texas Water Code § 13.248 Agreement, Mesquite will prepare the application and maps to be filed with the PUC to effectuate the transfer of the Transfer Area to Forney, and file the Texas Water Code § 13.248 Agreement with the PUC in accordance with such agreement. If the PUC, or successor agency, requires approval of the transfer pursuant to Texas Water Code § 13.301, Mesquite, with Forney's assistance, will prepare the application and maps to be filed with the PUC to effectuate the transfer of the Transfer Area to Forney.

- C. Mesquite is currently conducting a feasibility study to provide options and recommendations for disconnecting the Transfer Area from the Markout water system and reconnecting the Transfer Area to the Forney water system. The feasibility study shall consider the following:
 - (1) Protection of the existing water systems of Mesquite and Forney so as to not make either system become out of compliance with the Drinking Water Standards, or otherwise jeopardize water service to their respective existing customers or water quality; and
 - (2) Protection of the quality of water and water service provided to the customers on the Markout water system.
- D. Mesquite will complete such feasibility study within one (1) year after the transfer of the Markout water system to Mesquite. If Mesquite cannot complete the feasibility study within one (1) year after the transfer of the Markout water system, Mesquite shall provide Forney with written notice of the delay of the completion of the feasibility study and of the estimated date of completion.
- E. Upon completion of the feasibility study, Mesquite and Forney shall work together to determine how and when to disconnect the Transfer Area from the Markout water system, and reconnect the Transfer area to Forney's water system. Mesquite shall be responsible to fund all costs associated with disconnecting the Transfer Area from the Markout water system, and reconnecting the Transfer Area to Forney's water system up to One Hundred and Fifty Thousand Dollars (\$150,000.00). Any additional costs for the Transfer Area under this paragraph shall be the responsibility of both Mesquite and Forney equally.
- F. If Forney annexes into its city limits territory to which Mesquite provides water service, Forney may request that Mesquite transfer to Forney the rights to provide water service to the area annexed by Forney. Upon receipt of a request from Forney, Mesquite and Forney shall work together to assess the feasibility of transferring water service to the annexed area to Forney, and if it is determined to be feasible, negotiate in good faith an agreement to effectuate the transfer, including obtaining any approvals from the PUC or its successor agency.

3. **Miscellaneous**

- A. Term. The term of this MOU shall begin on the Effective Date and shall continue until the physical disconnection of the Transfer Area from the Markout water system and the reconnection of the Transfer Area to Forney's water system. Unless the parties otherwise agree in writing, this MOU shall terminate if Mesquite files

an application with the PUC to transfer the Markout system prior to Forney and Mesquite entering into a transportation agreement or a wholesale water supply agreement. Prior to the execution of any water transportation or wholesale water supply agreement between Mesquite and Forney, or the filing of an application with the PUC to transfer the Markout water system to Mesquite, either party may terminate this MOU for any reason by giving the other Party 30 days written notice of termination.

- B. Severability. If any provision of this MOU is held to be invalid for any reason by a court or agency of competent jurisdiction, the remainder of this MOU shall not be affected thereby, and this MOU shall be construed as if such invalid provision had never been contained herein, and the remaining enforceable provisions of this MOU are expressly deemed severable for this purpose.
- C. Cooperation. The Parties hereto agree to cooperate at all times in good faith to effectuate the purposes and intent of this MOU.
- D. Entire Agreement. This MOU contains the entire agreement of the Parties and supersedes all prior or contemporaneous understandings or representations, whether oral or written, respecting the subject matter hereof.
- E. Amendments. Any amendment to this MOU must be in writing and shall be effective only if signed by the authorized representatives of each Party to this MOU.
- F. Effect of Force Majeure. If any Party is unable to perform, in whole or in part, its obligations under this MOU by reason of “force majeure,” then performance of such obligations shall be suspended to the extent and during the period directly affected by the force majeure; provided, however, all due diligence must be exercised to eliminate the force majeure and to resume full performance at the earliest practicable time. As soon as reasonably possible after the occurrence of the force majeure relied upon to suspend performance, the Party whose performance is suspended shall give notice and full particulars of the force majeure to the other Parties. The term “force majeure” includes: acts of God; strikes; lockouts or other industrial disturbances; criminal conduct or sabotage; acts of the public enemy; orders of the government of the United States or the State of Texas or any civil or military authority; insurrections or riots; landslides; lightning; earthquakes; fires; hurricanes; storms; floods; washouts; droughts; epidemics; pandemics; arrests; restraints of government; civil disturbances; explosions; or any other events, whether similar to those enumerated or otherwise, (i) that are not within the reasonable control of the Party claiming the right to suspend performance, and (ii) that could not have been avoided by the exercise of due diligence.
- G. Effect of Legislative Changes. If any Party to this MOU is unable to perform, in whole or in part, its obligations under this MOU by reason of legislative or

regulatory changes beyond its control, then performance shall be suspended only to the extent and during the period affected by the change.

- H. No Third-Party Beneficiaries. This MOU shall inure only to the benefit of the Parties and their successors and assigns as permitted by this MOU. No person or entity that is not a Party to this MOU shall be considered a third-party beneficiary of this MOU.
- I. Assignment. Neither Party may assign its rights and obligations under this MOU without first obtaining a written consent from the other Party, which consent shall not be unreasonably withheld or delayed.
- J. Applicable Law. This MOU shall be construed in accordance with Texas law.
- K. Venue. Venue for any action arising hereunder shall be in Kaufman County, Texas.
- M. Notices. Any notice required or contemplated by this MOU shall be deemed given (i) if mailed via Certified Mail Return Receipt Requested, on the earlier of the date actually received or five business days after mailed, and (ii) if deposited with a private delivery service (such as U.P.S. or FedEx), when delivered, as evidenced by a receipt signed by a person at the delivery address, when received at the delivery address. All notices shall be addressed as follows:

If to Mesquite:

City of Mesquite, Texas
Attn: City Manager
1515 N. Galloway
Mesquite, TX 75149
Phone: 972-216-6293

And

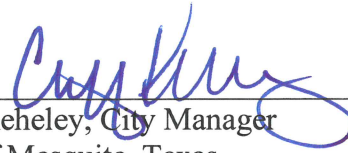
City of Mesquite, Texas
Attn: City Attorney
1515 N. Galloway
Mesquite, TX 75149
Phone: 972-216-6272

If to Forney:

City of Forney
Attn: City Manager
101 Main Street East
Forney, TX 75126
Phone: 972-564-7300

- N. Events of Default. Except as provided in this section, no Party shall be in default under this MOU until notice of the alleged failure of such Party to perform has been given (which notice shall set forth in reasonable detail the nature of the alleged failure) and until such Party has had a reasonable time to cure the alleged failure (such reasonable time determined based on the nature of the alleged failure, but in no event less than 15 days after written notice of the alleged failure has been given). In addition, no Party shall be in default under this MOU if within the applicable cure period the Party to whom notice was given begins performance and thereafter diligently and continuously pursues performance until the alleged failure has been cured within a reasonable period of time. If an event of default shall occur, then the aggrieved Parties shall be entitled to specific performance, injunctive relief, and damages to the maximum extent available under applicable law.
- O. Counterparts. This MOU may be executed in multiple counterparts, each of which will be deemed an original, and all of which will constitute one and the same instrument. Each Party represents and warrants that they have the full right, power and authority to execute this MOU.
- P. Effective Date. The Effective Date of this MOU is the date upon which this MOU was executed by the last Party.

CITY OF MESQUITE:

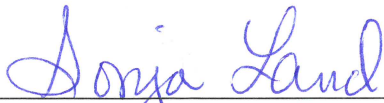


Cliff Keheley, City Manager
City of Mesquite, Texas

9.22.2020

Date

ATTEST:



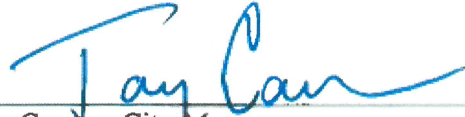
Sonja Land, City Secretary
City of Mesquite, Texas

APPROVED AS TO FORM:



David L. Paschall, City Attorney

CITY OF FORNEY:



Tony Carson, City Manager
City of Forney, Texas

September 16, 2020

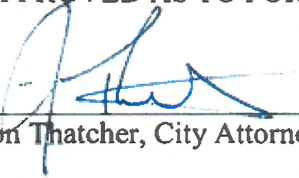
Date

ATTEST:



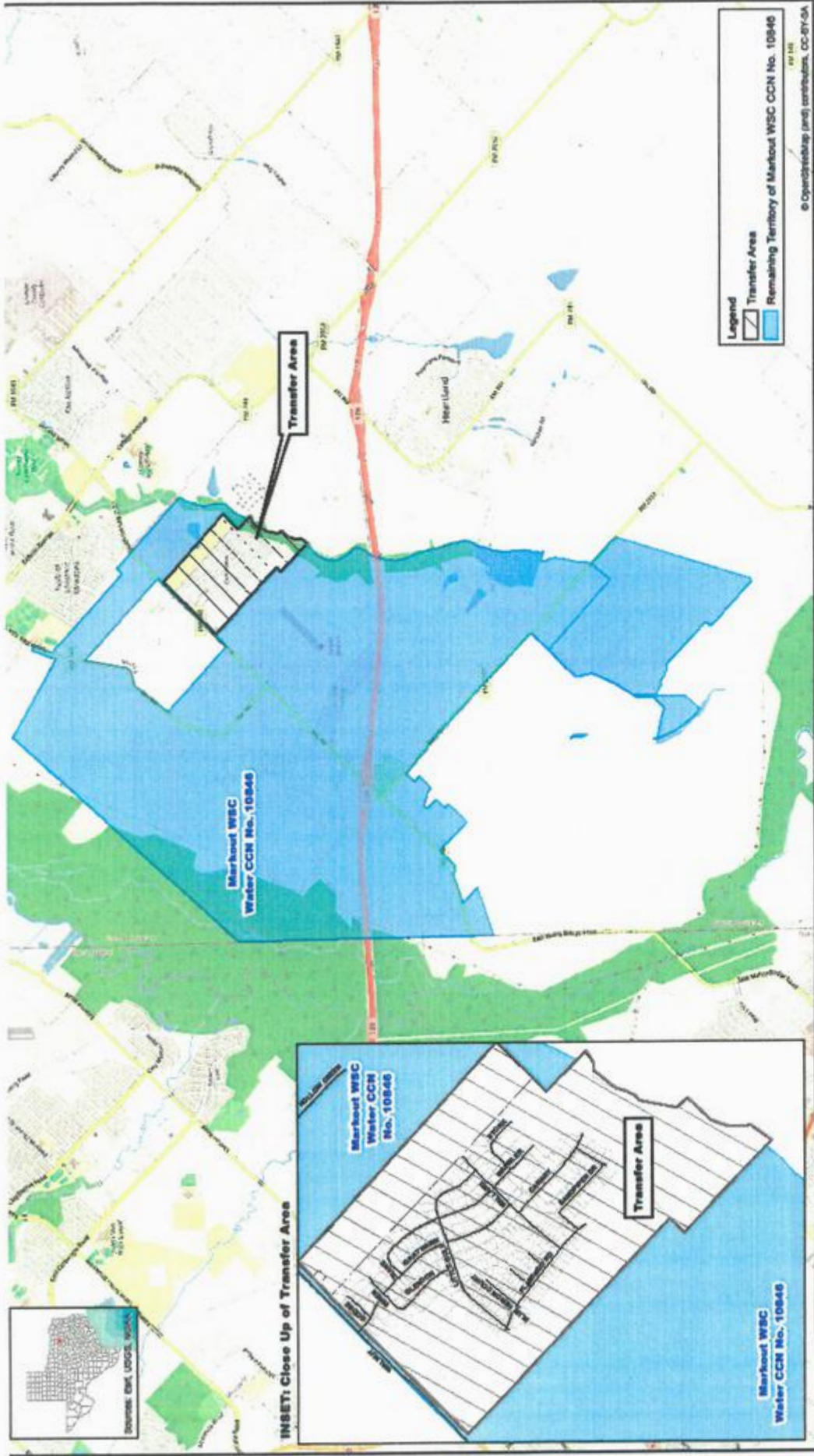
Dorothy Brooks, City Secretary
City of Forney, Texas

APPROVED AS TO FORM:



Jon Thatcher, City Attorney

EXHIBIT A
TRANSFER AREA



INSET: Close Up of Transfer Area

Legend

-  Transfer Area
-  Remaining Territory of Markout WSC CCN No. 10846

© 2020 Bicknell Health Deposits Assets, LLP
 Data Source: Existing Water CCR service areas
 obtained from the PUC, August 2020
 Parcels and roads obtained from Kaufman County
 Central Appraisal District (2018).



City of Mesquite
 Markout WSC with Transfer Area
 (Transfer Area is Grayhawk Subdivision, Madison
 Greyhawk Fomey Ltd. Properties, and Lemonis Properties)

Created: 9/16/2020
 Background Image: ESRI Open Street Map

EXHIBIT B

FORM OF TEXAS WATER CODE § 13.248 AGREEMENT

**AGREEMENT DESIGNATING RETAIL
WATER SERVICE TERRITORY
AND TRANSFERRING FACILITIES AND CUSTOMERS**

THIS AGREEMENT Designating Retail Water Service Territory and Transferring Facilities and Customers is made and executed by and between the City of Mesquite (Mesquite), and the City of Forney (Forney). Mesquite and Forney may be collectively referred to herein as the “Parties.”

I. RECITALS

WHEREAS, Mesquite is municipal corporation in Texas and holds water Certificate of Convenience and Necessity (CCN) No. 10060 (Mesquite Water CCN);

WHEREAS, Forney is a municipal corporation in Texas which holds water CCN No. 10956;

WHEREAS, on _____ Forney and Mesquite executed the Memorandum of Understanding Between the City of Mesquite and the City of Forney for the Purpose of Defining Expectations and Responsibilities of the Parties Related to the Acquisition of Markout Water Supply Corporation Water System and Customers and the Division of that System (MOU);

WHEREAS, pursuant to that MOU, the Parties agreed to transfer the rights to provide water service to the Grayhawk subdivision and other area currently in the city limits of Forney to Forney;

WHEREAS, by transferring rights to provide water service to the Transfer Area, the Parties will enhance the planning and development of capital improvement programs, and water services to be provided to the respective areas;

WHEREAS, this Agreement will accomplish legitimate public purposes of the Parties and will permit more dependable water service planning that will benefit the public health, safety and welfare of their respective present and future customers within each Parties’ service area; and

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained in this Agreement, including the recitals set forth above, and other good and valuable consideration, the receipt of which is hereby acknowledged, by their representatives affixing signatures below, Mesquite and Forney agree as follows:

II. TERMS OF AGREEMENT

2.1 Transfer Area.

(a) Mesquite hereby agrees to decertify the portion of the Mesquite Water CCN identified on the attached map, attached hereto and incorporated herein for all purposes as Exhibit A, and transfer the territory identified on Exhibit A to Forney.

(b) The area within the Mesquite Water CCN to be transferred from Mesquite to Forney identified in Exhibit A is designated as the “Transfer Area.”

2.2 Transfer to Forney. Mesquite and Forney agree that, on and after the Transfer Effective Date (as defined in Paragraph 2.5(b)), Forney shall have the sole right to provide retail water service within the Transfer Area, and Mesquite will have no further obligation or right to provide retail water service to any current or future customers in the Transfer Area.

2.3 Customers and Facilities in the Transfer Area.

(a) As of the Effective Date of this Agreement (as defined in Paragraph 2.5(a)), Mesquite serves customer connections in the Transfer Area (“Customer Connections”) and shall continue to provide water service to the Customer Connections until the Transfer Effective Date. The customer names, physical addresses, meter sizes, and customer deposits of those Customer Connections are identified on Exhibit B attached hereto.

(b) On the Transfer Effective Date of this Agreement, Mesquite shall transfer to Forney the Customer Connections identified in Exhibit B. On or before the Transfer Effective Date, Mesquite shall also provide Forney with its final meter reading for each Customer Connection. Mesquite’s final utility bill to the customer at each Customer Connection shall be determined using the meter reading as provided in this paragraph. Mesquite shall not be entitled to receipt of payments for water delivered after the final meter reading provided in this paragraph.

(c) At least ten (10) days before Transfer Effective Date, the Parties shall provide written notice of the transfer to each Customer Connection listed in Exhibit B.

(d) Subject and pursuant to the terms and conditions set forth in this Agreement, on the Transfer Effective Date of this Agreement, Mesquite shall transfer and Forney shall acquire **[LIST OF FACILITIES]**, with all the taps, meters, and valves and other appurtenances along and on the water line (“Facilities”). A map identifying the location of the water lines and Customer Connections is attached hereto as Exhibit C. Mesquite shall continue to operate, maintain, possess and use the Facilities after the Effective Date of this Agreement until the Transfer Effective Date, when all of the Customer Connections have been transferred to Forney as provided by this Paragraph 2.3. Upon the transfer of all of the Customer Connections to Forney on the Transfer Effective Date, Mesquite shall relinquish physical control over the Facilities and Customer Connections to Forney.

(e) On or before the Transfer Effective Date, the Parties shall execute a Bill of Sale and Assignment (“Bill of Sale”), a copy of which is attached as Exhibit D and incorporated into this Agreement, to transfer and assign the Facilities, Customer Connections, and customer deposits to Forney. Upon the execution of the Bill of Sale, Mesquite shall transfer the Facilities, Customer Connections, and customer deposits to Forney. The Bill of Sale shall provide for Forney’s assumption of all of Mesquite’s obligations and liabilities under or related to the Facilities and Customer Connections, except Forney does not assume the following:

(i) Any and all suits, actions, losses, damages, claims, or liability of any character, type, or description, including all expenses of litigation, court costs, and attorney's fees, for injury or death to any person, or injury to any property, received or sustained by any person or persons or property, arising out of, or occasioned by, directly or indirectly, the operation of the Facilities and provision of service to the Customer Connections, and accruing prior to the Transfer Effective Date, except to the extent such claims of damages arise from the gross negligence or willful misconduct of Forney; and

(ii) Any liability or obligation of Mesquite, absolute or contingent, known or unknown, arising out of Mesquite's ownership, operation, and maintenance of the Facilities and the provision of service to the Customer Connections.

(f) On or before the Transfer Effective Date, the Parties shall execute an Assignment of Easements ("Assignment"), a copy of which is attached as Exhibit E and incorporated into this Agreement, to transfer and assign the easements in which the Facilities are located.

2.3 Amendment of CCNs. Within sixty (60) days after the Effective Date of this Agreement, Mesquite shall file a petition with the Public Utility Commission of Texas (PUC) pursuant to Texas Water Code § 13.248 requesting that the PUC designate areas and customers to be served consistent with this Agreement and incorporate this Agreement into the respective CCNs of the Parties (Section 13.248 Petition) or an application for approval of the transfer pursuant to Texas Water Code § 13.301 (Section 13.301 Application). Mesquite shall endeavor to obtain PUC approval of the CCN and facility transfers contemplated herein in an expeditious manner and Forney will support the Section 13.248 Petition or the Section 13.301 Application before the PUC and will cooperate with Mesquite by providing Mesquite and the PUC with any required or requested information needed to complete, file, or review the Section 13.248 Petition or a Section 13.301 Application, and to obtain its approval by the PUC.

2.4 Effective Dates.

(a) This Agreement is effective on the date of the last signatory of this Agreement and enforceable as between Mesquite and Forney following execution by both Parties, and this date is referred to herein as the "Effective Date."

(b) The "Transfer Effective Date" shall be the date Forney assumes physical control of the Facilities and Customer Connections. The Parties shall mutually agree to the date of the Transfer Effective Date, but in no event shall the Transfer Effective Date be earlier than the PUC approve of the Section 13.248 Petition or the Section 13.301 Application.

2.5 Termination.

(a) Unless the Parties agree in writing to extend this Agreement, this Agreement shall terminate upon the date any order issued by the PUC denying the Section 13.248 Petition is final non-appealable.

(b) Either Party may terminate this Agreement if any hearing request or motion to intervene is granted by the PUC that opposes the granting of the Section 13.248 Petition.

III. MISCELLANEOUS

3.1 Section 13.248. This Agreement shall be construed and interpreted in accordance with Section 13.248 of the Texas Water Code.

3.2 Applicable Texas Law. This Agreement shall be governed by and construed and enforced under the laws of the State of Texas.

3.3 Performance. The obligations and undertakings of each of the Parties to this Agreement shall be performed in Kaufman County, Texas. Except for matters within the jurisdiction of the PUC (or its successor), the Parties expressly agree that all judicial proceedings to enforce any of the provisions of this Agreement shall take place in Kaufman County, Texas.

3.4 Entire Agreement. This Agreement contains the entire agreement of Mesquite and Forney with respect to the subject matter of the Agreement. No Agreement, statement, or promise made by any Party or to any employee, agent, or officer of any Party, that is not contained in this Agreement shall be valid, binding, or of any force or effect. Any amendments to this Agreement must be in writing and signed by the Parties.

3.5 Successors and Assigns. This Agreement shall be binding upon the Parties hereto and their respective successors, heirs, representatives, and assigns.

3.6 Agreement Drafted Equally. This Agreement shall be deemed drafted equally by the Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against either Party shall not apply.

3.7 Severability. Should any provision of this Agreement be declared void by a court of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect.

3.8 Attorneys' Fees. In the event of any suit or other adjudication between the Parties to enforce any claim arising out of this Agreement, or to interpret the terms of this Agreement, the prevailing Party shall be entitled to recover its fees, damages, costs, attorneys' fees, and such other and further relief from the non-prevailing Party, general or special, at law or in equity, to which the prevailing Party may show itself justly entitled.

3.9 Covenant of Authority. The respective signatories to this Agreement covenant that they are fully authorized to sign this Agreement on behalf of their respective Party.

IN WITNESS WHEREOF, this Agreement has been duly executed in multiple counterparts (each of which is to be deemed original for all purposes) by the Parties on the date appearing by each Parties signature.

CITY OF MESQUITE

BY: _____
Cliff Keheley, City Manager
City of Mesquite

Date: _____

ATTEST:

City Secretary for the City of Mesquite

APPROVED AS TO FORM:

City Attorney or Designee

CITY OF FORNEY

BY: _____
Tony Carson, City Manager
City of Forney

Date: _____

ATTEST:

City Secretary of the City of Forney

APPROVED AS TO FORM:

City Attorney or Designee

**EXHIBIT A
TRANSFER AREA**

EXHIBIT B
CUSTOMER CONNECTIONS

**EXHIBIT C
FACILITIES**

EXHIBIT D
BILL OF SALE AND ASSIGNMENT

BILL OF SALE AND ASSIGNMENT

Date: _____, 20__

Date: _____, 20__

Assignor: CITY OF MESQUITE, a municipal corporation of the State of Texas

Assignor's Mailing Address: 1515 N. Galloway Ave.
Mesquite, Texas 75149

Assignee: CITY OF FORNEY, TEXAS, a municipal corporation of the State of Texas

Assignee's Mailing Address: 101 Main Street East
Forney, Texas 75126

Consideration:

Ten dollars cash and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged.

Property:

The property set forth and described in **Exhibit 1** attached hereto and made a part hereof for all purposes.

Conveyance and Sale:

Assignor, for the Consideration and subject to any reservations from conveyance and any exceptions to conveyances, assigns, grants, sells, and conveys to Assignee, the Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold it to Assignee and Assignee's heirs, successors, and assigns, and Assignor does hereby bind itself and its successors and assigns to warrant and forever defend the Property to Assignee against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under Assignor, but not otherwise. All other warranties that might arise by common law as well as the warranties in section 5.023 of the Texas Property Code (or its successor) are excluded.

This Bill of Sale and Assignment is subject to the terms and conditions of that certain Agreement Designating Retail Water Service Territory and Transferring Facilities and Customers dated effective the ___ day of _____, 20__ by and between Assignor and Assignee, reference to which is made hereinafter for all purposes.

When the context requires, singular nouns and pronouns include the plural.

This Assignment may be executed in one or more counterparts, each of which shall be deemed an original and will become effective and binding upon the Parties as of the date shown at such time as all the signatories hereto have signed a counterpart of this Agreement.

CITY OF MESQUITE

By: _____
Cliff Keheley, City Manager
City of Mesquite, Texas

ACCEPTED as of the date first shown above.

CITY OF FORNEY, TEXAS

By: _____
Tony Carson, City Manager
City of Forney, Texas

ACKNOWLEDGED:

STATE OF TEXAS §

§

COUNTY OF DALLAS §

This instrument was acknowledged before me on _____20__, by _____, _____ of City of Mesquite, a municipal corporation of the State of Texas, on behalf of said water district.

NOTARY PUBLIC, STATE OF TEXAS

STATE OF TEXAS §

§

COUNTY OF KAUFMAN §

This instrument was acknowledged before me on _____20__, by _____, _____ of City of Forney, a municipal corporation of the State of Texas, on behalf of said corporation.

NOTARY PUBLIC, STATE OF TEXAS

EXHIBIT 1
To
BILL OF SALE AND ASSIGNMENT
Dated

_____, 20__

DESCRIPTION

1. Customer deposits for the Customer Connections listed in Exhibit 2 to this Bill of Sale and Assignment; and
2. The following water lines, and all taps, meters, and valves along and on the water lines, the location of which is shown on Exhibit 3 to this Bill of Sale and Assignment:

[LIST FACILITIES]

EXHIBIT 2
To
BILL OF SALE OF ASSIGNMENT

EXHIBIT 3
To
BILL OF SALE AND ASSIGNMENT

EXHIBIT E
ASSIGNMENT OF EASEMENTS

ASSIGNMENT OF EASEMENTS

Date: _____, 20__

Assignor: CITY OF MESQUITE, a municipal corporation of the State of Texas

Assignor's Mailing Address: 1515 N. Galloway Ave.
Mesquite, Texas 75149

Assignee: CITY OF FORNEY, TEXAS, a municipal corporation of the State of Texas

Assignee's Mailing Address: 101 Main Street East
Forney, Texas 75126

Consideration:

Ten dollars cash and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged.

Description of Easements:

Those easements and right-of-way easements in Kaufman County, Texas, more particularly described on **Exhibit 1** attached hereto and incorporated herein by reference for all purposes, together with any and all other easement rights of Assignor related to or associated with the Facilities described in the Agreement Designating Retail Water Service Territory and Transferring Facilities and Customers entered into by and between Assignor and Assignee whether acquired by recorded conveyance, prescription, estoppel, consent, permission to place in public right of way, or otherwise (hereinafter called the "Easement Property").

Reservation of Rights: NONE

ASSIGNMENT:

For the Consideration, Assignor grants, conveys, and assigns to Assignee, subject to any reservations herein, all of Assignor's interest in the Easement Property, including, without limitation, all of Assignor's rights of ingress, egress, and regress associated therewith, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold the Easement Property to Assignee and Assignee's successors and assigns forever. Assignor binds the Assignor and the Assignor's successor and assigns to warrant and forever defend the title to the Easement Property in Assignee and Assignee's successors and assigns against every person

whomever lawfully claiming or to claim the Easement Property or any part of the Easement Property.

This Assignment is subject to the terms and conditions of that certain Agreement Designating Retail Water Service Territory and Transferring Facilities and Customers concerning the Facilities described therein in Kaufman County, Texas dated effective the _____ by and between Assignor, as Mesquite, and Assignee, as Forney, reference to which is made herein for all purposes.

When the context requires, singular nouns and pronouns include the plural.

This Assignment may be executed in one or more counterparts, each of which shall be deemed an original and will become effective and binding upon the Parties as of the date shown at such time as all the signatories hereto have signed a counterpart of this Agreement.

CITY OF MESQUITE

By: _____
Cliff Keheley, City Manager
City of Mesquite, Texas

ACCEPTED as of the date first shown above.

CITY OF FORNEY, TEXAS

By: _____
Tony Carson, City Manager
City of Forney, Texas

ACKNOWLEDGED:

STATE OF TEXAS §

§

COUNTY OF DALLAS §

This instrument was acknowledged before me on _____20__, by _____, _____ of City of Mesquite, a municipal corporation of the State of Texas, on behalf of said water district.

NOTARY PUBLIC, STATE OF TEXAS

STATE OF TEXAS §

§

COUNTY OF KAUFMAN §

This instrument was acknowledged before me on _____20__, by _____, _____ of City of Forney, a municipal corporation of the State of Texas, on behalf of said corporation.

NOTARY PUBLIC, STATE OF TEXAS

**EXHIBIT 1
To
ASSIGNMENT OF EASEMENTS**

EASEMENTS: