

**Agreement For The Sale And**  
**Delivery of Treated Water - Wholesale Customer -**  
**Johnson County Special Utility District**

STATE OF TEXAS           §  
  §  
COUNTY OF TARRANT   §

THIS AGREEMENT (the "Agreement") entered into this 20<sup>th</sup> day of May, 2009 (the "Effective Date") by and between authorized representatives of the City of Mansfield, a home rule municipality operating under and governed by the laws and Constitution of the State of Texas ("Mansfield") and Johnson County Special Utility District, are hereinafter collectively referred to as the ("Parties"), evidences a binding agreement between the Parties regarding the purchase of treated water. For good and valuable consideration and in consideration of the agreements contained in this Agreement, the adequacy, receipt, and sufficiency of which are acknowledged, the Parties hereby agree as follows:

**Recitals**

**WHEREAS**, Mansfield is a home rule municipality operating under and governed by the laws and Constitution of the State of Texas, with its corporate limits and ETJ extending in portions of Ellis, Johnson and Tarrant Counties, Texas; and

**WHEREAS**, Johnson County Special Utility District is a special utility district operating under and governed by the laws of the State of Texas, with its certificated service area extending into portions of Ellis, Johnson and Tarrant Counties, Texas; and

**WHEREAS**, Mansfield desires to have the option to provide city utility service within that portion of the City's ETJ that extends into Johnson County Special Utility District service area as defined by their CCN; and

**WHEREAS**, at the present time, Mansfield has available a supply of Raw Water from which it can provide Treated Water, and owns, operates, and maintains facilities for storing, treating and transmitting Treated Water; and

**WHEREAS**, it is deemed to be in the best interest of both Mansfield and Johnson County Special Utility District that said Parties do enter into a mutually satisfactory agreement by means of which Mansfield would be granted dual service rights within that portion of Johnson County Special Utility District's CCN service area which is in common with the existing City of Mansfield ETJ; and

**WHEREAS**, the Parties desire to cooperate to insure that the utility customers of Mansfield and Johnson County Special Utility District have adequate and dependable utility service available; and

WHEREAS, Mansfield and Johnson County Special Utility District concur that the terms, conditions and considerations stated herein are fair, just and reasonable and will mutually benefit the Parties and serve the public interest; and

NOW, THEREFORE, pursuant to *Chapter 791, Texas Government Code*, and as otherwise authorized and permitted by the laws of the State of Texas for and in consideration of the covenants, conditions and undertakings hereinafter described, and subject to each and every term and condition of this Agreement, the Parties contract, covenant and agree as follows:

## ARTICLE I Findings and Purpose

- 1.1 **Recitals.** The recitals hereinabove set forth are incorporated herein for all purposes and are found to be true and correct.
- 1.2 **No Grant of Equity or Ownership.** Unless otherwise stated, no provision of this Agreement shall be construed to create any type of joint or equity ownership of any property or any partnership or joint venture. Unless otherwise stated, neither this Agreement, nor any acts of the Parties hereunder, nor Johnson County Special Utility District's payments, shall be construed as granting to or otherwise vesting Johnson County Special Utility District any right, title, interest, or equity in the Mansfield Raw Water System nor in the Mansfield Treated Water System or any element thereof.
- 1.3 **Purpose.** This Agreement provides the terms and conditions whereby Treated Water may be purchased by Johnson County Special Utility District from Mansfield, for which Johnson County Special Utility District agrees to pay for all costs of said water as further defined within this agreement and grants to Mansfield dual service rights within and on the area that is currently defined by Mansfield's ETJ that is also within the Johnson County Special Utility District's CCN service area.

## ARTICLE 2 Definitions and Interpretation

- 2.1 **Definitions.** The following terms and expressions used in this Agreement, unless the context indicates otherwise, shall mean:

*Agreement* means this "Agreement For The Sale And Delivery of Treated Water – Wholesale Customer – Johnson County Special Utility District" and any subsequent amendments agreed to in writing by the Parties.

*AWWA* means the American Water Works Association.

*Business Day* means any Day other than Saturdays, Sundays and Days on which banks in Mansfield are required or permitted to be closed for all or part of their customary hours of operation.

*CCN* means certificate of convenience and necessity.

*Cost of Service Study* means that study performed pursuant to Article 5.2(c) of this Agreement.

*Cost of the System* means all costs of acquiring, constructing, developing, permitting, implementing, expanding, improving, enlarging, bettering, extending, replacing, repairing, maintaining and operating the Mansfield Raw Water System and the Mansfield Treated Water System. The costs of property, interests in property, water and water rights, capitalized interest, land, easements and rights-of-way, damages to land and property, leases, treatment and other facilities, equipment, telemetry, machinery, pumps, pipes, tanks, lines, meters, taps, valves, fittings, mechanical devices, office equipment, assets, contract rights, wages and salaries, employee benefits, chemicals, stores, material, supplies, power, supervision, engineering, testing, auditing, franchises, charges, assessments, claims, insurance, engineering, financing, consultants, administrative expenses, auditing expenses, legal expenses, amounts for an operation and maintenance reserve fund, amounts for a debt service reserve fund, amounts for principal and interest on bonds issued by Mansfield to pay for the Costs of the System, amounts required for bond coverage reflective of Mansfield's policies and obligations to pay for Costs of the System, bond issuance expenses, amounts for working capital, appropriate general and administrative costs of Mansfield and other similar or dissimilar expenses and costs required for the Mansfield Raw Water System and the Mansfield Treated Water System.

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

*Demand Charge* means the annualized payment amount to be paid in monthly installments for each applicable Rate Year, calculated based on the Demand Rate applied to the Maximum Day Demand.

*Demand Rate* means the dollar amount per million gallons per day (MGD) applied to Johnson County Special Utility District's Maximum Day Demand to calculate the Demand Charge.

*Delivery Point* means the point at which Mansfield agrees to deliver, and Johnson County Special Utility District agrees to receive, Treated Water under this Agreement.

*Effective Date* means the date that this Agreement has been signed by both Parties.

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

*Excess Demand Charge* means the charge assessed against Johnson County Special Utility District for exceeding the Maximum Allowed Rate of Flow as provided in Article 5.3(d) of this Agreement.

*Expiration Date* means the last effective date of this Agreement as specified in Article 8.1, absent the renewal of this Agreement.

*ETJ* means extraterritorial jurisdiction.

*Fiscal Year* is the fiscal year of Mansfield from October 1 through September 30.

*Initial Maximum Day Demand* means the estimated daily maximum usage specified in Article 5.2(a) of this Agreement.

*Initial Rates* means the rates set under Article 5.2(a) of this Agreement until the recalculated rates, from the first Cost of Service Study that is completed after the Effective Date of this Agreement, become effective.

*Mansfield Raw Water System* means all facilities, structures, improvements, property, rights, certificates of adjudication, permits, licenses, contracts and other property of any nature whatsoever, now or hereafter owned by Mansfield, in connection with the storage, diversion, transportation, and delivery of Raw Water.

*Mansfield Treated Water System* means all facilities, structures, improvements, property, rights, permits, licenses, and other property of any nature whatsoever, now or hereafter owned by Mansfield, in connection with the diversion, storage, transportation, treatment, and delivery of Treated Water.

*Maximum Day Demand* means for each applicable Rate Year the greater of the historical Maximum Day Usage of Johnson County Special Utility District during this Agreement or the Initial Maximum Day Demand, except as provided in Article 3.1(c).

*Maximum Allowed Daily Demand* means a Maximum Day Usage of 9.0 MGD unless a mutually agreed upon change is made by the Parties in writing.

*Maximum Allowed Rate of Flow* means the maximum allowed usage on a per minute basis, which is 1.25 times the Maximum Day Demand converted into gallons per minute (gpm) as provided in Article 5.3(d), before the assessment of the Excess Demand Charge. The Maximum Allowed Rate of Flow shall not exceed 7,813 gpm for this Agreement unless mutually agreed upon by the Parties in writing.

*Maximum Day Usage* means the measured daily maximum usage as determined through Meter readings.

*Meter(s)* means the metering facility or devices installed or to be installed at the Delivery Point to measure the amount of Treated Water delivered to Johnson County Special Utility District by Mansfield as provided in this Agreement. If necessary, installation shall include a back flow device in order to prevent back flow of water into the Mansfield Treated Water System.

*Party* means either Mansfield or Johnson County Special Utility District, and "Parties" means Mansfield and Johnson County Special Utility District, collectively.

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

*Rate Year* means each twelve-month period beginning January 1 and ending December 31 of the same calendar year.

*Raw Water* means water that is purchased by Mansfield from Tarrant Regional Water District ("TRWD") and is in its natural state prior to treatment.

*Raw Water Charge* means the charge calculated by applying the Raw Water Rate to the number of gallons of Treated Water provided to Johnson County Special

Utility District by Mansfield as measured by the Meter(s) and billed on a monthly basis.

*Raw Water Rate* means the raw water rate charged to Mansfield for Raw Water by TRWD, adjusted for water loss on the Mansfield Treated Water System.

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

*Return Flow* means water supplied to Johnson County Special Utility District by Mansfield that is beneficially used but not consumed and that is subsequently returned to watercourses in the Trinity River Basin.

*Treated Water* means water treated by Mansfield so that it is potable water meeting the minimum quality requirements for human consumption as prescribed by the Texas Commission on Environmental Quality or other appropriate regulatory agency.

*TCEQ* means the Texas Commission on Environmental Quality.

*Volume Charge* means the charge calculated by applying the then in effect Total Effective Rate per 1,000 gallons as shown on Exhibit A or the Volume Rate to the number of gallons of Treated Water provided to Johnson County Special Utility District by Mansfield as measured by the Meter(s) and billed on a monthly basis.

*Volume Rate* means the dollar amount per 1,000 gallons applied to Johnson County Special Utility District's metered usage of Treated Water in order to calculate the Volume Charge. The Volume Rate excludes Mansfield's raw water costs from TRWD, which are captured within the Raw Water Rate.

*Water* means either Raw Water or Treated Water, or both Raw and Treated Water, as indicated by the context in which the word appears.

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

*Wholesale Customer* means the class of customers or Johnson County Special Utility District to whom, under the terms of a specific agreement, Mansfield sells and provides Treated Water for re-sale.

**2.2 Interpretations.** The following principles shall control the interpretation of this Agreement:

- (a) Unless otherwise stated, reference to any document, other than a license, certificate of adjudication or permit, means the document as amended or supplemented from time to time.

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- (b) Reference to any party or governmental regulatory agency means that entity and its successors and assigns.
- (c) Misspelling of one or more words in this Agreement shall not void the Agreement. Such misspelled words shall be read so as to have the meaning apparently intended by the Parties.
- (d) Words of any gender used in this Agreement shall be held and construed to include any other gender.
- (e) Words in the singular number shall be held to include the plural, unless the context otherwise requires.
- (f) Article and headings contained herein are for convenience and reference and are not intended to define or limit the scope of any provision of this contract.

**ARTICLE 3**  
**Water Provided Under Agreement**

**3.1 Treated Water.**

- (a) **Delivery and Acceptance.** Mansfield agrees to furnish and sell to Johnson County Special Utility District Treated Water delivered at the Delivery Point that is mutually agreed upon up to the limits, and at the times, set forth in this Agreement hereto or such lesser amount as Mansfield may be able to supply in the event of an Emergency. Johnson County Special Utility District agrees to accept delivery under the conditions of this Agreement and to pay for the water in accordance with the terms herein.
- (b) **Source of Supply and Capacity.** Mansfield's agreement to make Treated Water available is limited to the extent that Raw Water, as that term is defined in this Agreement, is available and the extent to which capacity is available in the Mansfield Treated Water System.
- (c) **Additional Water.** To the extent Treated Water is available in amounts greater than the Maximum Allowed Daily Demand, Mansfield may, at its sole discretion, provide Johnson County Special Utility District with additional Treated Water subject to the charges described in Article 5. Should Mansfield elect to provide Johnson County Special Utility District with Treated Water in excess of the Maximum Allowed Daily Demand, Mansfield may terminate or reduce providing Treated Water at the excess amount by providing Johnson County Special Utility District with twenty-four (24) hours written notice of such termination or reduction. In cases where Mansfield terminates or reduces the provision of Treated Water at the amounts in excess of the Maximum Allowed Daily Demand, the Maximum Day Demand, for purposes of determining the Demand Charge, shall be correspondingly adjusted to reflect the reduction of the excess Treated Water. Johnson County Special Utility District agrees that Mansfield shall never be obligated during the term of this Agreement to make Treated Water available to Johnson County Special Utility District in excess of the Maximum Allowed Daily Demand. The purchase of any additional supplies of Treated Water over the Maximum Allowed Daily

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Demand does not guarantee that Mansfield shall make Treated Water available on that basis at any time other than the time frame Mansfield elects to provide additional supplies of Treated Water to Johnson County Special Utility District.

- (d) **Water Pressure.** Mansfield agrees to furnish and sell to Johnson County Special Utility District Treated Water delivered under the operating pressure prevailing in the Mansfield Treated Water System at the Delivery Point that is mutually agreed upon up until Johnson County Special Utility District's Maximum Day Usage exceeds one-half (1/2) million gallons per day (MGD). Herewith Johnson County Special Utility District shall commence construction of the necessary facilities required to provide, at such minimum pressure, Treated Water purchased from Mansfield to its distribution system as may be required or allowed by applicable law or state or federal regulation and complete the required construction within 24 months of exceeding one-half (1/2) MGD. Mansfield shall notify Johnson County Special Utility District within 30 days of Johnson County Special Utility District exceeding one-half (1/2) MGD. Notwithstanding anything in this Agreement or in the requirements of any regulatory agency to the contrary, Mansfield does not represent or guarantee to Johnson County Special Utility District that Treated Water provided to Johnson County Special Utility District under this Agreement shall be provided at any specific minimum pressure at the Delivery Point, and Mansfield is under no obligation with respect thereto. **Johnson County Special Utility District understands and acknowledges that maintaining a certain water pressure in Johnson County Special Utility District's delivery system shall require the use of storage or pumps on Johnson County Special Utility District's system.**
- (e) **Interruption of Service for Maintenance.** Notwithstanding anything in this Agreement or in the requirements of any regulatory agency to the contrary, Mansfield shall be entitled at any and all times to install, repair, maintain, and replace such equipment or devices or to take any other action under an Emergency (including, reduction or cessation of water service to Johnson County Special Utility District) as necessary or appropriate to allow Mansfield at all times to maintain a minimum pressure as required by law at all retail service locations directly served by the Mansfield Treated Water System. Mansfield may install at the metering location appropriate devices to monitor and enforce all or any of these limitations.

- 3.2 **Regulatory Requirements.** Johnson County Special Utility District acknowledges and agrees that this Agreement defines the extent of Mansfield's obligations to supply Treated Water to Johnson County Special Utility District and that, except as expressly provided by this Agreement, Mansfield is under no obligation to provide Johnson County Special Utility District with a sufficient amount of Treated Water for Johnson County Special Utility District to meet its minimum production, storage, service pump, or pressure maintenance requirements, or any other requirements imposed on Mansfield by virtue of 30 Texas Administrative Code Chapters 290 or 291, or any other Regulatory Requirements.

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- 3.3 **Delivery Point.** Subject to the conditions set forth herein, Mansfield agrees to divert, transport, treat, and deliver Treated Water to Johnson County Special Utility District at the Delivery Point. The location of the Delivery Point shall be mutually agreed upon by and between Johnson County Special Utility District and Mansfield, and the Delivery Point shall not be moved or relocated except by their mutual consent in writing.
- 3.4 **Relocated Delivery Point.** Requests for a relocated Delivery Point shall be submitted in writing by the requesting party. If the relocated Delivery Point is mutually agreed upon, the Parties shall then decide whether Mansfield or Johnson County Special Utility District will be responsible for constructing the improvements.
- (1) If Mansfield is to construct all necessary improvements, Johnson County Special Utility District shall be responsible for reimbursing Mansfield for the entire cost of the improvements, including the acquisition of any easements or right-of-way. Prior to beginning construction, the Parties shall enter into a written agreement to specify the manner and time frame for such reimbursement to Mansfield and the time for construction.
  - (2) If Johnson County Special Utility District is to construct the necessary improvements for a relocated Delivery Point, Johnson County Special Utility District shall submit documents to acquire rights-of-way and shall submit plans for the construction of the improvements to Mansfield for approval prior to construction commencing. If Mansfield approves the documents and plans submitted, Mansfield shall give Johnson County Special Utility District notice of said approval in writing. During the construction, Mansfield may, but is not obligated to, inspect improvements under construction. All costs for the construction of the improvements, including the costs for any easements and/or rights-of-way, shall be borne by Johnson County Special Utility District. Mansfield may, but is not obligated to, make a final inspection and approval after construction of the improvements are completed and before the improvements are approved, by Mansfield, for use.
- 3.5 **Additional Delivery Point(s).** Requests for an additional Delivery Point(s) shall be made in writing by the requesting Party. If an additional Delivery Point(s) is mutually agreed upon, the Parties shall decide whether Mansfield or Johnson County Special Utility District will be responsible for constructing the improvements and shall follow the procedures set forth in Article 3.4.
- 3.6 **Improvements to Existing Delivery Point.** If Johnson County Special Utility District requests that improvements be made to a Delivery Point, Johnson County Special Utility District shall submit the request in writing to Mansfield. If Mansfield approves the request, the Parties shall then decide whether Mansfield or Johnson County Special Utility District will be responsible for constructing the improvements and shall follow the procedures set forth in Article 3.4.

- 3.7 **Valves at Delivery Point.** All valves releasing water from the Mansfield Treated Water System to Johnson County Special Utility District shall be operated by Mansfield. Johnson County Special Utility District shall not obstruct or block access to those valves.
- 3.8 **Property of Mansfield.** Any acquired easements and/or rights-of-way shall name Mansfield as a grantee for the portion of the easement and/or right-of-way on Mansfield's side of the Delivery Point and metering device. Upon the completion of construction and final approval by Mansfield of any new, relocated or improved Delivery Point, the constructed improvements shall become the property of Mansfield to and through the metering device.

#### **ARTICLE 4**

##### **Metering and Rate of Flow Control**

- 4.1 **Treated Water Measurement and Control.** Except as allowed under Articles 3.4, 3.5, and 3.6, Mansfield shall install a Meter(s) and appropriate valves, back flow prevention, flow controllers, and other appropriate equipment at the Delivery Point to measure and control the amount of Treated Water delivered to Johnson County Special Utility District under the terms of this Agreement. Johnson County Special Utility District agrees to have installed at its sole cost a working meter and rate-of-flow controller at the mutually agreed Delivery Point. Said meter shall be specified by Mansfield and meet appropriate AWWA standards. Said meter(s) shall be installed and tested prior to actual water delivery. The Meter and other equipment shall be owned, operated, and maintained by Mansfield.
- 4.2 **Rate-of-Flow Controllers.** The rate at which Treated Water is withdrawn by Johnson County Special Utility District from the Mansfield System shall be regulated by rate-of-flow controllers, pumps, or other approved methods. The rate of withdrawal may be controlled so that the maximum rate shall not exceed the Maximum Allowed Rate of Flow without a specific written request by Johnson County Special Utility District to Mansfield. Notwithstanding anything in this Agreement to the contrary, approval of a request to increase the rate of flow and of the length of time the request will be met, shall be at Mansfield's sole discretion. Mansfield shall respond to the request within 96 hours of receiving the request. If Mansfield approves the request, Mansfield shall make the adjustments within 48 hours of responding to the request.
- 4.3 **Calibration of Meters.**
- (a) **Annual Testing.** For Meters that require calibration, Mansfield shall routinely test for accuracy. Meters shall be serviced and calibrated as necessary, but no less frequently than once during each twenty-four (24) month period. Copies of the results of such calibration and all related information shall be provided to Johnson County Special Utility District upon request. Johnson County Special Utility District shall have access to the Meter(s) at all reasonable times; provided, however, that any reading, calibration or adjustment to such Meter(s) shall be done by employees or agents of Mansfield, or other mutually approved third party calibration agent, in the presence of representatives of

Johnson County Special Utility District and Mansfield, if so requested by Johnson County Special Utility District. Mansfield shall retain the right to test the Meter(s) more frequently than once each twenty-four (24) month period.

- (b) **Inaccuracy.** Upon any calibration, if it is determined that the accuracy envelope of such Meter(s) is found to be lower than ninety-five percent (95%) or higher than one hundred five percent (105%) expressed as a percentage of the full scale of the Meter(s), or Meter(s) fail to perform to AWWA water metering standards (whichever is more restrictive), then the registration of the flow as determined by such defective Meter(s) shall be corrected for a period extending back to the time such inaccuracy began, if such time is ascertainable; or, if such time is not ascertainable, then for a period extending back one-half (1/2) of the time elapsed since the date of the last calibration, but in no event further back than a period of twelve (12) months. In the event it is determined that there are inaccuracies with any Meter, Mansfield shall debit or credit Johnson County Special Utility District's invoice in the subsequent month, as appropriate, to reflect Johnson County Special Utility District's prior overpayments or underpayments. Mansfield shall debit or credit Johnson County Special Utility District's account in an amount equal to the difference between the amount actually paid by Johnson County Special Utility District and the amount that should have been paid by Johnson County Special Utility District, as determined by the corrected registration of the flow at the inaccurate Meter during the period of inaccuracy as determined in this subsection. The Meter(s) will be properly sealed, and the seals shall not be broken unless representatives of both Johnson County Special Utility District and Mansfield have been notified and given a reasonable opportunity to be present.
- (c) **Meter out of Service - No Readings.** If the Meter(s) used to determine the flow of Treated Water to Johnson County Special Utility District is out of service or out of repair so that the amount of Treated Water metered cannot be ascertained or computed from the reading thereof, the Treated Water delivered during the period such Meter(s) is out of service or out of repair shall be estimated and agreed upon by Johnson County Special Utility District and Mansfield upon the basis of the best data available. The basis for estimating such flow includes, but is not limited to, extrapolation of past patterns of flow for said Meter(s) under similar conditions. In the event that Johnson County Special Utility District and Mansfield cannot agree on the extrapolated estimate of Treated Water volume delivered before the payment due date, Johnson County Special Utility District shall make payment to Mansfield based on the same month in the previous year on or before the payment due date. After making such payment, Johnson County Special Utility District may request that the matter be submitted to non-binding mediation as provided herein. Mansfield may also request that the matter be submitted to non-binding mediation, as hereinafter provided.

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**4.4 Meter Reading.**

- (a) Mansfield shall read all Meter(s) provided for herein at monthly intervals, and Johnson County Special Utility District and Mansfield shall have free access to read these respective Meter(s) daily, if either party so desires. It shall be the duty of both Johnson County Special Utility District and Mansfield to give immediate notice, each to the other, should any Meter(s) be found to not be functioning properly, and, upon such notice; repairs to such Meter(s) shall be made promptly.
- (b) Johnson County Special Utility District shall have access to records on the Meter(s) readings during reasonable business hours and shall be furnished a copy of readings upon request.

**4.5 Additional Testing of the Meter(s).** Johnson County Special Utility District shall have the right to request Mansfield to test any Meter(s), but no more frequently than once per month. Upon any such request, Mansfield agrees to perform its testing and calibration of the Meter(s) with notice to Johnson County Special Utility District, and the Parties shall be entitled to jointly observe any testing, calibration, and adjustments that are made to the Meter(s), in the event such modifications shall be necessary. For such additional testing requests, Mansfield shall give Johnson County Special Utility District notice forty-eight (48) hours in advance of the time when any such testing shall occur. Johnson County Special Utility District shall pay the cost of any such additional testing request for any Meter(s) if the test shows that such Meter(s) is accurate (within five percent (5%) registration), but Mansfield shall pay the costs of such additional test if the results indicate that such Meter(s) is not accurate (in excess of five percent (5%) registration).

**ARTICLE 5**  
**Fees, Billing, and Payment**

**5.1 Charges for Water.**

- (a) **Treated Water.** Johnson County Special Utility District shall pay to Mansfield the fees and charges for the Treated Water delivered by Mansfield that may include Late Fees to be applied to the following: Demand Charge; Volume Charge; Raw Water Charge; and Excess Demand Charge.

**5.2 Water Rates.**

- (a) **Initial Rates.** Upon the Effective Date of this Agreement and until such time the Johnson County Special Utility District East Side Pumping and Storage Facility ("Plant No. 27") is operational or Johnson County Special Utility District's purchased water from Mansfield exceeds a Maximum Day Usage of 250,000 gallons, Johnson County Special Utility District shall be charged the Total Effective Rate per 1,000 gallons for the appropriate given Rate Year as shown on Exhibit A.

Johnson County Special Utility District shall notify Mansfield in writing within seven (7) calendar days before operation of Plant No. 27. Upon receipt of notice of operation of Plant No. 27 from Johnson County Special Utility

District or if Johnson County Special Utility District exceeds a Maximum Day Usage of 250,000 gallons, Mansfield shall discontinue charging the Total Effective Rate per 1,000 gallons and commence charging Johnson County Special Utility District a separate Volume Rate, Demand Rate, and Raw Water Rate. Unless recalculated in a Cost of Service Study that is completed after the Effective Date of this Agreement, the Volume Rate and the Demand Rate shall be the Volume Rate and Demand Rate for the appropriate given Rate Year as shown on Exhibit A. For example, if this Agreement is executed during the 2009 Rate Year and Plant No. 27 becomes operational in the 2011 Rate Year or Johnson County Special Utility District exceeds a Maximum Day Usage of 250,000 gallons in the 2011 Rate Year, the Volume Rate and Demand Rate for Rate Year 2011 on Exhibit A shall be initially charged. The Raw Water Rate shall be the then in effect raw water rate charged to Mansfield by TRWD, adjusted for water loss on Mansfield Treated Water System.

If at the time of the commencement of operation of Plant No. 27, Johnson County Special Utility District's Maximum Day Usage has not exceeded 250,000 gallons, the Initial Maximum Day Demand for the Rate Year in effect shall be 0.250 MGD. If at the time of the commencement of operation of Plant No. 27, Johnson County Special Utility District's Maximum Day Usage has exceeded 250,000 gallons, the Initial Maximum Day Demand for the Rate Year in effect shall be the Maximum Day Demand.

- (b) **Cost of Service Study and Subsequent Rates.** Upon the Effective Date of this Agreement and until such time Plant No. 27 is operational or Johnson County Special Utility District's purchased water from Mansfield exceeds a Maximum Day Usage of 250,000 gallons, Johnson County Special Utility District shall be charged the Total Effective Rate per 1,000 gallons for the appropriate given Rate Year as shown on Exhibit A, unless such rates are recalculated in a Cost of Service Study. The Total Effective Rate per 1,000 gallons as shown on Exhibit A may be annually recalculated in a Cost of Service Study, but no less than every five (5) years, with the recalculated Total Effective Rate per 1,000 gallons effective on January 1 following the completion of the Cost of Service Study. The Cost of Service Study shall forecast the rates over a five (5) year timeframe.

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At such time Plant No. 27 is operational or Johnson County Special Utility District's purchased water from Mansfield exceeds a Maximum Day Usage of 250,000 gallons, Johnson County Special Utility District shall be charged a two-part rate, consisting of a Volume Rate and a Demand Rate, based on Johnson County Special Utility District's treated water consumption and Maximum Day Demand. The Volume Rate and the Demand Rate may be annually recalculated in a Cost of Service Study, but no less than every five (5) years, with the recalculated Volume Rate and Demand Rate effective on January 1 following the completion of the Cost of Service Study. The Cost of Service Study shall forecast the rates over a five (5) year timeframe. In addition, Johnson County Special Utility District shall be charged a Raw Water Rate consisting of the raw water rate charged to Mansfield for Raw Water by TRWD, adjusted for water loss on the Mansfield Treated Water System. The Raw Water Rate shall be adjusted as TRWD adjusts its raw water rate charged to Mansfield and shall be passed through to Johnson County Special Utility District as is, adjusted for water loss on Mansfield Treated Water System, without further surcharge by Mansfield.

- (c) **Rate Methodology.** The rates subsequent to the Initial Rates shown on Exhibit A, excluding the Raw Water Rate, that Johnson County Special Utility District pays to Mansfield for Treated Water shall be calculated in a Cost of Service Study in accordance with the methodology described below. The rate methodology set forth in the principles below is hereby specifically agreed to between Mansfield and Johnson County Special Utility District.
1. The "Cash Basis" methodology for rate setting;
  2. The "Base – Extra Capacity" cost allocation methodology, as sanctioned by the American Water Works Association;
  3. The Cost of Service Study shall be based on Mansfield's Budget for the Fiscal Year in which the recalculated rates will become effective and the Costs of the System, excluding raw water costs charged to Mansfield by TRWD that are recovered through the Raw Water Rate;
  4. Until such time Plant No. 27 is operational or Johnson County Special Utility District's purchased water from Mansfield exceeds a Maximum Day Usage of 250,000 gallons, the allocation for the Demand Rate shall be based on the highest Maximum Day Usage for the Delivery Point(s) during the term of this Agreement, adjusted for water loss on the Mansfield Treated Water System. After such time Plant No. 27 is operational or Johnson County Special Utility District's purchased water from Mansfield exceeds a Maximum Day Usage of 250,000 gallons, the allocation for the Demand Rate shall be based on the Maximum Day Demand for the Delivery Point(s) during the term of this Agreement, adjusted for water loss on the Mansfield Treated Water System;
  5. The allocation for the Volume Rate shall be based on historical water consumption for the Delivery Point(s), adjusted for known and

measurable changes, adjusted for water loss on the Mansfield Treated Water System.

**5.3 Billing and Payment.**

- (a) **Volume Charge.** Each month during the term of this Agreement, Mansfield shall read the Meter(s) measuring Treated Water being provided to Johnson County Special Utility District. The numbers of gallons of Treated Water measured by the Meter(s) shall be multiplied by either the then in effect Total Effective Rate per 1,000 gallons or the Volume Rate to determine the Volume Charge. Mansfield shall prepare and deliver to Johnson County Special Utility District a statement showing the Volume Charge for all Treated Water delivered to Johnson County Special Utility District, in addition to the monthly Demand Charge. Payment shall be made by the 30th day after receipt of the statement.
- (b) **Raw Water Charge.** After such time Plant No. 27 is operational or Johnson County Special Utility District's purchased water from Mansfield exceeds a Maximum Day Usage of 250,000 gallons, for each month during the term of this Agreement, Mansfield shall read the Meter(s) measuring Treated Water being provided to Johnson County Special Utility District. The numbers of gallons of Treated Water measured by the Meter(s) shall be multiplied by the Raw Water Rate to determine the Raw Water Charge. The billing and payment for the Raw Water Charge shall be made in accordance with the billing and payment for the Volume Charge in Article 5.3(a).
- (c) **Demand Charge.** After such time Plant No. 27 is operational or Johnson County Special Utility District's purchased water from Mansfield exceeds a Maximum Day Usage of 250,000 gallons, the Demand Charge shall be paid in monthly installments with the payment for the Volume Charge and Raw Water Charge. The Maximum Day Demand shall be multiplied times the Demand Rate to determine the Demand Charge, plus applicable meter reading and billing costs.
- (d) **Excess Demand Charge.** Once Johnson County Special Utility District's Maximum Day Usage exceeds one (1) MGD, Johnson County Special Utility District may then become subject to Excess Demand Charges. The Maximum Day Usage that occurs within the Rate Year in which Johnson County Special Utility District exceeds one (1) MGD shall establish the Maximum Day Demand used to determine the initial Maximum Allowed Rate of Flow. Subsequent Maximum Allowed Rate of Flow limitations shall be adjusted to reflect Johnson County Special Utility District's Maximum Day Demand. If during the Rate Year, Johnson County Special Utility District's actual Rate of Flow exceeds the Maximum Allowed Rate of Flow, Johnson County Special Utility District shall also pay to Mansfield the Excess Demand Charge. The Excess Demand Charge shall be calculated by subtracting Johnson County Special Utility District's then in effect Maximum Day Demand from Johnson County Special Utility District's actual Rate of Flow (converted to MGD) to determine the Excess Demand. The Excess Demand, stated in MGD, shall be

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multiplied by the Demand Rate and then multiplied by a factor of 1.25 times. Upon exceeding the then current Maximum Allowed Rate of Flow, a new Maximum Allowed Rate of Flow shall be established for the Rate Year. The newly established Maximum Allowed Rate of Flow shall be subject to any future Excess Demand Charges if the newly established Maximum Allowed Rate of Flow is exceeded during the Rate Year. Johnson County Special Utility District shall be provided the Excess Demand Charge billing with full payment due within thirty (30) days from receipt of invoice. The Excess Demand Charge shall be on a per occurrence basis and not applied as an ongoing charge. It is agreed that the Excess Demand Charge and adjustment to the Maximum Day Demand that would normally be applicable shall not apply for Emergency withdrawals provided that Mansfield is notified in writing within 48 hours of the occurrence of an Emergency condition. In any event, the Raw Water Charge and Volume Charge for all Treated Water delivered shall be due and payable as described elsewhere herein.

**Example – Actual Rate of Flow Exceeds Maximum Allowed Rate of Flow**

Excess Demand Calculation

|                              |   |             |
|------------------------------|---|-------------|
| Maximum Day Demand           |   | 4.0 MGD     |
| Rate of Flow Margin          | x | <u>1.25</u> |
| Maximum Daily Rate of Flow   |   | 5.0 MGD     |
| Conversion to gpm            | ÷ | <u>1440</u> |
| Maximum Allowed Rate of Flow |   | 3472 gpm    |

|                                      |   |             |
|--------------------------------------|---|-------------|
| Actual Rate of Flow                  |   | 4167 gpm    |
| Conversion to MGD                    | x | <u>1440</u> |
| Actual Rate of Flow Converted to MGD |   | 6.0 MGD     |

Excess Demand (6.0 MGD – 4.0 MGD) = 2.0 MGD

Excess Demand Charge

|                             |   |             |
|-----------------------------|---|-------------|
| Demand Rate per MGD         |   | \$135,718   |
| Excess Demand               |   | 2.0 MGD     |
| Excess Demand Charge Factor | x | <u>1.25</u> |
| Excess Demand Charge        |   | \$339,295   |

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- (e) **Late Fees.** If Johnson County Special Utility District is late in the payment of any charge or fee due and payable to Mansfield under this Agreement, late payments shall bear per annum interest at a rate equal to the lesser of two percentage points (2%) above the Prime Interest Rate as published in the Wall Street Journal on the day said statement becomes delinquent, or the maximum allowed by law to be charged to Johnson County Special Utility District. If any charges remain unpaid at the expiration of thirty (30) days after receipt of the statement, Johnson County Special Utility District shall be in default under this Agreement, and Mansfield may invoke the remedies specified herein or otherwise available by law.

#### **5.4 Billing Questions and Disputes.**

- (a) **Statement Dispute; Protest.** If Johnson County Special Utility District has a protest or dispute concerning a statement, Johnson County Special Utility District shall notify Mansfield in writing within ten (10) days of receipt of said statement. Johnson County Special Utility District shall pay the portion of the statement that is not being disputed or protested. Upon written notification, the portion of the statement under dispute or protest (provided the dispute or protest is made in good faith and is not unreasonable) shall be set aside until resolved and shall not be subject to the penalties (such as Late Fees and Excess Demand Charge) stated herein. If Mansfield is not notified in writing, postmarked within ten (10) days of receipt of said statement, said protest or dispute shall be considered waived.
  - (1) The Parties shall negotiate in good faith to resolve the dispute. The Parties shall agree to submit the dispute to non-binding mediation as provided in Article 12.1.
- (b) **Inspection and Audit.** Complete records and accounts required to be maintained by each Party shall be kept for a period of five (5) years. Each Party shall at all times, upon notice, have the right at reasonable times to examine and inspect said records and accounts during normal business hours. If required by any law, rule or regulation, a Party shall make said records and accounts available to federal and/or state auditors.

### **ARTICLE 6**

#### **Treated Water Transmission Line**

- 6.1 **Future Treated Water Transmission Lines.** Cost sharing arrangements and operational responsibilities for future treated water transmission lines shall be established through either written agreement separate from this Agreement or as an amendment to this Agreement.

### **ARTICLE 7**

#### **Restrictions and Conditions**

- 7.1 **Resale of Treated Water.** Johnson County Special Utility District and Mansfield agree that the Treated Water supplied to Johnson County Special Utility District by Mansfield shall be used solely by Johnson County Special Utility District to meet the

reasonable water supply needs of Johnson County Special Utility District's retail potable water customers and wholesale customers whose service area is surrounded by or borders Johnson County Special Utility District's boundaries or service area defined by Johnson County Special Utility District's CCN, whichever is more expansive.

- 7.2 Amendment to Certificate of Convenience and Necessity.** Johnson County Special Utility District agrees that it will not amend its CCN to increase its service area within the ETJ of Mansfield without the prior written consent of Mansfield.

**7.3 Water Conservation and Demand Management.**

- (a) **Water Conservation.** Johnson County Special Utility District shall cooperate with and assist Mansfield and TRWD in their efforts to promote Water Conservation. This may include the development of any conservation or rationing plans by either Mansfield, TRWD, or Johnson County Special Utility District that may be necessary or appropriate to address operational constraints, whether or not the same are required by any state or federal regulatory agency. Additionally, upon the development and distribution of model drought contingency or water conservation plans by TRWD, Johnson County Special Utility District agrees to implement any such drought contingency or water conservation plan, or substitute plan approved by TRWD, within a reasonable amount of time from receipt of the model plan. Johnson County Special Utility District agrees to notify TRWD in writing of any deviation from the model plan and obtain TRWD's consent to such proposed deviation. Furthermore, Johnson County Special Utility District agrees to include the foregoing provision in all contracts for resale of Treated Water. Johnson County Special Utility District shall provide a copy of any drought contingency or water conservation plan adopted by Johnson County Special Utility District to Mansfield and TRWD within 30 days from the Effective Date.
- (b) **Demand Management.** If Mansfield or TRWD shall manage water demand through rationing the use of water to its retail customers, then a proportional rationing of water supplied to Johnson County Special Utility District by Mansfield shall be instituted, at Mansfield's option. Rationing does not relieve Johnson County Special Utility District from its obligation to pay the monthly Demand Charge.
- (c) **Temporary Rationing.** Where an Emergency may dictate temporary conservation or rationing requirements for either Mansfield or Johnson County Special Utility District, either Party may implement any measures considered appropriate by it to alleviate the Emergency. If Johnson County Special Utility District implements measures to alleviate an Emergency, Johnson County Special Utility District shall notify Mansfield in writing within five (5) days. Action taken under this subsection does not relieve Johnson County Special Utility District from its obligation to pay the monthly Demand Charge.

- 7.4 Federal and State Laws.** This Agreement is subject to all applicable federal and state laws and any applicable permits, amendments, orders, or regulations of any state

or federal governmental authority having or asserting jurisdiction, but nothing contained herein shall be construed as a waiver of any right to question or contest any such law, order, rule or regulation in any forum having jurisdiction. Johnson County Special Utility District agrees to abide by any changes in this Agreement made necessary by any new, amended, or revised state or federal regulation.

- 7.5 Support of Mansfield on Permits and Governmental Agency Approvals.** Johnson County Special Utility District shall support and assist Mansfield in obtaining permits and approvals from governmental agencies in order to protect, repair, maintain, replace, add to, supplement and/or enlarge the Mansfield Raw Water System and/or the Mansfield Treated Water System. Such support and assistance shall include, but is not limited to: providing information to Mansfield when requested by Mansfield in order to facilitate any permit or approval; providing written and oral statements of support and assistance or testimony, information, and evidence if appropriate and if requested by Mansfield in order to obtain any permit or approval; and taking all such other action as may be appropriate to support and assist Mansfield in obtaining any permit or approval.

## **ARTICLE 8**

### **Term of Agreement and Extension**

- 8.1 Term of Agreement.** Unless terminated as provided in this Agreement, this Agreement shall commence upon the Effective Date and shall remain in effect for a term of twenty (20) years.
- 8.2 Renewal of Agreement.**
- (a) Johnson County Special Utility District shall have the option to renew this Agreement for a quantity of water and at a rate as may be mutually agreed in writing by the Parties. In the absence of renewal, and except as specifically provided to the contrary, this Agreement and the obligations of the Agreement shall end on the Expiration Date. Johnson County Special Utility District expressly acknowledges that it has no right or entitlement to Raw Water or Treated Water from Mansfield after the expiration of this Agreement except to the extent that this Agreement is renewed as provided herein.
  - (b) Johnson County Special Utility District is required to give notice of its intent to renew this Agreement, at least five (5) years prior to the Expiration Date. Mansfield and Johnson County Special Utility District expressly agree that Johnson County Special Utility District's failure to provide notice of intent to renew on or before five (5) years prior to the Expiration Date of this Agreement shall constitute Johnson County Special Utility District's determination not to renew.
  - (c) If at least five (5) years prior to the Expiration Date of this Agreement Johnson County Special Utility District has not provided Mansfield notice that it intends to renew, Johnson County Special Utility District shall provide Mansfield evidence that Johnson County Special Utility District has secured

an alternative and sufficient water supply. This requirement is expressly enforceable by Mansfield.

- (d) If this Agreement is not renewed, after expiration of this Agreement, Johnson County Special Utility District shall nonetheless pay Mansfield for all Raw Water Charges and Volume Charges for Treated Water delivered pursuant to this Agreement, along with all applicable Demand and Excess Demand Charges, as well as penalties such as Late Fees, under the terms of this Agreement.

## **ARTICLE 9**

### **Termination and Default**

- 9.1 **Termination by Mutual Consent.** This Agreement may be terminated in whole or in part by the mutual consent of Johnson County Special Utility District and Mansfield. In the event of termination of this Agreement by mutual consent, all rights, powers, and privileges of Johnson County Special Utility District hereunder shall cease and terminate without necessity of further action. Johnson County Special Utility District shall make no claim of any kind whatsoever against Mansfield, its agents or representatives, by reason of such termination or any act incident thereto. If the Parties agree to terminate this Agreement, Johnson County Special Utility District shall nonetheless pay Mansfield for all Raw Water Charges and Volume Charges for Treated Water delivered pursuant to this Agreement, along with all applicable Demand and Excess Demand Charges as well as penalties such as Late Fees under the terms of this Agreement. The provisions of this section survive termination of this Agreement.
- 9.2 **Default by Johnson County Special Utility District.** In the event Johnson County Special Utility District is in default under the terms of this Agreement, Mansfield may, upon twenty (20) days written notification to Johnson County Special Utility District, temporarily suspend the delivery of Treated Water to Johnson County Special Utility District. If after the first day of suspension, Johnson County Special Utility District remains in default for a continuous one hundred eighty (180) day period, Mansfield may, upon written notice to Johnson County Special Utility District, terminate this Agreement.
  - (a) Mansfield shall advise Johnson County Special Utility District in writing immediately upon acceptance of the cure of any breach.
  - (b) If Mansfield terminates this Agreement, Johnson County Special Utility District shall nonetheless pay Mansfield for all Raw Water Charges and Volume Charges for Treated Water delivered pursuant to this Agreement, along with all applicable Demand and Excess Demand Charges, as well as penalties such as Late Fees under the terms of this Agreement, and shall be obligated to pay said charges during the time Johnson County Special Utility District is in default and during which time this Agreement is in effect. The provisions of this subsection survive termination of this Agreement.

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- (c) In the event of termination of this Agreement, all rights, powers, and privileges of Johnson County Special Utility District hereunder shall cease and terminate. Johnson County Special Utility District shall make no claim of any kind whatsoever against Mansfield, its agents or representatives, by reason of such termination or any act incident thereto, provided Mansfield acted reasonably and such termination was not unreasonable, arbitrary, and capricious. The provisions of this subsection survive termination of this Agreement.

- 9.3 **Default by Mansfield.** In the event Mansfield is in default under the terms of this Agreement, Johnson County Special Utility District shall give Mansfield written notice of such default. If Mansfield's default is not cured after the expiration of twenty (20) days after such written notification is given to Mansfield, and if the uncured default relates directly to payments due by Johnson County Special Utility District hereunder that are disputed in good faith by Johnson County Special Utility District, then, as its sole and exclusive remedy, Johnson County Special Utility District may temporarily suspend payment of any disputed funds, but not any other funds, then due or to become due in the future under the terms of this Agreement to Mansfield, and place the disputed funds in an interest bearing escrow account at a nationally recognized banking institution in Tarrant County, Texas, until such default is cured. In no event shall Mansfield be liable to Johnson County Special Utility District for any special, indirect, incidental, consequential, or punitive damages. In the event Johnson County Special Utility District is awarded damages in a final, non-appealable judgment, then such damages shall be offset against all sums due or to become due to Mansfield hereunder until Johnson County Special Utility District's damages are fully compensated.

## **ARTICLE 10**

### **Force Majeure**

- 10.1 **Definition.** The term *Force Majeure* as used herein shall mean a cause or causes beyond the reasonable control of the Party claiming *Force Majeure*, and shall include but not be limited to natural disasters, strikes, lockouts or other industrial disturbances, acts of public enemy, orders of any kind of the United States of America or the State of Texas or any civil or military authority, insurrections, riots, epidemics, lightning, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions and breakage or accidents to machinery, pipelines, or facilities; however, lockouts shall be entirely within the discretion of the Party having the difficulty, and the above requirement that any *Force Majeure* shall be remedied with all dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing Party or Parties when such settlement is unfavorable in the judgment of the Party having the difficulty.
- 10.2 **Notice; Suspension of Obligations.** By reason of Force Majeure, if any Party hereto shall be rendered partially or wholly unable to carry out its obligations under this Agreement, then if such Party shall give notice in writing of such Force Majeure to the other Party within a reasonable time after occurrence of the event or cause relied on, the obligation of the Party giving such notice, so far as it is affected by such Force Majeure. Monthly Demand Charges for services actually received from Mansfield

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hereunder, shall be suspended during the continuance of the inability then claimed, and such Party shall endeavor to remove or overcome such inability with all reasonable dispatch.

## **ARTICLE 11**

### **Ownership, Liability, Indemnification, and Insurance**

- 11.1 Responsibility for Damages for Water.** Mansfield shall be the owner of and responsible for the Treated Water only to the Delivery Point(s). After the Treated Water has passed through the Delivery Point(s), it becomes the property and responsibility of Johnson County Special Utility District. Unless otherwise provided in this Agreement, responsibility for damages arising from the improper treatment, transportation, and delivery of all Treated Water provided under this Agreement shall remain with Mansfield to the Delivery Point(s). Upon passing through the Meter(s), liability for all damages arising from improper transportation and delivery of the Treated Water after it leaves the Mansfield system shall pass to Johnson County Special Utility District. Mansfield's sole responsibility is to provide to Johnson County Special Utility District at the Delivery Point(s) potable water meeting the minimum quality requirements for human consumption as prescribed by the TCEQ or appropriate governing agency.
- 11.2 Immunities under State Law.** Nothing in this Agreement shall be construed as waiving sovereign immunity or any other immunity that Mansfield may be entitled to under state or federal law.
- 11.3 Direct or Consequential Damages.** Neither Mansfield nor Johnson County Special Utility District shall be liable to the other for loss, either direct or consequential, arising out of damage to or destruction of the rights-of-way or the Johnson County Special Utility District facilities thereon, when such loss is caused by an act of God or any of the periods that are included within or insured against by a form of property insurance. All such claims for any and all loss, however caused, hereby are waived. Said absence of liability shall exist whether or not the damage or destruction is caused by the negligence of either Party or by any of their respective agents, servants, or employees.
- 11.4 Indirect or Consequential Damages.** Mansfield's liability, if any, to Johnson County Special Utility District in contract or in tort under this Agreement specifically excludes any and all indirect or consequential damages that may arise from providing water to Johnson County Special Utility District or that may arise from the operation, maintenance, and management of the Mansfield Raw Water System and the Mansfield Treated Water System.
- 11.5 Waiver or Subrogation.** It is the intention and agreement of both Parties that any insurance carriers involved shall not be entitled to subrogation under any circumstances against any Party to this Agreement. Neither Party shall have any interest or claim in the other's insurance policy or policies, or in the proceeds thereof, unless specifically covered therein as an additional insured.
- 11.6 No Warranty.**

RAW WATER IS NON-POTABLE AND MANSFIELD MAKES NO WARRANTY OR REPRESENTATION WITH RESPECT TO THE QUALITY OR MINERAL CONTENT OF THE RAW WATER AND EXPRESSLY DISCLAIMS ANY WARRANTY AS TO ITS QUALITY ITS MERCHANTABILITY, OR FITNESS OR SUITABILITY OF THE RAW WATER FOR ITS INTENDED PURPOSE. JOHNSON COUNTY SPECIAL UTILITY DISTRICT HAS SATISFIED ITSELF THAT SUCH WATER IS SUITABLE FOR ITS NEEDS. JOHNSON COUNTY SPECIAL UTILITY DISTRICT AGREES THAT ANY VARIATION IN THE QUALITY OR CHARACTERISTICS OF THE RAW WATER SHALL NOT ENTITLE JOHNSON COUNTY SPECIAL UTILITY DISTRICT TO AVOID OR LIMIT ITS OBLIGATION TO MAKE PAYMENTS PROVIDED FOR BY THIS AGREEMENT. THERE ARE NO WARRANTIES THAT EXTEND BEYOND THE DESCRIPTION CONTAINED IN THIS AGREEMENT.

- 11.7 **Return Flows.** Johnson County Special Utility District and Mansfield agree that, for purposes of use and reuse of Return Flow and not for purposes of liability, title to all water supplied to Johnson County Special Utility District under this Agreement reverts to Mansfield upon return to watercourses in the Trinity River Basin. Johnson County Special Utility District will receive no compensation, credit, or offset for Mansfield's subsequent use and reuse of Return Flow.

## **ARTICLE 12**

### **Dispute Resolution**

- 12.1 **Non-binding mediation.** Each Party agrees that prior to filing a lawsuit or an administrative complaint with a regulatory agency on an issue related to the terms of this Agreement or otherwise related to water supply in lieu of this Agreement, the Party shall submit the dispute to non-binding mediation. This provision survives termination of this Agreement.

## **ARTICLE 13**

### **Notice**

- 13.1 **Manner of Giving Notice.** Unless otherwise provided in this Agreement, any notice, communication, request, reply, advice, approval or consent herein provided or permitted to be given, made, or accepted by either Party to the other, must be in writing and may be given or be served by depositing the same in the United States Mail postpaid and registered or certified and addressed to the Party to be notified with return receipt requested, or by delivering the same to the Mayor/City Manager or Chief Executive Office, or by prepaid telegram, when appropriate, addressed to the Party to be notified. Any such matter deposited in the mail in the manner hereinabove described shall become exclusively deemed to be effective, unless otherwise stated in this Agreement, from and after the earlier of actual receipt of notice or the expiration of four (4) days after it is so deposited. Any such notice given in any other manner shall be effective only if and when received by the Party to be notified.
- 13.2 **Notice to Mansfield.**

City Manager  
City of Mansfield

- 1200 East Broad Street  
Mansfield, Texas 76063
- 13.3 Notice to Johnson County Special Utility District.  
General Manager  
Johnson County Special Utility District  
P.O. Box 509  
Cleburne, Texas 76033

- 13.4 The Parties shall have the right from time to time and at any time to change their respective addresses and each shall have the right to specify as its address any other address by at least five (5) days written notice to the other Party.

#### ARTICLE 14 Miscellaneous Provisions

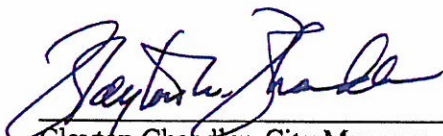
- 14.1 **Governing Law.** This Agreement shall be governed by the applicable law of the State of Texas and due performance by each Party or any action arising under this Agreement shall lie in Tarrant County, Texas. Jurisdiction and venue shall be in Tarrant County, Texas, and each of the Parties submit to personal jurisdiction in the state district courts in such county.
- 14.2 **No Waiver.** Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to any of the Parties nor to create any legal rights or claim on behalf of any third party. No Party waives, modifies, or alters to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas of the United States.
- 14.3 **Entire Agreement.** This Agreement and any Exhibits hereto embody the entire agreement and understanding of the Parties hereto and supersede any and all prior agreements, arrangements and understandings relating to the matters provided for herein. No amendment, waiver of compliance with any provision or condition hereof or consent pursuant to this Agreement shall be effective unless evidenced by an instrument in writing signed by the Party against whom enforcement of any amendment, waiver or consent is sought. This Agreement may not be amended or modified except in writing executed by all Parties and authorized by their respective governing bodies.
- 14.4 **Partial Invalidity.** If any provision of this Agreement is held to be invalid, illegal, or unenforceable in any judicial action, the remaining provisions shall be unaffected. In the event any provision of this Agreement is held to be invalid, illegal, or unenforceable in any judicial action, the Parties shall, upon the request of a Party, promptly renegotiate in good faith a new provision to eliminate the invalidity and to restore this Agreement, as nearly as possible, to its original intent and effect.
- 14.5 **Duty to Review and Revise.** The Parties shall review and revise this Agreement to ensure compliance with the federal and state laws and rules and regulations as necessary.
- 14.6 **Survival.** Any provision that by its terms survives the termination of this Agreement shall bind the Parties' legal representatives, heirs, and assigns as set forth herein.

- 14.7 **Assignment.** This Agreement shall not be assignable by either Party without the prior written consent of the other Party nor in contravention of any other provisions contained herein.
- 14.8 **Benefits.** This Agreement shall bind and the benefits thereof shall inure to the respective Parties hereto, their heirs, legal representative, executors, administrators, successors, and assigns. This Agreement shall not be construed as creating any rights in any third party or any duty to any third party.
- 14.9 **Multiple Copies.** This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall be considered fully executed as of the date when all Parties have executed an identical counterpart, notwithstanding that all signatures may not appear on the same counterpart.
- 14.10 **Deadlines.** To the extent that the date for any payment or notice due hereunder by either Party shall fall on a Day that is not a Business Day, such deadline for payment or notice, as the case may be, shall be automatically extended to the next following Business Day.

IN WITNESS WHEREOF, the Parties have executed and attested this Agreement by their officers thereunto duly authorized as of the date signed.

Executed this 20 day of May 2009.

City of Mansfield

  
Clayton Chandler, City Manager

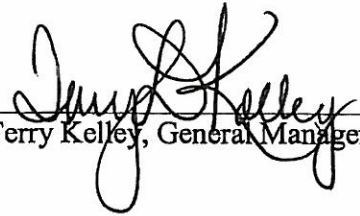
Date 5/20/09

ATTEST

By   
City Secretary City of Mansfield

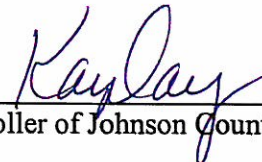
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Johnson County Special Utility District

  
Terry Kelley, General Manager

Date 4/27/09

ATTEST

By   
Controller of Johnson County Special Utility District

APPROVED AS TO FORM AND LEGALITY:

By   
City Attorney, Mansfield

City of Mansfield, Texas  
Wholesale Water Rate Calculation  
Johnson County SUD

EXHIBIT A

| Line No.                                    | Description  | Reference        | Rate<br>Year<br>2009 | Rate<br>Year<br>2010 | Rate<br>Year<br>2011 | Rate<br>Year<br>2012 | Rate<br>Year<br>2013 |
|---|--|------------------|----------------------|----------------------|----------------------|----------------------|----------------------|
| 1   | Total Base Costs                                   |                  | \$ 3,890,762         | \$ 4,260,229         | \$ 4,738,838         | \$ 4,946,087         | \$ 5,313,640         |
| 2   | Johnson County SUD's % Base Costs                  |                  | 0.96%                | 0.94%                | 0.92%                | 0.89%                | 1.03%                |
| 3   | Johnson County SUD's Base Costs                    | = 1 x 2          | \$ 3,722             | \$ 39,862            | \$ 43,450            | \$ 44,185            | \$ 54,824            |
| 4   | Johnson County SUD Est. Consumption (000s gallons) |                  | 39,332               | 39,332               | 39,332               | 39,332               | 47,198               |
| 5   | Volume Rate (per 1,000 gal.)                       | = 3 ÷ 4          | \$ 0.95              | \$ 1.01              | \$ 1.10              | \$ 1.12              | \$ 1.16              |
| 6   |  |                  |                      |                      |                      |                      |                      |
| 7   | Total Extra Capacity Costs                         |                  | \$ 3,546,579         | \$ 3,877,922         | \$ 4,450,376         | \$ 4,662,227         | \$ 5,083,165         |
| 8   | Johnson County SUD's % Extra Capacity Costs        |                  | 0.96%                | 0.94%                | 0.92%                | 0.89%                | 1.03%                |
| 9   | Johnson County SUD's Extra Capacity Costs          | = 7 x 8          | \$ 33,929            | \$ 36,284            | \$ 40,805            | \$ 41,649            | \$ 52,446            |
| 10  | Johnson County SUD Est. Max Day Demand (MGD)       |                  | 0.25                 | 0.25                 | 0.25                 | 0.25                 | 0.30                 |
| 11  | Demand Rate (per MGD)                              | = 9 ÷ 10         | \$ 135,718           | \$ 145,137           | \$ 163,219           | \$ 166,597           | \$ 174,819           |
| 12  |  |                  |                      |                      |                      |                      |                      |
| 13  | Total System Connections                           |                  | 18,034               | 18,373               | 18,763               | 19,148               | 19,530               |
| 14  | Johnson County SUD Connection                      |                  | 1                    | 1                    | 1                    | 1                    | 1                    |
| 15  | % of Total   | = 14 ÷ 13        | 0.01%                | 0.01%                | 0.01%                | 0.01%                | 0.01%                |
| 16  | Total Customer Cost                                |                  | \$ 933,986           | \$ 951,860           | \$ 990,682           | \$ 1,031,663         | \$ 1,075,888         |
| 17  | Johnson County SUD Customer Costs                  | = 15 x 16        | \$ 52                | \$ 52                | \$ 53                | \$ 54                | \$ 55                |
| 18  |  |                  |                      |                      |                      |                      |                      |
| 19  | Johnson County SUD Total Revenue Requirement       | = 3 + 9 + 17     | \$ 71,204            | \$ 76,198            | \$ 84,307            | \$ 85,889            | \$ 107,325           |
| 20  |  |                  |                      |                      |                      |                      |                      |
| 21  | Treated Water Effective Rate (per 1,000 gal.)      | = 19 ÷ 4         | \$ 1.81              | \$ 1.94              | \$ 2.14              | \$ 2.18              | \$ 2.27              |
| 22  |  |                  |                      |                      |                      |                      |                      |
| 23  |  |                  |                      |                      |                      |                      |                      |
| 24  | Johnson County SUD Demand Charge (Annual)          | = 9 + 17         | \$ 33,981            | \$ 36,338            | \$ 40,857            | \$ 41,703            | \$ 52,501            |
| 25  | Demand Charge (Monthly)                            | = 24 ÷ 12 months | \$ 2,832             | \$ 3,028             | \$ 3,405             | \$ 3,475             | \$ 4,375             |
| Total Revenue Requirement                   |  |                  |                      |                      |                      |                      |                      |
| Demand Rate per MGD                         |  |                  |                      |                      |                      |                      |                      |
| Volume Rate per 1,000 gal.                  |  |                  |                      |                      |                      |                      |                      |
| Treated Water Effective Rate per 1,000 gal. |  |                  |                      |                      |                      |                      |                      |
| Raw Water Rate per 1,000 gal.               |  |                  |                      |                      |                      |                      |                      |
| Total Effective Rate per 1,000 gal.         |  |                  |                      |                      |                      |                      |                      |
|   |  |                  | \$ 2.55              | \$ 2.69              | \$ 2.94              | \$ 2.97              | \$ 3.05              |