

**AN AGREEMENT FOR RECLAIMED WATER SERVICE BETWEEN
THE CITY OF FORT WORTH AND
THE CITY OF EULESS**

STATE OF TEXAS §

COUNTIES OF TARRANT, DENTON AND WISE §

This Agreement is made and entered into this ___th day of _____, 2009, by and between the City of Fort Worth, a municipal corporation located in Tarrant County, Texas, acting by and through _____, its duly authorized Assistant City Manager, hereinafter called "Fort Worth," and the City of Euless, located in Tarrant County, Texas, acting by and through Gary McKamie, its duly authorized City Manager, hereinafter called "Customer."

WHEREAS, use of reclaimed water is a recommended water management strategy for the City of Fort Worth in the 2006 Region C Water Plan; and,

WHEREAS, use of reclaimed water has been identified as a Best Management Practice for water conservation by the Water Conservation Implementation Task Force established by the 78th Texas Legislature under Senate Bill 1094; and,

WHEREAS, development of a reclaimed water program for the City of Fort Worth will provide for efficient use of Fort Worth's and the region's water resources; and,

WHEREAS, it is in Fort Worth's and the region's best interest, when economically justified, to provide reclaimed water to other entities in the region in order to conserve valuable water supplies for the region; and,

WHEREAS, Fort Worth and the Customer recognize that the use of reclaimed water for nonpotable uses allowed by the State of Texas is a practical and efficient method of relieving the demand on potable water supplies; and,

WHEREAS, Fort Worth is authorized to provide reclaimed water by the TCEQ

under Authorization for Reclaimed Water No. R10494-013; and,

WHEREAS, Fort Worth owns, operates and maintains facilities for processing and distributing reclaimed water, and at the present time may furnish and deliver reclaimed water, both within and without the corporate boundaries of Fort Worth as allowed by its TCEQ Authorization; and,

WHEREAS, Customer now wishes to establish, own and operate at its own cost and expense a reclaimed water distribution system; and furnish reclaimed water service to the customers within its own boundaries, and,

WHEREAS, it is deemed to be in the best interest of both parties to enter into an agreement to allow the Customer to obtain from Fort Worth a supply of reclaimed water at a rate and in accordance with the terms contained herein; and,

WHEREAS, Customer desires to purchase reclaimed water and Fort Worth desires to sell reclaimed water to Customer; and

WHEREAS, Section 402.001 and 402.075 of the Texas Local Government Code, and Chapter 791 of the Texas Government Code authorize Fort Worth and Customer to enter into this Agreement;

NOW, THEREFORE, KNOW ALL BY THESE PRESENTS:

That, for and in consideration of the mutual covenants, promises and agreements contained herein, Fort Worth and Customer do hereby covenant and agree as follows:

Table of Contents

1. <u>Definitions</u>	3
2. <u>Reclaimed Water Delivery</u>	5
3. <u>Meters; Responsibilities</u>	9
4. <u>Point-of-Delivery, Meter, Testing</u>	11
5. <u>Meter Reading</u>	12
6. <u>Billing</u>	13
7. <u>Rates and Charges</u>	14
8. <u>Effective Date; Term</u>	21
9. <u>Easements and Rights-of-Way</u>	22
10. <u>Reclaimed Water Use Requirements</u>	23
11. <u>Resale of Reclaimed Water</u>	24
12. <u>Adequate Supply</u>	24
13. <u>Reclaimed Water System Advisory Committee</u>	25
14. <u>Termination</u>	25
15. <u>Ownership of the System</u>	27
16. <u>Third Party Beneficiaries</u>	27
17. <u>Liability</u>	27
18. <u>Force Majeure</u>	28
19. <u>Notices</u>	29
20. <u>Inspection and Audit</u>	29
21. <u>Request for Service by Fort Worth</u>	30
22. <u>Arbitration</u>	30
23. <u>Licenses, Permits and Fees</u>	32
24. <u>Miscellaneous</u>	32

1. Definitions

1.1 "Annual Amount" is defined in **§ 2.5** and is comprised of the Customer's total annual Reclaimed Water use estimate, as adjusted.

1.2 "Applicable Law" is any statute, law, constitution, charter, ordinance (including the Fort Worth city code and ordinances, rules and regulations), resolution, judgment, order, decree, rule, regulation, directive, interpretation, standard or similarly binding authority, which in any case, is enacted, adopted, promulgated, issued or enforced that relates to or affects Fort Worth, the Customer, or a party's performance of its obligations under this Agreement.

1.3 "Customer system" is the Customer's entire Reclaimed Water transmission

and distribution system on the Customer's side of the point of delivery.

1.4 "Director" is the Director of the Fort Worth Water Department or the Director's authorized designee.

1.5 "Fiscal Year" (or "FY") is Fort Worth's fiscal year, which is October 1 through September 30. For example, "FY 2011" is October 1, 2010 thru September 30, 2011.

1.6 "Maximum Rate" is the volume equivalent of the City of Fort Worth wholesale treated water contract rate, as defined in **§ 7.4.1**. The Maximum Rate calculation includes Fort Worth's cost of raw water.

1.7 "MGD" is million gallons per day.

1.8 "Minimum Monthly Use" is an amount of Reclaimed Water equal to 50% of the Annual Amount divided by 12 months.

1.9 "Peak Usage" is the Customer's maximum rate of flow of Reclaimed Water, in any one Fiscal Year, measured in gallons per minute at the point-of-delivery meter.

1.10 "Reclaimed Water" is highly treated effluent from Fort Worth's wastewater treatment plant(s), supplied through the System.

1.11 "Service Area" means the "City of Fort Worth Reclaimed Water Service Area" identified in the TCEQ Reclaimed Water Authorization No. R10491-013, as amended from time to time. **Exhibit A** describes the Service Area as of the effective date of this Agreement, but an amendment of the TCEQ Authorization that expands the Service Area shall become effective upon issuance by TCEQ, without the need to amend this Agreement.

1.12 "Subsidy" means the amount, in dollars, equal to the revenue shortfall in Fiscal Years when the Rates charged pursuant to this Agreement are less than rates necessary to recover the cost-of-service revenue requirement for the System, as

determined by the article 7 cost-of-service rate study. "Cumulative Subsidy" means the total, un-recouped amount of all Subsidies paid by Fort Worth over the life of the Agreement.

1.13 "System" is the entire Fort Worth Reclaimed Water transmission and distribution system(s), which extends from its connection to Fort Worth's wastewater treatment plant(s) to each customer's point of delivery, and includes all equipment and related facilities owned or used by Fort Worth to pump, transport, measure, control, store, distribute, deliver or otherwise manage Reclaimed Water within the Service Area.

1.14 "System Cost" means a cost associated with the System that is to be included in the System-wide cost of service (as provided in **Section 7.2**).

1.15 "Users" means any user that Fort Worth permits as a distributor or a bulk user of the Reclaimed Water.

1.16 "Volume Rate" is the wholesale rate per 1,000 gallons of Reclaimed Water to be set annually pursuant to this Agreement.

1.17 "TCEQ" is the Texas Commission on Environmental Quality or its successor in function.

2. Reclaimed Water Delivery

2.1 Fort Worth Reclaimed Water Delivery.

2.1.1 Fort Worth shall furnish and sell to Customer, pursuant to the terms and conditions of this Agreement, Reclaimed Water that meets the requirements for Type I reclaimed water uses, as set forth in Chapter 210 of Title 30 of the Texas Administrative Code and the TCEQ Reclaimed Water Authorization No. R10494-013.

2.1.2 Fort Worth is responsible for treatment and transportation of the

Reclaimed Water, in compliance with Applicable Law, up to the Customer's point of delivery, and the Customer shall have no liability related to or arising out of the Reclaimed Water up to the Customer's point of delivery.

2.2 Customer Reclaimed Water Purchase.

2.2.1 Customer shall purchase and pay Fort Worth for Reclaimed Water, pursuant to the terms and conditions of this Agreement.

2.2.2 Customer is responsible for the transportation and use of the Reclaimed Water, in compliance with Applicable Law, at and after the point of delivery, and Fort Worth shall have no liability related to or arising out of Reclaimed Water that complies with the requirements of **§ 2.1** at the Customer's point of delivery.

2.2.3 Customer shall supply, install and maintain, at Customer's sole cost and expense, all equipment to obtain Customer's desired Reclaimed Water pressure if the pressure provided by Fort Worth is not adequate for Customer's purposes. Fort Worth does not guarantee a minimum pressure for the delivery of Reclaimed Water.

2.3 Point of Delivery. The Customer's point of delivery will be the meter vault connection to Customer's side of the meter, installed at a mutually agreed location on the System. The parties will designate the agreed location for the meter (including a map or diagram of the location) in writing, signed by both parties, and that signed designation will become part of this Agreement. The parties may agree to designate one or more additional Customer points of delivery from time to time, following the requirements of this **§ 2.3.**

2.4 Customer's Estimated Reclaimed Water Use.

2.4.1 On or before the date of Customer's execution of this Agreement, and thereafter on or before March 31 of each year, Customer will provide to Fort Worth its best good-faith estimate of:

- a. the Customer's Reclaimed Water use month-by-month for each month;
- b. the Customer's total annual Reclaimed Water use; and
- c. the Customer's Peak Usage, consisting of the maximum rate of flow of Reclaimed Water measured in gallons per minute at the point-of-delivery meter (and must be provided for each point-of-delivery meter)

for the Fiscal Year that begins the following October 1, in writing, in the form of **Exhibit B**.

2.4.2 If the Customer has more than one point of delivery, its annual estimates will include separate estimates of annual usage and Peak Usage use for each of its points of delivery.

2.5 Customer's Annual Amount. The Customer's Annual Amount (used to calculate monthly charges under § 7.5) shall be equal to the Customer's § 2.4 annual estimated Reclaimed Water use, unless adjusted as described below. The parties agree that the adjustments below are just and reasonable, in part because they provide greater stability in System revenues and, therefore, in the supply of Reclaimed Water. Disputes over these adjustments to the Annual Amount shall be resolved by arbitration.

2.5.1 If Customer fails to withdraw at least 50% of 1/12th of the Annual

Amount each month for any twelve (12) consecutive months, for any reason other than rainfall or disruption of service by Fort Worth, then the Director may reduce the Annual Amount to an amount approximating the Customer's actual historical usage over the previous twelve (12) months. Months in which the Reclaimed Water is reduced by Fort Worth, through no fault of Customer, shall not be included in determining whether Customer has withdrawn at least 50% of 1/12th of the Annual Amount within the consecutive 12-month period.

2.5.2 The parties may agree to any adjustments, in writing, signed by the Customer and the Director. The Director may, in their discretion, increase the Annual Amount at the Customer's request, subject to available capacity and other factors related to the provisions of Reclaimed Water.

2.5.3 The Director may unilaterally increase the Annual Amount to reflect actual historical use if the Customer exceeded the total annual Reclaimed Water use by an average of 30 % or more in the three prior Fiscal Years, and the Customer will be responsible for all increase-related costs pursuant to **§ 3.1.3** and **§ 3.3**.

2.5.4 If Customer ceases taking Reclaimed Water from the System for two or more consecutive years, then the Director may adjust the Annual Amount to an amount equal to the average of the Customer's highest and lowest annual usage. The Director has the discretion to keep that Annual Amount in effect for the term of this Agreement, or until the

Customer withdraws at least that Annual Amount for two or more consecutive years, whichever is sooner. Annual withdrawals of less than 10% of Customer's highest historical Annual Amount will be deemed to be cessation of use for purposes of this adjustment. Alternatively, the Director may allow the Annual Amount to be reduced to actual withdrawals, and all subsequent requests to increase the Annual Amount will be subject to available capacity.

2.6 Fort Worth may limit the maximum flow rate of the Customer's meter to the estimated peak flow rate, through the installation and use of a flow control device, such as, but not limited to, an orifice plate.

2.7 Service Interruptions. Equipment failures, plant upsets, water line breaks and other similar events may cause disruptions to Fort Worth's Reclaimed Water Service. In such events, Fort Worth will use all reasonable efforts to restore service as soon as possible and limit the duration of any such disruptions. However, Fort Worth shall have no liability arising out of or related to interruptions in Customer's Reclaimed Water service caused by such events.

2.8 If Fort Worth determines that the Reclaimed Water System is not compliant or is near noncompliance with its TCEQ Reclaimed Water authorization or other Applicable Law, then Fort Worth may cease the delivery of Reclaimed Water to Customer to allow for such measures as determined necessary by Fort Worth to remain compliant with its TCEQ permit and Applicable Law. Fort Worth shall have no liability arising out of or related to interruptions in Customer's Reclaimed Water service caused by such events.

3. Meters; Responsibilities

3.1 All Reclaimed Water furnished under this Agreement by Fort Worth shall be

measured by one or more meters as approved by Fort Worth and shall be equipped with continuous flow and chart-recording devices. All meters, recording devices, and appurtenances shall be approved and installed by Fort Worth at the Customer's point of delivery.

3.1.1 Customer shall be solely responsible for all costs associated with the meter, to include the meter vault, recording devices, equipment and appurtenances, and installation costs.

3.1.2 Fort Worth shall be responsible for the costs associated with the operation and maintenance of the meter, to include the meter vault, recording devices, equipment and appurtenances, and necessary replacement, as determined by Fort Worth, caused by malfunction or ordinary wear and tear. Replacement costs shall be a System Cost.

3.1.3 If the Customer's meter or metering equipment is upgraded or replaced to increase flows to the Customer as provided in this Agreement, then the Customer is responsible for the cost incurred and associated with the upgrade and/or additional capacity that is over and above the cost of replacement as reasonably determined by Fort Worth.

3.2 The Customer's point of delivery is the meter vault connection to Customer's side of the meter installed at the locations identified as required by **§ 2.4**. All mains and distribution facilities on the Customer's side the point of delivery are the sole responsibility of the Customer. No meter shall be moved or relocated except as agreed, in writing, signed by both parties made a part of this agreement by Amendment.

3.3 If Fort Worth determines through historical review that the Customer's

meter(s) is not sufficiently sized for the amount of Reclaimed Water that Customer takes, then Customer shall be responsible for the cost and expense of upgrading such meter to the appropriate size as reasonably determined by Fort Worth.

3.4 In the event of an unforeseeable mechanical failure, or an unusual high rate of Reclaimed Water usage, or a Reclaimed Water main break of Customer, Customer shall notify Fort Worth within twenty-four (24) hours of the occurrence of the emergency condition and follow all procedures required by Applicable Law and as requested by Fort Worth. Notwithstanding these conditions, the Volume Charge for all Reclaimed Water delivered to the Customer shall be due and payable.

4. Point-of-Delivery, Meter, Testing

4.1 Fort Worth shall have the right to test for accuracy, service and calibration of the meter at each Customer point of delivery as Fort Worth reasonably determines is necessary. The meters shall be tested at least once each twelve (12) month period. Fort Worth shall provide copies of the results of such test and all related information to Customer in a timely manner.

4.2 Customer shall have access to the metering facilities for its point of delivery at all reasonable times; provided, however, that any reading, calibration or adjustment to such metering equipment must be done i) by employees or agents of Fort Worth, or other mutually approved third party calibration agent; and ii) in the presence of representatives of Customer and Fort Worth. Notification of any testing shall be provided to the Customer at least seventy-two (72) hours prior to such test being conducted and Customer may observe such test, if so desired.

4.3 If any calibration indicates that the accuracy envelope of the meter 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, the registration of the flow as determined by the meter shall be corrected for a period extending back to the time such inaccuracy began, if that time is ascertainable; or, if that 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 six (6) months. All meters will be properly sealed, and the seals shall not be broken unless representatives of both parties have been notified and given a reasonable opportunity to be present.

4.4 If any meter used to determine the flow of Reclaimed Water to Customer is out of service or out of repair, so that the amount of Reclaimed Water metered cannot be ascertained or computed from the meter reading, then the Reclaimed Water delivered during the period that the meter is out of service or out of repair shall be estimated based on reasonable factors, such as extrapolation of past patterns of flow for the meter under similar conditions. Fort Worth may, in its own discretion, consider the volume of Reclaimed Water delivered to the Customer's retail users to determine Customer's flow. If the parties cannot agree on the extrapolated estimate of Reclaimed Water volumes delivered, then the flow volume will be determined by arbitration.

4.5 Each party has the duty to notify the other immediately upon its own knowledge that a Reclaimed Water meter is not functioning properly. Fort Worth shall repair such meter as promptly as is reasonably practicable after learning of the meter's malfunction.

5. Meter Reading

5.1 Fort Worth will read each of the Customer's point-of-delivery meters at monthly intervals. Fort Worth will keep records of all meter readings. Customer shall have access to those records during reasonable business hours. Monthly readings for each

point of delivery meter will be included with Customer's monthly bill for Reclaimed Water service.

5.2 If Customer has more than one point of delivery from the System, then the sum of all meter readings shall be used to calculate the Customer's monthly Volume Charge.

5.3 A review of Reclaimed Water usage amounts by Customer for the past twelve (12) months shall be made during the presentation of the October bill each year.

6. Billing

6.1 Fort Worth will send bills for Reclaimed Water service to Customer each month. All bills shall be due and payable by Customer thirty (30) days from the billing date. The bills will show current charges, as well as past-due charges, if any. Past-due charges shall be the total unpaid amount from all prior billings up to the current billing date. Payments received by Fort Worth shall first be applied to the past-due charges, if any, and thereafter to the current charges.

6.2 If Customer disputes a bill and is unable to resolve the difference informally, Customer shall notify the Director in writing. If the Director and Customer are unable to resolve the disputed bill, the dispute will be resolved by arbitration. Dispute of a bill shall not be grounds for non-payment. For all past due charges, Customer shall pay Fort Worth an interest charge of ten percent (10%) per annum, calculated from the date that the payment was required to be made. If a billing adjustment is agreed upon by the parties or established by arbitration, then the amount of any over-payment to Fort Worth will be credited to Customer's account together with an interest charge of ten percent (10%) per annum calculated from the date the over-payment was received.

6.3 If requested by the Director, Customer shall provide quarterly the following data:

- a. Actual number of individual users (by user account) using Reclaimed Water from the Customer system within its service area;
- b. Actual monthly usage volumes of individual users (by user account) from the Customer system within its service area;
- c. Copies of service agreements or contracts between the Customer and individual users within its service area.

Customer may require that Fort Worth pay the reasonable costs of providing the requested data.

7. Rates and Charges

7.1 Rate. The rate per thousand gallons of Reclaimed Water ("Rate") is a wholesale rate, charged pursuant to this Agreement. The Rate is set annually pursuant to this Agreement, based on the System-wide cost-of-service rate study as provided in **§ 7.2**, except when the terms of this Agreement require (i) fixed rates under **§ 7.3**, which are either the Initial Rates or rates based on the Annual 5% Adjustment or (ii) the Maximum Rate under **§ 7.4**. Fort Worth will maintain the records and documents related to the annual rate studies and annual adjustment of the Rates, and these records shall be available for Customer inspection at the Fort Worth Water Department during reasonable business hours and upon prior request by Customer.

7.2 Cost-of Service Rate Methodology

7.2.1 System-Wide Cost of Service. The cost-of-service rate will be determined based upon a System-wide cost-of-service rate study

performed by an independent utility rate consultant as provided in § 7.2.3. The Director shall select the independent utility rate consultant from a list of qualified firms submitted to the Director by the Reclaimed Water System Advisory Committee. The cost of any rate study under this Agreement is a System Cost. All rate studies shall use the cash basis of determining revenue requirements applicable to the wholesale customer class of Reclaimed Water purchasers. To determine the System-wide cost of service, the independent utility rate consultant shall include relevant factors, including: total volume, rate of flow, metering, utility costs, cost of supplies, customer-related costs (such as accounting, billing, and monitoring), system losses, debt service expenses, franchise fees, Reserve Fund levels, and historical and projected use.

7.2.2 Rates to be Sufficient. The Rates shall be sufficient to promote confidence in the financial stability of the System; to maintain and support Fort Worth's credit; to enable Fort Worth to raise the money necessary to pay the costs associated with the System of reasonable and necessary operation and maintenance expenses, debt service payments, and capital expenditures that are not debt financed or contributed; and to maintain a reserve equal to twenty (20) percent of the operation, maintenance and debt service expenses associated with the System (the "Reserve Fund") in accordance with City of Fort Worth Financial Management Policies, as adopted and amended from time to time by the Fort Worth City Council.

7.2.3 Annual Rate Studies. For FY 2012, and every three (3) years thereafter, the Rate will be established by a detailed wholesale System-wide Reclaimed Water cost-of-service rate study performed by an independent utility rate consultant selected by the Director as provided in § 7.2.1. After the first rate study, the rate consultant will use the same methodology that was used in the immediately previous rate study. In the interim Fiscal Years between detailed rate studies, Fort Worth will adjust the Rate annually, using the same methodology as the last detailed rate study, using: the actual operating expenditure for the twelve (12) month period ending September 30th of the prior year, adjusted for all known and measurable changes in cost data since the last adopted System budget; historical usage; the Reclaimed Water use estimated by the Customer under § 2.4, and the Reserve Fund. Annual rate studies are necessary and shall be performed each year, regardless of whether the Rate charged is determined by the rate study, or by § 7.3 (a fixed rate) or § 7.4 (a Maximum Rate).

7.3 Fixed Rates and Subsidy by Fort Worth during the Initial Years of Operation

Fort Worth and Customer acknowledge that, during the initial years of System operation, a rate based purely on cost-of-service may not be competitive in the Customer's Reclaimed Water market. To provide more marketable rates during these initial years, Fort Worth agrees to the fixed rates and fixed rate increases in §§ 7.3.1 and 7.3.2. Fort Worth further agrees that, if those Rates do not produce sufficient revenue to meet the System revenue requirements in any one Fiscal Year, Fort Worth will pay an

annual Subsidy equal to the shortfall. The annual payment of the Subsidy will be calculated as of September 30 each year.

7.3.1 Fixed Rates before FY 2015. Rates for the initial 5 years of this Agreement are fixed as follows:

Fiscal Year 2010 \$1.45 per 1,000 gallons.

Fiscal Year 2011 \$1.45 per 1,000 gallons.

Fiscal Year 2012 \$1.50 per 1,000 gallons.

Fiscal Year 2013 \$1.50 per 1,000 gallons.

Fiscal Year 2014 \$1.50 per 1,000 gallons.

These § 7.3.1 Rates will remain in effect until Fort Worth recoups the Cumulative Subsidy, or through the Fiscal Year beginning October 1, 2014, whichever occurs first.

7.3.2 Annual 5 Percent Increase. If Fort Worth does not fully recoup the Cumulative Subsidy before the end of the 2014 Fiscal Year, then the Rate for Fiscal Year 2015, and each Fiscal Year thereafter until Fort Worth fully recoups the Cumulative Subsidy, will be calculated by multiplying the prior FY Rate times 1.05, resulting in a fixed annual 5% increase in the Rate.

7.3.3 Source of Recoupment. Fort Worth is entitled to recoup the entire amount of the Cumulative Subsidy, without interest, out of revenue produced by the Rates. Each Fiscal Year that System revenue exceeds the annual cost-of-service revenue requirement, the excess revenue shall be transferred to Fort Worth until Fort Worth has recovered the Cumulative Subsidy. At the end of the Fiscal Year in

which Fort Worth first fully recoups the Cumulative Subsidy, any revenue received in excess of the Cumulative Subsidy will become the initial Reserve Fund balance.

7.4 Maximum Rate Protection.

- 7.4.1 In any Fiscal Year, if the Rate exceeds the Maximum Rate, then the Rate will be adjusted to equal the Maximum Rate. However, if the Maximum Rate is less than the Rate in effect for the Fiscal Year just ended, the Rate will not be lowered based on the Maximum Rate, but will simply remain unchanged for that new FY. The Maximum Rate is the equivalent of the volume rate portion of the City of Fort Worth wholesale treated water contract rate (which currently is not a volume-only rate), as that rate may be adjusted from time to time, as reasonably determined by Fort Worth for each year that the Maximum Rate is in effect. **Exhibit C** is the current example of this calculation. The City currently charges a wholesale treated water rate pursuant to contracts with over 25 wholesale customers (primarily cities); if the City enters into new contracts after the existing contracts expire, then the calculation of the Maximum Rate will be adjusted as necessary to carry out the intent of the parties to this Agreement that the Maximum Rate approximate the City's wholesale treated water contract rate. The Maximum Rate shall include Fort Worth's cost of raw water.
- 7.4.2 If the resulting **§ 7.4.1** Rate does not produce sufficient revenue to meet the System revenue requirements in any Fiscal Year, Fort Worth agrees to resume paying an annual Subsidy equal to the

shortfall. To allow Fort Worth to recoup that Subsidy, Customer agrees that the § 7.3.2 (“Annual 5 Percent Increase”) will be in effect the following Fiscal Year, and thereafter in any year when the resulting Rate does not trigger the Maximum Rate, until Fort Worth fully recoups any Cumulative Subsidy that accumulates from time to time.

7.5 Charges. Charges for Reclaimed Water commence on the day when Fort Worth first makes Reclaimed Water service available at the Customer’s point of delivery,

7.5.1 Volume Charge. Customer shall pay Fort Worth a Volume Charge for all Reclaimed Water withdrawn from the System at the Customer’s point of delivery. The Volume Charge is calculated monthly as:

- a. the amount of Reclaimed Water withdrawn from the system at the Customer point of delivery during the monthly billing period (in gallons x 1000) times,
- b. the Rate in effect for that monthly billing period.

7.5.2 Minimum Charge. If the Reclaimed Water withdrawn from the System at the Customer’s point of delivery for any one monthly billing period is less than half of the Customer’s Annual Amount, divided by twelve (12), then the Customer shall pay a Minimum Monthly Charge instead of the § 7.5.1 Volume Charge. The Minimum Monthly Charge is calculated as:

- a. fifty percent (50%) of the Customer’s Annual Amount (in gallons x 1000) divided by twelve (12) months, multiplied by
- b. the Rate in effect for that monthly billing period.

The parties agree that this monthly minimum charge is just and reasonable, and is necessary to establish a minimum cash flow to meet the operating expenses and debt service for the System. **Exhibit D** presents three examples of how the monthly minimum and any credit shall be calculated.

7.5.3 Adjustments to the Minimum Charge. When the System is financially self-supporting and the Reserve Fund has been established, Fort Worth may modify or eliminate this minimum monthly charge. If the Customer is prevented from withdrawing Reclaimed Water because of an extended interruption in Fort Worth's delivery of Reclaimed Water (exceeding 5 consecutive days), then the Minimum Monthly Charge shall be proportionately reduced for that monthly billing cycle, based on the number of 24-hour days that no Reclaimed Water was delivered by Fort Worth.

7.5.4 Credits. In any Fiscal Year that Customer incurs a Minimum Monthly Charge for a month, but its annual withdrawal is equal to or greater than its Annual Amount, Fort Worth will credit the Customer's account with a credit (in dollars) calculated as:

- a. the total charges for that year, minus
- b. the Annual Amount / 12 x the Rate.

Examples of this calculation are in **Exhibit D**. Fort Worth will first apply the credit to past-due charges, if any, and thereafter to current charges.

7.6 Customer to Collect Resale Rates. Customer agrees, throughout the term of

this Agreement, (i) to fix and collect such rates and charges for Reclaimed Water service supplied by Customer as will produce revenues in an amount equal to at least all of the operation and maintenance expenses of the Customer system, including specifically its payments due to Fort Worth under this Agreement; and all other amounts as required by Applicable Law, (ii) to enact or pass all ordinances or resolutions authorizing the System's revenue bonds or other obligations now or hereafter outstanding, including the amounts required to pay its allocable share as a System customer of all principal of and interest on such bonds and other obligations.

7.7 Rates Charged to Additional Reclaimed Water Customers

7.7.1 Retail Customers. When and if Fort Worth provides Reclaimed Water service to its retail customers, in the § 7.2 annual cost-of-service study, Fort Worth shall allocate System Costs proportionately between a retail customer class and a wholesale customer class. The allocation shall be based upon generally acceptable rate-making principles, and taking into consideration relevant factors, which may include the facilities and customer services required to provide Reclaimed Water Service to each customer class.

7.7.2 Wholesale Customers. New wholesale customers, added as provided in § 12, shall pay the Rates as provided in this Agreement, and such other contributions, connection fees, rates and charges as may be determined by Fort Worth to be in the best interest of the System and its customers.

8. Effective Date; Term

8.1 Effective Date. The effective date of this Agreement shall be the date it is

fully executed by both parties. Reclaimed Water service to Customer begins on the date the Reclaimed Water facilities and points of connection are constructed and Fort Worth makes Reclaimed Water service available at the Customer's point of delivery.

8.2 Term. The term of this Agreement shall be twenty (20) years from the Effective Date, subject to termination under Article 14. This Agreement may be renewed on terms mutually agreeable to the parties.

9. Easements and Rights-of-Way

9.1 Customer shall grant, without charge to Fort Worth, such easements and rights-of-way along public highways or other property owned by Customer, as requested by Fort Worth for the purpose of constructing and/or maintaining Reclaimed Water mains or facilities within the Customer's service area, as necessary to provide Reclaimed Water service to Customer and as allowable by Applicable Law, to other areas. Alternatively, if the Customer has owner cities, then Customer shall request its owner cities to grant, without charge to Fort Worth, such easements and rights-of-way, or at Customer's election, if the Customer's owner cities do not grant such easements and rights-of-way, Customer shall grant licenses for the duration of this Agreement, as requested by Fort Worth for the purpose of constructing and/or maintaining Reclaimed Water mains or facilities within the Customer's service area, as necessary to provide Reclaimed Water service to Customer and, as allowable by Applicable Law, to other areas. The easements and rights-of-way will be in a form reasonably acceptable to Fort Worth. Upon notice from Customer and at Fort Worth's expense, Fort Worth will move System water mains or facilities located in street rights-of-way, or other property owned by Customer, when reasonably necessary to the performance of essential governmental duties by Customer.

9.2 Fort Worth shall grant, without charge to Customer, such easements and

rights-of-way along public highways or other property owned by Fort Worth, as requested by Customer, for the purpose of constructing and/or maintaining Reclaimed Water mains or facilities within Fort Worth to provide reclaimed water to Customer. Upon notice from Fort Worth and at Customer's expense, Customer will move such reclaimed water mains or facilities when located in such street rights-of-way or other property owned by Fort Worth when reasonably necessary to performance of essential governmental duties by Fort Worth. All work done by or on behalf of Fort Worth under this paragraph will be performed in accordance with specifications equal to those applying to work of a similar nature performed within Fort Worth, but neither party hereto will be required to restore the other's property to a condition exceeding its original condition, unless otherwise mutually agreed in writing. Fort Worth and Customer agree to coordinate the location of the mains and/or facilities in the other's easements and rights-of-way or license areas in order to prevent further conflicts insofar as is reasonably practicable.

10. Reclaimed Water Use Requirements

10.1 The use of Reclaimed Water is regulated by the Texas Commission on Environmental Quality ("TCEQ") under Chapter 26 of the Texas Water Code and 30 Texas. Administrative Code Ch. 210, and by Article VII of Chapter 35 of the Fort Worth City Code, as it may be amended from time to time. Customer and its officers, agents, employees, contractors and subcontractors, shall abide by and comply with Applicable Law. Fort Worth may in its sole discretion, immediately terminate the delivery of Reclaimed Water upon its good faith belief that a violation of any Applicable Law(s) has occurred.

10.2 Title 30 Texas. Administrative Code Ch. 210 states: "The producer of reclaimed water will not be liable for misapplication of reclaimed water by users, except

as provided in this section,” and lists certain requirements for providers and users. Customer acknowledges that its actions under this Agreement may fall within the definition of both a provider and a user from time to time. Customer agrees that Applicable Laws include its obligation to comply with the requirements of Section 210.6 for providers and users, based on the capacity in which the Customer is acting.

11. Resale of Reclaimed Water

Customer agrees that it will not share the Customer system or any other facilities for Reclaimed Water use with any other governmental or corporate entity outside of the Customer’s Service Area as identified in **Exhibit E**, without the prior written consent of Fort Worth. Fort Worth neither recognizes nor approves any existing agreements entered into by Customer with other governmental or corporate entities outside its service area prior to the effective date of this Agreement.

12. Adequate Supply

Fort Worth will use its best efforts to provide an adequate supply of Reclaimed Water for all of its customers. Before Fort Worth contracts with additional wholesale Reclaimed Water service applicants, the Director will consult with the Reclaimed Water System Advisory Committee and provide reasonable assurances that the projected five (5) year Reclaimed Water demands of both the then-existing wholesale customers and the proposed additional customer can be adequately fulfilled. Reasonable assurances may include an analysis of the economic feasibility of providing the requested service to the new customer, taking into account additional operating and maintenance costs, potential capital costs required to expand the System infrastructure, projected annual volumes requested by the applicant, funds contributed by the applicant to defray System expansion costs and impacts on the Volume Charge. Because Fort Worth, the

Dallas Fort Worth International Airport Board, and the Cities of Euless and Arlington negotiated the terms of this Agreement collectively, and entered into their contracts contemporaneously, those contracts do not require further assurances under this Article 12.

13. Reclaimed Water System Advisory Committee

Customer's governing body shall appoint a representative to be a voting member of the Reclaimed Water System Advisory Committee, whose purpose shall be to consult with and provide advice to Fort Worth on matters related to the System pertaining to conservation, wholesale planning, improvements, and additional wholesale Reclaimed Water customers. The Committee shall establish bylaws governing the election of officers, meeting dates and other matters pertinent to its function. It is understood and agreed that, by execution of this Agreement, neither Fort Worth nor any other Customer waives or surrenders any of its governmental powers or immunities. The Committee shall act on an advisory basis and its actions or decisions shall not bind the Fort Worth City Council or the City of Fort Worth.

14. Termination

14.1 This Agreement may be terminated without cause by the mutual consent of Customer and Fort Worth. Such termination shall be effective ninety (90) days from the date of such mutual consent, which shall be in writing, signed by both parties.

14.2 Except as otherwise allowable herein, this Agreement may also be terminated by either party for breach and/or failure to perform any of the duties or the obligations as described hereunder or to faithfully keep and perform any of the terms, conditions and provisions of this Agreement by either party (hereinafter "breach"). Upon such breach, the non-breaching party may deliver to the breaching party, written notice of

its intention to terminate this Agreement if the breaching party fails to cure such breach no later than forty-five (45) days from the date of the notice. Such notice shall also include a reasonable description of the breach. The non-breaching party shall notify the breaching party in writing upon acceptance of the cure of any breach. If by the forty-fifth (45th) day the breaching party fails or refuses to cure such breach pursuant to the terms and conditions of this Agreement, then and in such event, the non-breaching party shall have the right to terminate this Agreement by issuing notice of termination and all rights, powers, and privileges of the breaching party shall cease and terminate.

14.3 Upon a second breach of a similar nature by a party and irrespective of any cure of such breach, the non-breaching party may, after six (6) months written notice provided to the breaching party terminate this Agreement. In the event of such termination, all rights, powers, and privileges of breaching party hereunder shall cease and breaching party shall make no claim of any kind whatsoever against non-breaching party, its agents, or representatives, by reason of such termination or any act incident thereto.

14.4 The following is a non-exclusive list of acts or omissions which shall be considered a breach of this Agreement

- a. Failure to make any payment of any bill, charge or fee as provided for in this Agreement;
- b. Making any connection to the System at any point except as provided in Section 3.2 hereof;
- c. Continuous failure to provide Fort Worth ingress and egress to any metering facility for purposes of operation and maintenance of;
- d. Failure to provide Fort Worth rights-of-way and/or easements or licenses as required herein; and

e. Failure to strictly comply this Agreement and with all Applicable Laws.

14.5 Any failure by a party to terminate this Agreement or the acceptance by Fort Worth of any payments for delivered Reclaimed Water under this Agreement for any period of time after such breach shall not be determined to be a waiver by Fort Worth or a non-breaching party of any rights to terminate this Agreement pursuant to the terms herein. No waiver by either party hereto of any term or condition of this Agreement shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.

15. Ownership of the System

15.1 No provision of this Agreement, including the use of the cash basis for rate studies, shall be construed to create any Customer ownership or equity in the System. Customer payments (whether past, present, or future) shall not be construed as granting Customer partial ownership of, pre-paid capacity in, or equity in the System.

15.2 This Agreement will not be construed in any form or manner to establish a partnership, joint venture or agency, express or implied, nor any employer-employee, borrowed servant or joint enterprise relationship by and among the parties. Each party shall be an independent contractor and shall be responsible at all times for directing its employees in the course of their duties.

16. Third Party Beneficiaries

This Agreement shall inure only to the benefit of the parties hereto and any person or entity not a party to this Agreement shall not, in any form or manner, be considered a third party beneficiary of this Agreement. Each party to this Agreement is solely responsible to fulfill its own contract obligations or commitments.

17. Liability

17.1 Customer shall be solely responsible for any and all claims, damages, deaths, losses, injury, fines, penalties, suits and liability of every kind, including environmental liability (the "Liabilities"), arising from the Customer's or the Customer's reclaimed water users' use, distribution or discharge of the Reclaimed Water on the Customer's side of the point of delivery, whether such use is intended or accidental, or authorized by this Agreement and Applicable Laws or otherwise. Customer shall be solely responsible for any and all claims, damages, deaths, losses, injury, fines, penalties, suits and liability of every kind arising from or relating to the design, installation, construction, connection, maintenance, operation and modification of its own system.

18. Force Majeure

18.1 If by any reason of force majeure either party hereto shall be rendered unable, wholly or in part, to carry out its obligations under this Agreement, other than the obligation of the Customer to make payments required under the terms hereof, then if such parties shall give notice and full particulars of such force majeure in writing to the other party within a reasonable time after the occurrence of the event or cause relied on, the obligation of the party giving such notice, so far as it is affected by such force majeure, shall be suspended during the continuance of the inability then claimed, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch.

18.2 The term "force majeure", as employed herein, shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of public enemy, orders of any kind of the government of the United States or the State of Texas, or any civil or military authority, insurrection, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms,

floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, partial or entire failure of Reclaimed Water supply, and inability on the part of Fort Worth to deliver Reclaimed Water.

19. Notices

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

City of Fort Worth: Water Director
City of Fort Worth
1000 Throckmorton Street
Fort Worth, TX 76102

Customer: City Manager
City of Euless
201 N. Ector Drive
Euless, Texas 76039

The parties hereto shall indicate in writing any change that may occur in such respective addresses from time to time.

20. Inspection and Audit

20.1 Upon prior notice by Fort Worth, any duly authorized employee of Fort Worth bearing proper credentials and identification shall have access to any premises located within Customer's service area or served by Customer as may be necessary for the purpose of inspections and observation, measurements, sampling and testing and/or auditing, in accordance with the provisions of this Agreement.

20.2 Complete records and accounts required to be maintained by each party hereto shall be kept for a period of five (5) years after their creation. 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; and further, if required by any law, rule or

regulation, make said records and accounts available to federal and/or state auditors.

21. Request for Service by Fort Worth

21.1 At the request of the Director, but only to the extent permitted by applicable law and at no additional cost to Customer, Customer agrees to furnish Reclaimed Water to areas and premises situated adjacent to the boundary of Customer and within the boundaries of Fort Worth. The metered quantity of Reclaimed Water delivered used in this area each month by Fort Worth shall be the total of all individual Fort Worth customer meter readings. At the option of Customer or Fort Worth, a meter may be installed where practicable at the expense of Fort Worth to meter all Reclaimed Water used by Fort Worth under the terms of this section.

21.2 Each month, the metered quantity of Reclaimed Water furnished by Customer to Fort Worth shall be deducted from the total quantity of Reclaimed Water withdrawn from the System by the Customer, before computing the Customer's Volume Rate Charge for that month.

22. Arbitration

22.1 The parties shall endeavor, but only to the extent permitted by applicable law and at no additional cost to Customer, to settle all disputes arising out of or relating to this contract by amicable negotiations. However, where this Agreement expressly states that a controversy or claim arising out of or relating to this Agreement will be settled by arbitration, the Parties shall arbitrate the dispute or claim under the following procedures.

22.2 Such controversy or claim arising out of or relating to this Agreement as provided for herein, shall be resolved by binding arbitration administered by the Federal Mediation and Conciliation Services ("FedMed") in accordance with its Commercial Arbitration Rules and judgment on the award may be rendered by the arbitrators and

entered in any court having jurisdiction thereof. The procedure for initiation and conduct of the binding arbitration will be as follows:

- a. The arbitration may be commenced by either party by the service of a written request for arbitration ("Request for Arbitration") upon the other party. The Request for Arbitration shall summarize the controversy and claims to be arbitrated.
- b. The arbitration shall be heard in Tarrant County, Texas before an arbitration panel comprised of three (3) arbitrators. Upon initiation of a Request for Arbitration by either party hereto, each party, within fifteen (15) days of the date of the Request for Arbitration, shall select an arbitrator. The arbitrators selected by the claimant and respondent shall, within ten (10) days of their appointment, select a third arbitrator. In the event the two arbitrators are unable to agree upon a third arbitrator, then FedMed shall appoint the third neutral arbitrator. Prior to commencement of hearings, each of the arbitrators appointed shall provide an undertaking of impartiality. In determining the appropriate background of the third arbitrator, the first two arbitrators shall give due consideration to the issues to be resolved.

22.3 Judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof.

22.4 Both parties may allow their clients, representatives, witnesses and agents to participate and observe the Arbitration proceedings without compromising any attorney/client or confidentiality privileges otherwise applicable. However, no other third party may participate or observe an Arbitration proceeding.

22.5 Fort Worth's arbitration costs shall be a System Cost.

23. Licenses, Permits and Fees

23.1 Customer agrees to obtain and pay for all licenses, permits, certificates, inspections and all governmental approvals as required by Applicable Law, including those necessary for the use of Reclaimed Water.

23.2 This Agreement, so long as it is in effect between the parties, constitutes a Fort Worth permit for the Customer to use Reclaimed Water under TCEQ Authorization for Reclaimed Water No. R10494-013.

24. Miscellaneous

24.1 If any one or more of the provisions in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement; and this Agreement shall be construed as if such invalid, illegal or unenforceable provision was not had never been contained herein

24.2 Whenever possible, each provision of this Agreement shall be interpreted to be effective and valid under applicable law, but if any provision of this Agreement, or its application to any person or entity under any circumstance, is invalid or unenforceable to any extent under Applicable Law, and the extent of the invalidity or unenforceability does not cause substantial deviation from the underlying intent of the Agreement, then such provision shall be deemed severed from this Agreement with respect to such person, entity or circumstance, without invalidating the remainder of this Agreement or the application of such provision to other persons, entities or circumstances, and a new provision shall be deemed substituted in lieu of the provision so severed which new provision shall, to the extent possible, accomplish the intent of the parties as evidenced by the provision so

severed.

24.3 The parties acknowledge that each party and, if it so chooses, its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits to it. As used in this Agreement, the term "including" means "including without limitation," the words "shall" and "will" are mandatory and the word "may" is permissive, and the term "days" means calendar days, not business days. Wherever required by the context, the singular shall include the plural, and the plural shall include the singular. Each defined term may be used in its singular or plural form whether or not so defined.

24.4 In addition to any other remedy provided by law, this Agreement shall be specifically enforceable by the parties hereto.

24.5 SHOULD ANY ACTION, WHETHER REAL OR ASSERTED, AT LAW OR IN EQUITY, ARISE OUT OF THE TERMS AND CONDITIONS OF THIS CONTRACT, VENUE FOR SAID ACTION SHALL BE IN TARRANT COUNTY, TEXAS.

24.6 Modifications or amendments to this Agreement must be in writing and approved by the governing body of each party. Both parties agrees to implement and abide by any changes in this Agreement made necessary by Applicable Law, including any new, amended, or revised state or federal regulation.

24.7 Incorporation of Exhibits by Reference. All exhibits attached to this Agreement are incorporated into this Agreement by reference for the purposes set forth herein, as follows:

- | | |
|-----------|-------------------------------------------------------------------------------------|
| Exhibit A | TCEQ Reclaimed Water Authorization and "Service Area" |
| Exhibit B | Form for submitting Customer's estimate of Reclaimed Water use as required by § 2.4 |
| Exhibit C | Maximum Rate Calculation Example |
| Exhibit D | Volume Charge Calculation Examples |
| Exhibit E | Customer's Service Area |

IN TESTIMONY WHEREOF, after proper action by the respective governing bodies of the parties hereto, we have caused these presents to be executed in quadruplicate copies, each of which is considered to be an original and the seals of the respective parties to be hereto affixed on the date above written.

[THIS SPACE INTENTIONALLY BLANK]

ATTEST:

CITY OF FORT WORTH

City Secretary, City of Fort Worth

By: _____
Fernando Costa
Assistant City Manager
City of Fort Worth

APPROVED AS TO FORM AND LEGALITY:

Christa R. Reynolds
Assistant City Attorney, City of Fort Worth
Date: _____

APPROVAL RECOMMENDED:

Frank Crumb
Director
City of Fort Worth Water Department

CITY OF EULESS

ATTEST:

BY: _____
Gary McKamie
City Manager

Susan Crim,
City Secretary, TRMC

APPROVED AS TO FORM AND LEGALITY:

Bob McFarland
City Attorney

Date: _____

WITNESS:

EXHIBIT A
TCEQ Reclaimed Water Authorization and “Service Area”

EXHIBIT B
Form for Submitting Customer's Estimate of Reclaimed Water Use

Customer _____ **Date** _____

1. User's total maximum annual quantity of reclaimed water

_____ Million Gallons

2. Peak usage required _____ gallons per minute

3. Estimated Monthly volumes

MONTH	Approximate Usage (1000 gallons/month)
January	
February	
March	
April	
May	
June	
July	
August	
September	
October	
November	
December	

Does this Attachment A supercede a previous Attachment A? Yes No

If yes, what is the Effective Date of superceded Attachment A?

If yes, execution by authorized Fort Worth representative is required.

Fort Worth Water Department Representative

Date

EXHIBIT C
Maximum Rate Calculation Example
based on the Wholesale Treated Water Contract Rate*

Maximum Rate Example from FY09 Wholesale Water Cost of Service Study:

WHOLESALE WATER VOLUME RATE	RATE PER 1,000 GALLONS
Treatment and Delivery Rate \$ / kgal	\$0.8277
Raw Water Rate \$ / kgal**	\$0.7424
Total Base Volume Rate	\$1.5701

The Maximum Rate calculated under this example would equal \$1.5701 per 1,000 gallons.

* The "Maximum Rate" is calculated by adding the Treatment and Delivery Charge per 1,000 gallons and the Raw Water Out-of-District Charge per 1,000 gallons, as each of those is calculated in the annual Wholesale Water Cost of Service Study, as shown in this Exhibit C example.

** Fort Worth's cost of raw water presently includes the rate charged by the City's raw water provider, the Tarrant Regional Water District, as adjusted by the provider from time to time.

EXHIBIT D
Volume Charge Calculation Examples

The following examples illustrate the calculation of Customer Charges under the Agreement and resulting FY credits for three hypothetical Reclaimed Water Use scenarios.

Example 1 - Customer uses less than Annual Amount during the fiscal year, and does not use more than the Minimum Monthly Use in any one month.

Annual Amount (kgal)	240,000 (x 1,000) gal
Minimum Monthly Use (kgal)	10,000 = 50% of Annual Amount / 12
Rate \$/1,000 Gal	\$ 1.45
Monthly Minimum Charge:	\$ 14,500 = Rate x Minimum Monthly Use
Minimum Annual Charge:	\$ 174,000 = \$14,500 Minimum Monthly Charge x 12 months.

	Usage (kgal)	Monthly Bill
October	5,000	\$14,500
November	0	\$14,500
December	0	\$14,500
January	0	\$14,500
February	0	\$14,500
March	0	\$14,500
April	5,000	\$14,500
May	5,000	\$14,500
June	10,000	\$14,500
July	10,000	\$14,500
August	5,000	\$14,500
September	5,000	\$14,500
TOTAL	45,000	<u>\$174,000</u>
Annual Charge		<u>\$174,000</u>
Credit to Next		
FY		<u><u>\$0</u></u>

Example 2 - Customer uses less than Annual Amount during the fiscal year, but uses more than the Minimum Monthly Amount during some months. At FY year end, Customer has paid more than the Minimum Monthly Charge x 12, but has not taken the full Annual Amount. Fort Worth subtracts the Minimum Monthly Charge x 12 from the actual amount paid and applies the difference to the Customer's account for the next FY.

Annual Amount (kgal) 240,000 (x 1,000) gal
 Minimum Monthly Use (kgal) 10,000 = 50% of Annual Amount / 12
 Rate \$/1,000 Gal \$1.45
 Monthly Minimum Charge \$14,500 = Rate x Min. Monthly Use
 Minimum Annual Charge: \$174,000 = \$14,500 Minimum Monthly Charge x 12 months.

	Usage (kgal)	Monthly Bill
October	5,000	\$14,500
November	0	\$14,500
December	0	\$14,500
January	0	\$14,500
February	0	\$14,500
March	5,000	\$14,500
April	10,000	\$14,500
May	15,000	\$21,750
June	20,000	\$29,000
July	20,000	\$29,000
August	15,000	\$21,750
September	10,000	<u>\$14,500</u>
TOTAL	100,000	<u>\$217,500</u>
	Annual Charge	<u>\$174,000</u>
	Credit to Next FY	<u><u>\$43,500</u></u>

Example 3 - Customer uses more than Annual Amount during the FY, but uses less than the Minimum Monthly in some months. At FY end, Customer has paid more than the Monthly Minimum Charge x 12, and has taken more than the full Annual Amount. Fort Worth subtracts the Minimum Monthly Charge x 12 from the actual amount paid and applies the remainder to the Customer's account for the next FY.

Annual Amount (kgal)	240,000 (x 1,000) Gal
Minimum Monthly Use (kgal)	10,000 = 50% of Annual Amount / 12
Rate \$/1,000 Gal	\$1.45
Monthly Minimum Charge	\$14,500 = Rate x Min. Monthly Use
Minimum Annual Charge:	\$ 174,000 = Annual Amount /2 x Rate
Charges Due:	\$ 355,250 = \$14,500 Minimum Monthly Charge x 12 months.

	Usage (kgal)	Monthly Bill
October	30,000	\$43,500
November	15,000	\$21,750
December	0	\$14,500
January	0	\$14,500
February	0	\$14,500
March	15,000	\$21,750
April	15,000	\$21,750
May	30,000	\$43,500
June	35,000	\$50,750
July	35,000	\$50,750
August	40,000	\$58,000
September	30,000	\$43,500
TOTAL	245,000	\$398,750
	Annual Charge	\$355,250
	Credit to Next FY	\$43,500

Exhibit E Customer's Service Area