

MEMORANDUM OF UNDERSTANDING

This MEMORANDUM OF UNDERSTANDING (this “Memorandum”) is entered into and effective _____, by and between the City of Fort Worth, Texas, a home-rule municipal corporation in Tarrant, Denton and Wise Counties, Texas (“Fort Worth”) by and through its duly authorized Assistant City Manager, Fernando Costa, and the City of Eules, a home-rule municipal corporation in Tarrant County, Texas (“Customer”) by and through its duly authorized City Manager, Gary McKamie.

W I T N E S S E T H:

WHEREAS, Fort Worth and Customer have entered into a certain “Agreement for Reclaimed Water Service” (the “Agreement”), dated _____, 2009, known as Fort Worth City Secretary Contract No. _____ and Eules City Secretary Contract No. _____, whereby Fort Worth agreed to furnish and sell Reclaimed Water to Customer under the terms and conditions therein; and

WHEREAS, the Customer agreed to purchase and pay Fort Worth for Reclaimed Water at the annual Rate set pursuant to the Agreement based on a System-wide cost-of-service rate study to be performed by an independent utility rate consultant as more fully described in Section 7 of the Agreement;

WHEREAS, upon entering into the Agreement, Fort Worth forecasted the issuance of debt to construct the Reclaimed Water System used to deliver Reclaimed Water to Customer;

WHEREAS, the Agreement provides for the debt service for the construction of the Reclaimed Water System to be used in determining the annual Rate set pursuant to the Agreement for payment for Reclaimed Water Service;

WHEREAS, on February 17, 2009 the President of the United States signed into effect the American Recovery and Reinvestment Act of 2009 making available federal stimulus funds for qualified and accepted projects; and

WHEREAS, Fort Worth has made application to receive federal stimulus funds to help with the cost of building its Reclaimed Water System infrastructure.

NOW THEREFORE, for and in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, the parties hereto agree as follows:

1. Definitions

Unless otherwise specified herein, all terms shall have the same definition as described in the Agreement.

2. Purpose

The purpose of the MOU is to memorialize certain agreements and understandings related to Fort Worth's application for federal stimulus funding under the American Recovery and Reinvestment Act of 2009 to aid in the cost of constructing its Reclaimed Water System and the Customer's payment for Reclaimed Water. If awarded such funding, in consideration of the original customers' support of such funding, it is Fort Worth's intention to reduce and/or not issue debt to the extent that it receives federal funding for the construction of the Reclaimed Water System infrastructure, as described below. **If Fort Worth is not awarded federal stimulus funding, then this MOU shall have no effect.** Furthermore, upon receipt of such funds, if awarded, both parties agree to negotiate in good faith an amendment to the Agreement with the terms and conditions contained herein.

3. Capital Recovery Fee

If Fort Worth receives federal stimulus funding to fund any or all of the construction of the Reclaimed Water System, Fort Worth intends for the contract rate to include a Capital Recovery Fee amount that is based on the debt service avoided, and reserved for future capital expenditures on the Reclaimed Water System. That annual Capital Recovery Fee shall be calculated by multiplying that portion of the infrastructure costs for the Reclaimed Water System paid for with federal stimulus funding by two percent (2%). Other components of the rate include Fort Worth's franchise fee, and future capital recovery fees that may be included in the contract rates from time to time, consistent with the terms of Article VII of the Agreement.

4. Cost of Service Rates

Fort Worth acknowledges that if federal stimulus funds are received, Fort Worth may not need to subsidize the system cost or may only be required to subsidize a portion thereof. Therefore, the parties agree that the fixed rates per § 7.3.1 of the Agreement would not be applicable if the § 7.2 cost-of-service rates are less than the contractual fixed rates.

5. Debt Financed System Expansion

If Fort Worth incurs debt to fund System capital costs within the first 10 years of the Agreement, and the resulting cost-of-service rates are more than \$1.50 per thousand gallons, then the fixed rates under § 7.3.1 will apply, and will be extended to provide for a fixed rate of \$1.50 for the years 2015 through 2019, and thereafter rates will be subject to the § 7.3.2 annual 5% increase, capped by the § 7.4 Maximum Rate. Further, when Fort Worth incurs debt to fund System capital costs, the Capital Recovery Fee in paragraph 3 above will no longer be included as a component of the cost-of-service contract rates.

6. **Wholesale Water Rate**

If awarded the federal stimulus funding, Fort Worth agrees to normalize the Wholesale Water Rate over a three (3) year period.

7. **Miscellaneous**

Nothing contained herein shall be deemed to amend or modify the Agreement. In the event of a conflict between the terms of this MOU and the Agreement, the terms of this Agreement shall control.

IN WITNESS WHEREOF, this Memorandum has been executed on this ____ day of _____, 2009.

CITY OF FORT WORTH, TEXAS

CITY OF EULESS, TEXAS

Fernando Costa
Assistant City Manager

Gary McKamie
City Manager

ATTEST:

ATTEST:

Marty Hendrix
City Secretary

Susan Crim, TRMC
City Secretary

APPROVED AS TO FORM AND LEGALITY:

APPROVED AS TO FORM AND LEGALITY:

Assistant City Attorney

Bob McFarland, City Attorney