

RESOLUTION NO. 09-2022

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE A WHOLESAL WATER FACILITIES CONSTRUCTION AND TREATED WATER SUPPLY AGREEMENT WITH THE CITY OF CRANDALL, TEXAS, FOR THE DESIGN, CONSTRUCTION, AND OPERATIONS OF A WATER SUPPLY LINE AND SUPPLY OF TREATED WATER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, authorizes a local government to contract with one or more local governments to perform governmental functions and services under the terms of the Act; and

WHEREAS, the City of Crandall, Texas (“**Crandall**”), requested that the City of Mesquite, Texas (“**Mesquite**”), supply wholesale treated water to supplement its current supply from the North Texas Municipal Water District; and

WHEREAS, on or about May 7, 2021, Mesquite and Crandall entered into a Memorandum of Understanding outlining the basic concepts necessary for Mesquite to supply Crandall with treated water; and

WHEREAS, Mesquite and Crandall have agreed to formally specify, among other things, the amount of water to be supplied, price of the water, water line project specifics including design and construction responsibilities, project reimbursement terms, operational responsibilities of each party, supply line segment ownership after construction, wholesale billing methodology, and an agreement term of 30 years, all as reflected in the Wholesale Water Facilities Construction and Treated Water Supply Agreement, attached hereto as Exhibit 1 and incorporated herein by reference (the “**ILA**”); and

Whereas, the ILA was approved by the City Council of Crandall at its regularly scheduled meeting on January 18, 2022.

WHEREAS, the City Council of Mesquite is of the opinion and finds that the agreements made in the ILA will promote a more efficient use of government resources and better management of growth in the area subject to the ILA and is in the public interest of the City and its citizens and should be approved.

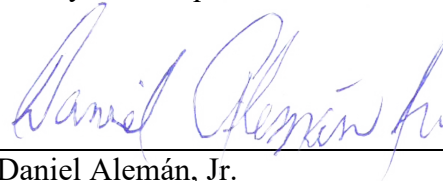
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. The City Manager is hereby authorized to execute the Wholesale Water Facilities Construction and Treated Water Supply Agreement with the City of Crandall, Texas, attached hereto as Exhibit 1 and made a part hereof for all purposes, for the purposes provided therein.

SECTION 2. That the City Manager is further hereby authorized to administer the ILA on behalf of Mesquite including, without limitation, the City Manager shall have the authority to: (i) provide any notices required or permitted by the ILA; (ii) approve amendments to the ILA provided such amendments, together with all previous amendments approved by the City Manager, do not increase Mesquite expenditures under the ILA in excess of \$50,000; (iii) approve or deny any matter in the ILA that requires the consent of Mesquite provided, however, notwithstanding the foregoing, any assignment of the ILA that requires the consent of Mesquite pursuant to the terms of the ILA shall require the approval of the City Council; (iv) approve or deny the waiver of performance of any covenant, duty, agreement, term or condition of the ILA; (v) exercise any rights and remedies available to Mesquite under the ILA; and (vi) execute any notices, amendments, approvals, consents, denials and waivers authorized by this Section 2 provided, however, notwithstanding anything contained herein to the contrary, the authority of the City Manager pursuant to this Section 2 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 3. This resolution shall take effect immediately upon its passage.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 21st day of February 2022.



Daniel Alemán, Jr.
Mayor

ATTEST:



Sonja Land
City Secretary

APPROVED AS TO LEGAL FORM:



David L. Paschall
City Attorney

EXHIBIT 1

**WHOLESALE WATER FACILITIES CONSTRUCTION AND TREATED WATER
SUPPLY AGREEMENT**

**AN INTERLOCAL AGREEMENT BETWEEN
THE CITY OF MESQUITE
AND
THE CITY OF CRANDALL**

**WHOLESALE WATER FACILITIES CONSTRUCTION AND TREATED WATER
SUPPLY AGREEMENT
(City of Crandall)**

This WHOLESALE WATER FACILITIES CONSTRUCTION AND TREATED WATER SUPPLY AGREEMENT (this "Agreement") is made and entered into by and between the CITY OF MESQUITE, a Texas home rule municipality ("Mesquite") and the CITY OF CRANDALL, a home rule municipality ("Crandall"). Mesquite and Crandall are individually referred to herein as a "Party" and collectively as the "Parties."

RECITALS

1. Mesquite is a party to one or more contracts with the North Texas Municipal Water District ("NTMWD") pursuant to which Mesquite obtains a supply of potable water for the provision of retail and wholesale water services within Kaufman County.
2. Crandall provides retail water services to customers within Kaufman County pursuant to water Certificate of Convenience and Necessity ("CCN") No. 11295.
3. Mesquite intends to undertake certain water transmission and pumping improvements within Kaufman County that will extend to approximately three (3) miles from the northern border of Crandall CCN territory.
4. Crandall has requested that Mesquite extend the water transmission line improvements into Crandall's water CCN territory and provide wholesale water services to Crandall until such time as Crandall obtains an additional water supply from NTMWD.
5. Mesquite and Crandall desire to execute this Agreement to set forth the terms and conditions pursuant to which Mesquite will construct water transmission improvements and provide wholesale water services to Crandall.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mesquite and Crandall agree as follows:

ARTICLE I
DEFINITIONS

Section 1.01 Definitions of Terms. In addition to the terms otherwise defined in the above recitals or the provisions of this Agreement, the terms used in this Agreement will have the meanings set forth below.

“Agreement” means this Wholesale Water Facilities Construction and Treated Water Supply Agreement.

“AWWA” means the American Water Works Association.

“Crandall” means the City of Crandall.

“Crandall Facilities” means that portion of the Project to be conveyed by Mesquite to Crandall, which generally represents all Project improvements from the exit of the master meter, located at the intersection of FM 2757 and County Road 257, to the termination point near FM 741, as identified and estimated in **Exhibit “A”**.

“Crandall Project Costs” means the Project Costs for which Crandall is responsible for payment under the terms of this Agreement, which shall constitute all Project Costs associated with, or arising out of, the Project improvements necessary to transport treated water from Kelly Road and FM 2757 to the termination point near FM 741, as identified and estimated in **Exhibit “A”**.

“Crandall System” means Crandall’s water transmission, distribution and delivery systems that provide service to Crandall’s retail customers through the Wholesale Water Services provided under this Agreement and through Crandall’s other water supply sources, including any facilities required to extend service from the Delivery Point to Crandall’s retail customers. The Crandall System shall be owned, operated and maintained by Crandall and shall not include the Master Meter, the metering vault at the Delivery Point, or any facilities on Mesquite’s side of the Delivery Point.

“Daily Maximum Volume” shall be 2,500,000 GPD.

“Delivery Point” means the point at which Mesquite will deliver treated water to Crandall under this Agreement, as depicted on **Exhibit A**.

“Effective Date” means the date this Agreement has been executed by both Crandall and Mesquite.

“Emergency” means a sudden unexpected happening; an unforeseen occurrence or condition; exigency; pressing necessity; or a relatively permanent condition or insufficiency of service or of facilities resulting from causes outside of the reasonable control of Mesquite. The term includes Force Majeure and acts of third parties that cause the Mesquite System to be unable to provide the Wholesale Water Services agreed to be provided herein.

“Force Majeure” means acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of any governmental entity other than Mesquite or any civil or military authority, acts, orders or delays of any regulatory authorities with jurisdiction over the parties, insurrections, riots, acts of terrorism, epidemics (including pandemics), landslides, lightning, earthquakes, fires, hurricanes, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, or any other conditions which are not within the control of a party.

“GPD” means gallons per day, as measured at the Master Meter during any 24 hour period.

“Master Meter” means the master meter vault, and all metering and telemetering equipment required to measure Wholesale Water Services provided by Mesquite pursuant to this Agreement that shall be installed at the Delivery Point as part of the Project.

“Mesquite” means the City of Mesquite.

“Mesquite System” means the facilities owned and operated by Mesquite, together with all extensions, expansions, improvements, enlargements, betterments and replacements to provide water or Wholesale Water Services to Mesquite's customers in Mesquite Service Area. The Mesquite System shall not include any improvements located on Crandall’s side of the Delivery Point.

“Mesquite Water Conservation and Drought Contingency Plan” means, collectively, Mesquite Water Conservation Plan and Mesquite Drought Contingency Plan, as may be amended by Mesquite from time to time.

“NTMWD” means North Texas Municipal Water District.

“Project” means the installation by Mesquite of any pump station, storage and water transmission line improvements and related appurtenances, including metering, valve and SCADA improvements, extending from the intersection of Kelly Road and FM 2757 along FM 2757 to a terminus point on FM 741, as generally depicted on the attached **Exhibit “A”**.

“Project Costs” means all costs and expenses incurred by Mesquite relating to or arising out of the Project. Without limitation, the Project Costs shall include: (i) all costs and expenses incurred by Mesquite for design of the Project; (ii) all costs of materials, labor, construction and inspection arising in connection with the Project; (iii) all payments arising under any contracts entered into by Mesquite for the construction of the Project; (iv) all costs incurred by Mesquite in connection with obtaining governmental approvals, certificates, permits, easements, rights-of-way, or sites required for the Project; (v) all legal fees and expenses incurred by Mesquite relating to the Project; and (vi) all costs and expenses incurred by Mesquite relating to securing Project Easements, including costs of surveying, appraisal, easement preparation, purchase price, and condemnation costs (including the condemnation award).

“Project Easements” means all easements to be acquired by Mesquite for the Project.

“TCEQ” means the Texas Commission on Environmental Quality or its successor agency.

“Volume Charge” means the monthly charge assessed by Mesquite to Crandall for the provision of Wholesale Water Services under this Agreement, calculated by multiplying: (1) the bulk rate per 1,000 gallons that Mesquite is charged for purchasing treated water from NTMWD, plus the Volumetric Surcharge; by (2) the actual number of 1,000 gallons received by Crandall as measured by the Master Meter at the Delivery Point. In the event the Parties enter into a separate financing agreement providing for Crandall to reimburse Mesquite for the Crandall Project Costs over time in lieu of lump sum payment, then the methodology for calculation of the Volume Charge may be

revised in accordance with such financing agreement to incorporate the financing charges to be paid by Crandall to Mesquite.

“Volumetric Surcharge” means the surcharge to be paid by Crandall to Mesquite for purposes of calculating the Volume Charge. The initial Volumetric Surcharge shall be equal to fifteen percent (15%) of the bulk rate per 1,000 gallons that Mesquite is charged for purchasing treated water from NTMWD, but shall be subject to adjustment in accordance with the terms of Section 4.02(b) of this Agreement.

“Water” means potable water purchased by Mesquite from NTMWD.

“Wholesale Water Services” means the transmission of potable water purchased by Mesquite from NTMWD to the Delivery Point.

“Wholesale Service Area” means the territory within Crandall’s water CCN or other lands to which Crandall provides retail water services, as may be amended from time to time.

Section 1.02 Captions. The captions appearing at the first of each numbered section or paragraph in this Agreement are inserted and included solely for convenience and shall never be considered or given any effect in construing this Agreement.

ARTICLE II **PROVISION OF WHOLESALE WATER SERVICES**

Section 2.01 Wholesale Water Services.

- a. Mesquite agrees to provide Wholesale Water Services to Crandall in accordance with the terms and conditions of this Agreement.
- b. This Agreement shall not be a sole source contract for purposes of compliance with TCEQ drinking water rules. Crandall may acquire alternative or supplemental sources of water supply. Crandall is solely responsible for meeting its minimum production, storage, service pump, and pressure maintenance requirements, and any other requirements imposed on Crandall under Title 30 Texas Administrative Code, Chapters 290 and 291, and any other regulatory requirements.

Section 2.02 Conditions Precedent. Mesquite shall have no obligation to commence providing the Wholesale Water Services until all of the following events have occurred, and Mesquite will commence the provision of Wholesale Water Service only after all of the following occur:

- (1) Receipt by Mesquite of all applicable approvals from NTMWD required for the provision of Wholesale Water Services;
- (2) Completion of the Project and acceptance thereof by Mesquite; and
- (3) Payment by Crandall of Crandall Project Costs in full, or execution of a separate financing agreement by the Parties pursuant to which Crandall shall

pay for the Crandall Project Costs over time instead of by lump sum payment.

Section 2.03 Crandall Responsible for Retail Connections. Crandall will be solely responsible for providing retail water service within the Wholesale Service Area. Crandall shall not provide or sell water received under this Agreement to any entity, private or public, other than Crandall's retail customers located within the Wholesale Service Area. Crandall will be solely responsible for ensuring compliance by its retail customers with the applicable terms of this Agreement, and for the proper and lawful application of Crandall's policies and regulations governing connection to the Crandall System.

Section 2.04 Water Supply Source.

- a. Mesquite shall provide Wholesale Water Services to Crandall only from Water purchased by Mesquite from NTMWD. The provision of Wholesale Water Services is subject to receipt by Mesquite of all applicable approvals by Mesquite from NTMWD.
- b. Mesquite, by entering into this Agreement with Crandall, does not confer upon Crandall, and Crandall, as a result of this Agreement, shall never have or claim, any interest in water owned or controlled by Mesquite.

Section 2.05 Title to and Responsibility for Water; Delivery Point(s).

- a. Title to the Water transported to Crandall by Mesquite under this Agreement shall remain with Mesquite at all times until it reaches the Delivery Point. At the Delivery Point, title, control and dominion of the Water shall pass to Crandall.
- b. Crandall shall be solely responsible for conveying water from the Delivery Point to Crandall's intended places of use.

Section 2.06 Quantity and Pressure.

- a. Subject to the terms of this Agreement, upon final completion of construction and acceptance of the Project by Mesquite and receipt of payment of Crandall Project Costs in full (or execution by the Parties of a separate financing agreement in lieu thereof), Mesquite agrees to treat all Water needed and requested by Crandall for the Wholesale Service Area, up to, but not in excess of, the Daily Maximum Volume.
- b. Mesquite agrees that Crandall may increase the Daily Maximum Volume up to 5.0 MGD once Crandall's demand hits 70% of the Daily Maximum Volume during any 24 hour period if the Parties otherwise enter into an agreement specifying the additional improvements to the Mesquite System required to furnish the additional capacity, and providing for Crandall to pay its pro-rata share of the improvements based on the relative capacity to be made available to Crandall and Mesquite.
- c. The wholesale Water supply shall be delivered at a delivery pressure not less than 35 psi.

- d. Mesquite reserves the right to require Crandall, at its expense, to install flow restriction devices at such locations as Mesquite may reasonably specify if necessary in order to restrict the flow of water to Crandall to the level specified above.
- e. Mesquite does not guarantee or represent that the Water furnished by Mesquite to Crandall will be sufficient for fire protection purposes, and Mesquite expressly disclaims any such responsibility.

Section 2.07 Quality of Water Delivered to Crandall. The water delivered by Mesquite at the Delivery Point shall be potable water as purchased by Mesquite from NTMWD. Each Party agrees to provide to the other Party, in a timely manner, any information or data regarding this Agreement or the quality of treated Water provided through this Agreement as required for reporting to the TCEQ or other state and federal regulatory agencies.

Section 2.08 Maintenance and Operation; Future Construction. Mesquite shall be responsible for operating, maintaining, repairing, replacing, extending, improving and enlarging the Mesquite System, including the Master Meter, in good working condition and shall promptly repair any leaks or breaks in the Mesquite System. Crandall shall be responsible for operating, maintaining, repairing, replacing, extending, improving and enlarging the Crandall System in good working condition and shall promptly repair any leaks or breaks in the Crandall System.

Section 2.09 Rights and Responsibilities in Event of Leaks or Breaks. Crandall shall be responsible for paying for all Water delivered to it under this Agreement at the Delivery Point even if such water is lost as a result of leaks or breaks in the Crandall System. In the event a leak, break, rupture or other defect occurs within the Crandall System that could either endanger or contaminate the Mesquite System or prejudice Mesquite's ability to provide water service to its other customers, Mesquite, after providing reasonable notice to Crandall and an opportunity for consultation, shall have the right to take reasonable, appropriate action to protect the public health or welfare of the Mesquite System or the water systems of Mesquite's customers including, without limitation, the right to restrict, valve off or discontinue service to Crandall until such leak, break, rupture or other defect has been repaired.

Section 2.10 Wholesale Service Commitment Not Transferable. Mesquite's commitment to provide Wholesale Water Services is solely to Crandall and solely for the Wholesale Service Area. Crandall may not assign or transfer in whole or in part its right to receive Wholesale Water Services without the prior written approval of Mesquite and NTMWD.

Section 2.11 Conservation and Drought Planning. Crandall, by signing below, certifies that it has adopted a water conservation plan and a drought contingency plan in compliance with TCEQ rules, 30 Texas Administrative Code, Chapter 288, and that the provisions of such plans are at least as stringent as the provisions of the Mesquite Water Conservation and Drought Contingency Plan, as amended from time to time. Crandall's adopted water conservation plan, and any amendments thereto, must be submitted to Mesquite for approval.

Section 2.12 Plumbing Regulations. Both Mesquite and Crandall covenant and agree to adopt and enforce adequate plumbing regulations with provisions for the proper enforcement thereof, to ensure that neither cross-connection nor other undesirable plumbing practices are permitted,

including an agreement with each of their respective water customers that allows it to inspect individual water facilities prior to providing service to ensure that no substandard materials are used and to prevent cross-connection and other undesirable plumbing practices.

Section 2.13 Curtailment of Service. The Parties agree that, if water service is curtailed by Mesquite to other similarly-situated customers of the Mesquite System, Mesquite may impose a like curtailment, with notice to Crandall, on Wholesale Water Services delivered to Crandall under this Agreement. Mesquite will impose such curtailments in a nondiscriminatory fashion. The Parties agree that they will not construe this Agreement to prohibit Mesquite from curtailing service completely in the event of a maintenance operation or Emergency for a reasonable period necessary to complete such maintenance operations or repairs or respond to an Emergency circumstance. Crandall acknowledges and agrees that Mesquite's provision of Wholesale Water Services under this Agreement is subject to applicable provisions of Mesquite Water Conservation and Drought Contingency Plan.

Section 2.14 Cooperation During Maintenance or Emergency. Crandall will reasonably cooperate with Mesquite during periods of Emergency or required maintenance. If necessary, upon prior notice, Crandall will operate and maintain the Crandall System at its expense in a manner reasonably necessary for the safe and efficient completion of repairs or the replacement of facilities, the restoration of service, and the protection of the public health, safety, and welfare.

Section 2.15 Right of Entry. Crandall agrees to provide Mesquite the right of entry and access to the Crandall System at all reasonable times upon prior notice in order to inspect those facilities, to investigate the source of operational or maintenance problems or for preventive purposes intended to detect, minimize, or avert operational or maintenance problems, or for any other purpose reasonably related to the provision of Wholesale Water Services.

Section 2.16 Maintenance of Water Supply. Crandall shall be responsible for maintaining compliance with its contract with NTMWD. In the event NTMWD terminates or suspends the supply of Water to Mesquite for any reason, Mesquite may similarly terminate or suspend its provision of Wholesale Water Services under this Agreement. Mesquite shall not commence Wholesale Water Services until all required approvals are received from NTMWD, including approval of this Agreement.

ARTICLE III **CONSTRUCTION OF PROJECT AND METERING PROVISIONS**

Section 3.01 Project Committee.

- a. General. There is hereby created a Project Committee to be composed of not less than one representative appointed by each Party. Each such representative may appoint additional representatives on behalf of its Party. Each representative of a Party shall serve at the will of the governing body that the person represents. Upon the death, resignation, or revocation of the power of such representative, the appropriate Party shall promptly appoint a new representative (or alternate representative) to the Project Committee and shall immediately notify the other Party of such appointment.

- b. Responsibility of Project Committee. The Project Committee shall represent the individual and collective interests of the Parties with respect to the following matters:
- (1) The design of the Project;
 - (2) The review of bid documents, as related to the Project;
 - (3) The review of the bid tabulation and qualification of prospective contractors for the Project;
 - (4) The periodic review of the status of construction of the Project;
 - (5) The review of change orders relating to the construction of the Project;
 - (6) The review of invoices for payment related to the Project;
 - (7) Any other pertinent matters relating to the construction of the Project.

Notwithstanding the foregoing, the Parties acknowledge and agree that Mesquite shall manage, and render all final decision regarding, the Project, and the purpose of the Project Committee is to provide an opportunity for Crandall to secure information regarding the status of the Project and to provide input regarding the Project, and the Crandall Facilities in particular.

Section 3.02 The Project Committee shall meet at regular intervals to review the matters over which it has authority. The Project Committee shall be diligent, prompt and timely in reviewing and acting on matters submitted to it.

Section 3.03 Mesquite to Design and Construct Project, Master Meter.

- a. Mesquite shall design and construct, or cause the construction of, the Project, including the Master Meter to be installed at the Delivery Point, and shall secure all regulatory approvals required therefor. All costs and expenses incurred by Mesquite in connection therewith shall qualify as Project Costs.
- b. Upon execution of this Agreement, Mesquite shall commence and proceed with the acquisition of easements for, design of, securing regulatory approvals for, and construction of the Project with reasonable diligence, but expressly disclaims any representation or warranty as to the date of completion of the Project or availability of Wholesale Water Services.
- c. The final design, specifications, location and installation of the Project shall be determined by Mesquite in its sole discretion; provided, however, the Project shall comply with applicable standards of the Texas Commission on Environmental Quality and shall be generally consistent with the location and sizing set forth on Exhibit "A" attached hereto.

Section 3.04 Funding of Project Costs.

- a. Mesquite will advance and pay Project Costs, subject to its right to reimbursement from Crandall of Crandall Project Costs in accordance with the terms of this Agreement.
- b. Mesquite agrees that the bid documents for the Project shall be prepared to allow the construction costs for all Project improvements for which Crandall is responsible for payment to be separately identified. Similarly, Mesquite agrees that all other Project Costs for which Crandall is responsible for payment shall be separated to the extent practicable.
- c. Upon final acceptance of the Project and except as provided in Section 3.04(d) below, Mesquite shall prepare and send a written invoice to Crandall for the Crandall Project Costs. Crandall shall provide payment in the full amount of the Crandall Project Costs in full within thirty (30) days after receipt of the invoice.
- d. The Parties may enter into a separate written financing agreement setting forth the terms and conditions pursuant to which Crandall shall reimburse Mesquite for the Crandall Project Costs over time. The Parties acknowledge that any such separate financing agreement shall include an interest component. In the event the Parties fail to execute a separate written financing agreement prior to completion of the Project, then Crandall shall be responsible for payment of the Crandall Project Costs in full in accordance with the terms of Section 3.04(c) above.

Section 3.05 Ownership of Project Facilities.

- a. After completion of installation of the Project and written acceptance by Mesquite, and subject to receipt of payment of the Crandall Project Costs in full, Mesquite shall assign, dedicate, and convey the Crandall Facilities (together with associated easements, rights-of-way, permits, licenses or appurtenances) to Crandall free and clear of any liens, claims and encumbrances and execute an appropriate document in form and substance reasonably acceptable to Mesquite evidencing the dedication and conveyance. Thereafter, the Crandall Facilities will be part of the Crandall System, and Crandall will own, operate, repair, maintain and replace the Crandall Facilities. Notwithstanding the foregoing, in the event the Parties enter into a separate written financing agreement setting forth the terms and conditions pursuant to which Crandall shall reimburse Mesquite for the Crandall Project Costs over time pursuant to Section 3.04(d) above, then such separate agreement may modify the terms, conditions and timing for conveyance of ownership of the Crandall Facilities by Mesquite to Crandall, including providing for conveyance only after Crandall has fully reimbursed Mesquite for the Crandall Project Costs plus interest.
- b. Mesquite shall own, operate, repair, maintain and replace the Project with the exception of the Crandall Facilities (after conveyance to Crandall).

Section 3.06 Master Meter Accuracy; Calibration.

- (a) The Master Meter shall be calibrated each calendar year by Mesquite. Mesquite shall provide not less than 48 hours prior written notice of each such calibration, and a representative of Crandall may be present to observe each calibration.

(b) The Master Meter may be calibrated at any reasonable time by either party to this Agreement, provided that the party making the calibration notifies the other party in writing at least five days in advance and allows the other party to witness the calibration. In the event any question arises at any time as to the accuracy of the Master Meter, but not more than a frequency of once per consecutive 12-month period without mutual consent of both parties, then the Master Meter shall be tested by Mesquite within 10 business days upon demand of Crandall. The expense of such test shall be borne by Crandall if the Master Meter is found to be within AWWA and manufacturer's standards of accuracy for the type and size of meter and by Mesquite if the Master Meter is found to not be within AWWA and manufacturer's standards for the type and size of meter.

(c) If, as a result of any test, the Master Meter is found to be registering inaccurately (in excess of AWWA and manufacturer's standards for the type and size of meter), the readings of the Master Meter shall be corrected at the rate of their inaccuracy for any period which is definitely known or agreed upon and Mesquite shall pay for the testing or, if no such period is known or agreed upon, the shorter of:

- (1) a period extending back either 60 days from the date of demand for the test or, if no demand for the test was made, 60 days from the date of the test; or
- (2) a period extending back one-half of the time elapsed since the last previous test;

and the records of the readings, and all payments which have been made on the basis of such readings, shall be adjusted accordingly.

Section 3.07 Project Easements. As part of the Project, Mesquite shall be responsible for securing all required easements and other real property interests required for the Project, including easements required for the Crandall Facilities. All costs and expenses, including but not limited to attorney's fees, incurred by Mesquite shall qualify as Project Costs. Mesquite shall determine the final location of all such easements and real property interests in its sole discretion. Notwithstanding the foregoing, in the event that Mesquite cannot acquire easements for the Crandall Facilities for any reason, then Crandall shall be responsible for acquisition of such easements at its sole cost and expense.

ARTICLE IV **RATES AND CHARGES**

Section 4.01 Wholesale Water Rates. Crandall shall pay Mesquite for the Wholesale Water Services provided under this Agreement by payment of the Volume Charge in accordance with the terms of this Article IV.

Section 4.02 Volume Charge.

(a) Mesquite will measure water flows monthly based on monthly readings of the Master Meter. The total of these amounts multiplied by the Volume Charge will be used by Mesquite to compute the monthly bill for Wholesale Water Services.

(b) The Parties acknowledge and agree that an additional point of delivery for additional wholesale water service from NTMWD to Mesquite in Kaufman County at a location approved by Mesquite (the "New Delivery Point") to meet projected demands for water service required by growth in Kaufman County will be mutually beneficial and a benefit to others in Kaufman County including Crandall. During the term of this Agreement, Crandall agrees to actively support, cooperate and participate in efforts by Mesquite and other water purveyors to secure the New Delivery Point. As consideration for such support, cooperation and participation, Mesquite agrees to lower the Volumetric Surcharge charged to Crandall from 29% per 1,000 gallons to 15% per 1,000 gallons in anticipation of construction and operation of the New Delivery Point with the Volumetric Surcharge increasing over time should the New Delivery Point not be timely constructed and operational for the benefit of the Parties, as follows:

(i) Beginning on the Effective Date and for a ten (10) year period thereafter and except as provided in section 4.02(b)(iii) below, the Volumetric Surcharge shall be 15% of the bulk rate per 1,000 gallons that Mesquite is charged for purchasing treated water from NTMWD;

(ii) Should the New Delivery Point not be completed and in operation ten (10) years after the Effective Date, the Volumetric Surcharge shall increase to 29% of the bulk rate per 1,000 gallons that Mesquite is charged for purchasing treated water from NTMWD beginning ten (10) years and one day after the Effective date and such volumetric Surcharge shall remain in effect for the remaining term of this Agreement; and

(iii) Should Crandall elect not to participate in a contract otherwise approved by Mesquite and NTMWD for the New Delivery Point, the Volumetric Surcharge shall increase to 29% of the bulk rate per 1,000 gallons that Mesquite is charged for purchasing treated water from NTMWD effective the first day of the billing period commencing after Mesquite and NTMWD enter into the contract for the delivery of service to the New Delivery Point.

Section 4.03 Amendment of Wholesale Rate. The Volume Charge shall automatically adjust to reflect any change in the volumetric rate charged by NTMWD to Mesquite for Water.

Section 4.04 Crandall Water Rates and Charges. Crandall will determine and charge its retail water customers such rates as are determined by its governing body. During the term of this Agreement, Crandall will fix and collect rates and charges for retail water service that are, in the opinion of its governing body, sufficient, together with any other revenues available to Crandall, to produce the amount necessary to operate, repair, and maintain the Crandall System, and to pay the cost of Wholesale Water Services from Mesquite. Crandall will be solely responsible for ensuring that its retail rates and charges are determined and collected in accordance with applicable law.

ARTICLE V
WHOLESALE BILLING METHODOLOGY AND
RELATED MATTERS

Section 5.01 Monthly Statement. For each monthly billing period, Mesquite will forward to Crandall a bill providing a statement of the total owed by Crandall for Wholesale Water Services provided to Crandall during the previous monthly billing period. Crandall will pay Mesquite for each bill submitted by Mesquite to Crandall by check or bank-wire on or before thirty (30) days from the date of the invoice. Payments shall be mailed to the address indicated on the invoice, or can be hand-delivered to Mesquite's billing office upon prior arrangement. If payments will be made by bank-wire, Crandall shall verify wiring instructions. Payment must be received at Mesquite's billing office or bank by the due date in order not to be considered past due or late. In the event Crandall or an assignee responsible for payment in accordance with this Agreement fails to make payment of a bill within said thirty (30) day period, Crandall shall pay in addition Mesquite's then-current, Council approved wholesale water contract late payment charges on the unpaid balance of the invoice.

Section 5.02 Monthly Billing Calculations. Mesquite will compute the monthly charges for Wholesale Water Services on the basis of monthly readings of the Master Meter. The total of these amounts multiplied by the Volume Charge will be used to compute the monthly bill for Wholesale Water Services.

Section 5.03 Effect of Nonpayment. With respect to monthly billings, if Mesquite has not received payment from Crandall by the due date, the bill will be considered delinquent, unless contested in good faith. In such event, Mesquite will notify Crandall, or its assignee responsible for payment in accordance with this Agreement, of such delinquency in writing, if Crandall or its assignee fails to make payment of the delinquent billing within 30 calendar days from the date of transmittal of such written notice of delinquency from Mesquite, then Mesquite may, at its discretion, terminate or reduce the level of Wholesale Water Services to Crandall until payment is made.

Section 5.04 Protests, Disputes or Appeals. Nothing in this Agreement is intended to limit, impair or prevent any right of Crandall to protest, dispute or appeal with respect to rate making, the establishment of fees and charges or any other related legal or administrative proceedings affecting services or charges to Crandall under this Agreement.

ARTICLE VI
REGULATORY COMPLIANCE

Section 6.01 Agreement Subject to Applicable Law. The Agreement will be subject to all valid rules, regulations, and applicable laws of the United States of America, the State of Texas and/or any other governmental body or agency having lawful jurisdiction or any authorized representative or agency of any of them.

Section 6.02 Cooperation to Assure Regulatory Compliance. Since the Parties must comply with all federal, state, and local requirements to obtain permits, grants, and assistance for system construction, studies, etc., each Party will cooperate in good faith with the other Party at all times

to assure compliance with any such governmental requirements where noncompliance or non-cooperation may subject the parties to penalties, loss of grants or other funds, or other adverse regulatory action in the performance of this Agreement.

ARTICLE VII
TERM, TERMINATION, DEFAULT, REMEDIES

Section 7.01 Term and Termination.

- a. This Agreement shall become effective upon the Effective Date and shall extend for a term of thirty (30) years unless terminated earlier as provided herein.
- b. This Agreement shall terminate in the event of termination of Mesquite's contract for purchase of Water from NTMWD.
- c. In the event Crandall acquires a replacement supply of Water directly from NTMWD, it may terminate this Agreement by providing not less than 180 days' prior written notice of termination to Mesquite.
- d. In the event of termination of this Agreement for any reason, any payment obligations that accrue prior to termination shall survive termination. Without limitation, Crandall shall remain responsible for payment of all Crandall Project Costs incurred by Mesquite prior to termination.
- e. Upon execution of a new agreement by Mesquite and Crandall with NTMWD to secure the supply of water from the New Delivery Point (and any other points of delivery approved by the parties thereto), this Agreement shall terminate upon the effective date of the new agreement; provided, however, that except as otherwise provided in said agreement, any payment obligation of Crandall to Mesquite that accrue under this Agreement prior to termination shall survive termination.

Section 7.02 Default.

- a. In the event Crandall shall default in the payment of any amounts due to Mesquite under this Agreement, or in the performance of any material obligation to be performed by Crandall under this Agreement, then Mesquite shall give Crandall at least 30 days' written notice of such default and the opportunity to cure same. Thereafter, Mesquite shall have the right to temporarily limit Wholesale Water Services to Crandall under this Agreement pending cure of such default by Crandall and also to pursue any remedy available at law or in equity, pending cure of such default by Crandall.
- b. In the event Mesquite shall default in the performance of any material obligation to be performed by Mesquite under this Agreement, then Crandall shall give Mesquite at least 30 days' written notice of such default and the opportunity to cure same. Thereafter, in the event such default remains uncured, Crandall shall have the right to pursue any remedy available at law or in equity, pending cure of such default by Mesquite.

Section 7.03 Additional Remedies Upon Default. It is not intended hereby to specify (and this Agreement shall not be considered as specifying) an exclusive remedy for any default, but all such other remedies existing at law or in equity may be availed of by any party and shall be cumulative of the remedies provided. Recognizing however, that Mesquite's undertaking to provide and maintain the services of the Mesquite System is an obligation, failure in the performance of which cannot be adequately compensated in money damages alone, Mesquite agrees, in the event of any default on its part, that Crandall shall have available to it the equitable remedies of mandamus and specific performance in addition to any other legal or equitable remedies (other than termination of this Agreement) that may also be available. In recognition that failure in the performance of Crandall's obligations could not be adequately compensated in money damages alone, Crandall agrees in the event of any default on its part that Mesquite shall have available to it the equitable remedies of mandamus and specific performance in addition to any other legal or equitable remedies that may also be available to Mesquite including the right to obtain a writ of mandamus or an injunction against Crandall requiring Crandall to levy and collect rates and charges sufficient to pay the amounts owed to Mesquite by Crandall under this Agreement. If either party institutes legal proceedings to seek adjudication of an alleged default under this Agreement, the prevailing party in the adjudication shall be entitled to its reasonable and necessary attorneys' fees. THE PARTIES ACKNOWLEDGE AND AGREE THAT THIS AGREEMENT IS SUBJECT TO SUBCHAPTER I, CHAPTER 271, TEXAS LOCAL GOVERNMENT CODE.

ARTICLE VIII **GENERAL PROVISIONS**

Section 8.01 Assignability. Assignment of this Agreement by either Party is prohibited without the prior written consent of the other Party.

Section 8.02 Amendment. This Agreement may be amended or modified only by written agreement duly authorized by the respective governing bodies of Crandall and Mesquite and executed by duly authorized representatives of each. Any amendment shall also be subject to the written approval of NTMWD.

Section 8.03 Necessary Documents and Actions. Each Party agrees to execute and deliver all such other and further instruments and undertake such actions as are or may become necessary or convenient to effectuate the purposes and intent of this Agreement.

Section 8.04 Entire Agreement. This Agreement constitutes the entire agreement of the Parties and this Agreement supersedes any prior or contemporaneous oral or written understandings or representations of the Parties regarding Wholesale Water Services by Mesquite to Crandall for the Wholesale Service Area.

Section 8.05 Applicable Law. This Agreement will be construed under and in accordance with the laws of the State of Texas.

Section 8.06 Venue. All obligations of the Parties created in this Agreement are performable in Kaufman County, Texas, and venue for any action arising under this Agreement will be in Kaufman County, Texas.

Section 8.07 No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer upon any person or entity, other than to the Parties, any rights, benefits, or remedies under or by reason of this Agreement.

Section 8.08 Duplicate Originals. This Agreement may be executed in duplicate originals each of equal dignity.

Section 8.09 Notices. Any notice required under this Agreement may be given to the respective Parties by deposit in regular first-class mail or by hand-delivery and by email to the address of the other party shown below:

Crandall:

City of Crandall
Attn: City Manager
110 S. Main
Crandall, TX 75114
Phone: 972-427-3771

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

Notices shall be deemed received on the date of hand delivery or within three days of deposit in first-class mail.

Section 8.10 Consents and Approvals. Wherever this Agreement requires any Party, or its agents or employees to provide a consent, approval or similar action, the parties agree that such consent, approval or similar action will not be unreasonably withheld or delayed.

Section 8.11 Severability. Should any court declare or determine that any provisions of this Agreement is invalid or unenforceable under present or future laws, that provision shall be fully

severable; this Agreement shall be construed and enforced as if the illegal, invalid, or unenforceable provision had never comprised a part of this Agreement and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, in place of each such illegal, invalid, or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable. Texas law shall govern the validity and interpretation of this Agreement.

Section 8.12 Records. Mesquite and Crandall each agree to preserve, for a period of at least two years from their respective dates of origin, all books, records, test data, charts and other records pertaining to this Agreement. Mesquite and Crandall shall each, respectively, have the right during reasonable business hours to inspect such records to the extent necessary to verify the accuracy of any statement, charge or computation made pursuant to any provisions of this Agreement.

Section 8.13 Force Majeure. If either Party is rendered unable, wholly or in part, by Force Majeure to carry out any of its obligations under this Agreement, other than an obligation to pay or provide money, then such obligations of that party to the extent affected by such Force Majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time shall be suspended during the continuance of any inability so caused to the extent provided but for no longer period. Such cause, as far as possible, shall be remedied with all reasonable diligence. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the affected party, and that the above requirements that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demand of the opposing party or parties when such settlement is unfavorable to it in the judgment of the affected party.

Section 8.14 Good Faith. Each Party agrees that, notwithstanding any provision herein to the contrary (i) it will not unreasonably withhold or condition or unduly delay any consent, approval, decision, determination or other action which is required or permitted under the terms of this Agreement, and (ii) it will act in good faith and shall at all times deal fairly with the other Party.

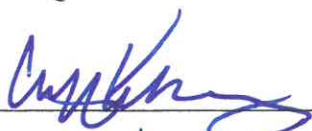
Section 8.15 Authority of Parties Executing Agreement, Validity. By their execution, each of the individuals executing this Agreement on behalf of a party represents and warrants to the other party that he or she has the authority to execute the document in the capacity shown on this document. Each of the Parties further represent and warrant that this Agreement constitutes a valid and binding contract, enforceable against it in accordance with its terms.

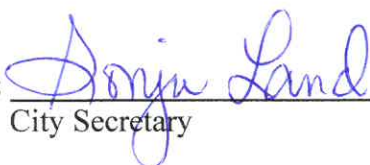
Section 8.16 Exhibits. The following exhibits are attached to and incorporated into this Agreement for all purposes:

Exhibit A- Map Showing Project Location and Description of Facilities

Section 8.17 Effective Date. This Agreement will be effective from and after the last date of due execution by all Parties.

CITY OF MESQUITE


By: 
Name: Cliff Keholey
Title: City Manager
Date: 2.23.22

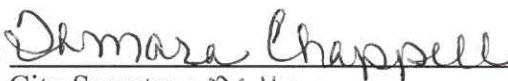
ATTEST: 
City Secretary

APPROVED AS TO FORM:


City Attorney

CITY OF CRANDALL

By: 
Name: David Lindsey
Title: Mayor
Date: ~~02~~. 01.20.2022

ATTEST: 
City Secretary, Acting

APPROVED AS TO FORM:


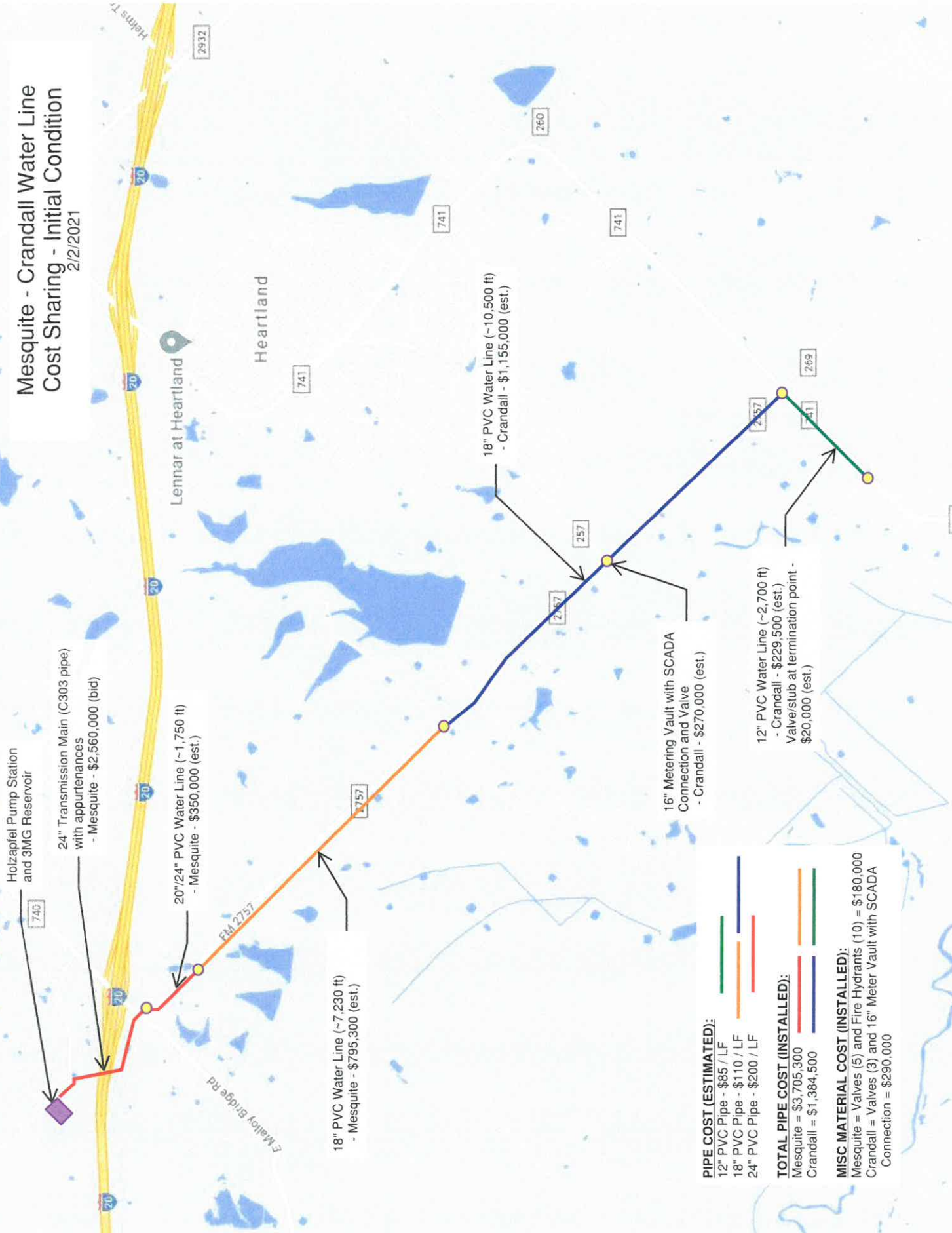

City Attorney

Exhibit "A"
Project Exhibit

Mesquite - Crandall Water Line Cost Sharing - Initial Condition

2/2/2021



PIPE COST (ESTIMATED):

- 12" PVC Pipe - \$85 / LF
- 18" PVC Pipe - \$110 / LF
- 24" PVC Pipe - \$200 / LF

TOTAL PIPE COST (INSTALLED):

- Mesquite = \$3,705,300
- Crandall = \$1,384,500

MISC MATERIAL COST (INSTALLED):

- Mesquite = Valves (5) and Fire Hydrants (10) = \$180,000
- Crandall = Valves (3) and 16" Meter Vault with SCADA Connection = \$290,000