

# DRAFT

## AGREEMENT TO PURCHASE CCN SERVICE AREA AND FACILITIES FROM WESTON WATER SUPPLY WESTON WSC

This AGREEMENT TO PURCHASE CCN SERVICE AREA AND FACILITIES FROM WESTON WATER SUPPLY WESTON WSC (this "Agreement") is entered into as of the Effective Date between the CITY OF WESTON, TEXAS, a Type A general law municipality principally situated in Collin County, Texas, acting through its governing body, the City Council of Weston, Texas (the "City"), and WESTON WATER SUPPLY WESTON WSC, a non-profit water supply Weston WSC created pursuant to and operating under Chapter 67 of the Texas Water Code and Chapter 22 of the Texas Business Organizations Code (the "Texas Non-Profit Corporation Act"), acting through its governing body, the Board of Directors (the "Weston WSC"). The City and Weston WSC may be referred to individually as a "Party" and collectively as the "Parties."

**WHEREAS**, Texas Water Code § 49.227, as amended, authorizes Weston WSC to act jointly with other entities, including the City, to effectuate its water supply purposes;

**WHEREAS**, Texas Business Organizations Code § 22.252(d)-(e), as amended, authorizes the sale of Weston WSC assets to the City in accordance with the terms set forth therein;

**WHEREAS**, with the addition of the Van Buren Estates development and the imminent development of what is currently known as Weston Trails, each within the City's territorial boundaries as of the Effective Date, it is evident that water demand will continue;

**WHEREAS**, in accordance with Texas Business Organizations Code § 22.252(d)(1), as amended, the Board of Directors ("Board") met at its April 10, 2019 Board meeting and approved by resolution this matter for a vote of its membership, and directed said resolution to be voted on by Weston WSC members at the annual meeting scheduled for May 20, 2019 (the "Annual Meeting");

**WHEREAS**, the City and Weston WSC desire to enter into this Agreement in order to establish the procedures by which a sale of Weston WSC's Certificate of Convenience and Necessity ("CCN") service area and water distribution and supply facilities (the "Facilities") to the City will occur upon all of the statutory conditions precedent being met; and

**NOW THEREFORE**, in consideration for the mutual covenants and consideration contained herein, the City and Weston WSC do hereby mutually agree as follows:

1. The City and Weston WSC specifically agree that all the areas within Weston WSC's CCN certificated water service area will be transferred to the City under the terms of this Agreement, upon approval by the vote required by Weston WSC's members pursuant to Texas Water Code § 67.004, Texas Business Organizations Code § 22.252(d), and Texas Business Organizations Code §11.051, as more specifically set forth in Section 2 of this Agreement. The water utility service area intended to be

# DRAFT

transferred to the City is specifically delineated on Exhibit “A”, attached hereto and made a part of this Agreement for all purposes. Said area encompasses all the CCN of Weston WSC. The property is hereinafter referenced as the “Acquired Area.” The Acquired Area is further described as follows:

*Insert narrative description or generalized boundaries*

In the event of any conflict between the descriptions in this paragraph and the map attached as Exhibit “A,” the Acquired Area shown on the map shall prevail.

2. Upon approval of the Weston WSC members of the transfer of the CCN areas and related Facilities at the Annual Meeting, City and Weston WSC shall jointly and diligently pursue approval of the assumption of Weston WSC’s debt (including USDA and any other debt) from Weston WSC to City. In anticipation of the transfer of the CCN areas and related Facilities, Weston WSC agrees to immediately begin assembling and sharing with the City, the data necessary to seek the regulatory approvals contemplated by this Section 2. The official “Acquisition Closing Date” shall be the date that the City receives approval of the USDA of the transfer of debt or otherwise retires the USDA debt. Within 45 days after making application for the assumption of debt, the City will file an Application for Sale, Transfer and Merger (“STM Form”) or other appropriate application with the Public Utility Commission of Texas (“PUC”) to formally transfer the Acquired Area from Weston WSC’s CCN to become the City’s CCN. City will endeavor to obtain PUC approval in an expeditious manner and Weston WSC will cooperate with the City and the PUC to accomplish this goal. All costs associated with preparing and filing the CCN application and the pursuit of regulatory approvals shall be borne by the City. City and Weston WSC shall further jointly pursue transfer of any and all service accounts and operational contracts from Weston WSC to City during the first 30 days following the Acquisition Closing Date.

3. Within seven (7) days following the Acquisition Closing Date (the “Transfer Period”), the Weston WSC shall deliver to the City a Special Warranty Deed and other instruments of conveyance transferring to the City: all rights, title and interest in the Acquired Area and all real property and improvements thereto then-owned by Weston WSC, said real property being further described in Exhibit “B” attached hereto. All closing costs associated with the transfer of ownership and the delivery of the Special Warranty Deed and other instruments of conveyance, including but not limited to surveys, title policies, and legal fees shall be borne by the City.

Not later than the Transfer Period, Weston WSC shall also deliver to the City a Bill of Sale transferring to the City all rights, title and interest in all the Facilities, including all waterlines, equipment and any other fixtures and improvements (including, but not limited to, all water meters) that exist within the Acquired Area as well as all operational equipment and vehicles, maintenance equipment and tools, and office equipment, office supplies, and other incidental equipment and supplies in possession of Weston WSC. Attached hereto and incorporated herein for all purposes as Exhibit “C” is a list that more particularly describes the facilities, waterlines,

# DRAFT

equipment and other fixtures and improvements to be transferred to the City. Not later than the Transfer Period, Weston WSC shall also grant to the City, by assignment, any easements owned by Weston WSC to the extent they are located within the Acquired Area and that solely relate to those Facilities, waterlines and equipment to be transferred to the City. The City shall have the right to inspect any lines and facilities, at the City's sole cost and expense, but shall not have the right to reject or decline to accept any such facilities. Additionally, any bank accounts, checking accounts, operational fund accounts, certificates of deposit, and / or any other cash, including petty cash, shall become assets of City and shall be transferred to City not later than the Transfer Period.

4. Except as stated below, all current retail water customers of Weston WSC and any customers added between the Effective Date of this Agreement and the Acquisition Closing Date whose property is located within the Acquired Area shall become customers of the City on the Acquisition Closing Date. Attached hereto and incorporated herein for all purposes as Exhibit "D" is a list of the current customers of the Weston WSC ("Current Customers"). Within 30 calendar days of the Effective Date of this Agreement, Weston WSC shall provide the City with a list, including address and telephone numbers, of all the then members / customers of the water system and shall indicate whether each such member's account is delinquent, and if so indicate the length and dollar amount of the delinquency. Weston WSC agrees to provide to the City an updated list of customers on the Acquisition Closing Date.

5. Weston WSC and City shall cooperate in securing transfer of the debt obligations to the USDA RWA Weston WSC Debt to City or release of said debt if refinanced by the City. Further, the Weston WSC agrees that it shall not pursue or secure any additional debt from and after the Effective Date of this Agreement, without the written consent of the City, such consent not to be unreasonably delayed, conditioned or withheld. It is specifically noted that the current Weston WSC Debt is subject to the provisions of 7 USC §1926(b). It is understood and agreed that the Weston WSC and the City shall work diligently and cooperatively to expeditiously secure the approval of the USDA RWA of this Agreement and the subsequent transfer of all Weston WSC assets and liabilities to City.

6. It is understood and agreed that Weston WSC shall be dissolved as an entity pursuant to Chapter 11 of the Texas Business Organizations Code, and that all assets and indebtedness of Weston WSC shall become assets and indebtedness of City, thus there shall be no monetary compensation for the acquisition of the Weston WSC's assets by City. City and Weston WSC hereby agree that said transfer and assumption shall constitute sufficient consideration for the transactions contemplated by this Agreement. Weston WSC members / customers shall continue to have the right to receive water service as customers of City, in accordance with City's subscription services guidelines applicable to all customers, and City covenants to Weston WSC to abide by the following conditions that are further consideration for the transactions contemplated by this Agreement:

# DRAFT

- I. City will not require the payment of any additional connection, meter fees or deposits from Current Customers who have already paid such fees to Weston WSC.
- II. Rates for service for Current Customers outside the City's territorial limits shall not be more than rates for Current Customers within the territorial limits of the City.
- III. City agrees to create a Utility Advisory/Water Service Advisory Committee ("Committee") with recommending authority to the City Council and such committee shall be composed of at least fifty percent (50%) of Current Customers located within the City limits and the remaining fifty percent (50%) of Current Customers located outside the City limits. The advisory committee shall consist of six (6) members, and will be created prior to the Acquisition Closing Date, with the City Council appointing three (3) members and Weston WSC appointing three (3) members meeting the representational requirements of this section. The members shall select from among the Committee membership, a chair who shall not vote except in the case of a tie. The Committee will remain in existence for at least five (5) years from its date of creation by the City. Governing documents consistent with those of other City advisory committees shall be adopted by the City within sixty (60) days of the date of the last appointment under this section. A vacancy on the Committee shall be filled through the same appointment procedure as for appointment of the initial members under this section, except upon the dissolution of Weston WSC, the City shall fill any such vacancy in a manner consistent with the filling of a vacancy on other City advisory committees. The Committee shall have the following duties and responsibilities:
  - a. Provide recommendations to the City Council with regard to Capital Improvements projects related to water supply and distribution, water system improvements, and acquisition of additional water rights and sources as needed;
  - b. Review and provide recommendations on water rates, including both short and long-term projected water rates; and
  - c. Monitor and advise the City on adherence to this Agreement.
- IV. Service to Current Customers shall be continued and no Current Customer shall be disconnected except in accordance with City policy applicable to all customers, regarding non-payment. Water service provided to new development or connections shall not adversely affect water service provided to Current Customers.

# DRAFT

- V. Each year during the first five (5) years after the Acquisition Closing Date, City agrees not to raise water rates for Current Customers in an amount exceeding PUC annual price index change, which increase represents not more than the average rate of increase implemented by Weston WSC for the five (5) calendar years beginning January 1, 2013 and ending December 31 2018. In addition, any such increase may not be implemented unless there is a corresponding and equal (or greater) increase imposed on all other City water customers. Water rates and/or assessments charged to Current Customers shall include only the amount required for cost of service and any capital improvements related to the existing infrastructure in order to service Current Customers. Water rates and/or assessments charged to Current Customers shall not include costs of new infrastructure for new development projects that do not benefit Current Customers. It is expressly provided that the limitation on rate adjustments benefit rests solely with each Current Customer, personally, and is non-assignable, non-transferable, and shall terminate upon the sale of any Current Customer's property, closure of such Current Customer's water account, or on failure to pay for the water service when due following the standard notice and opportunity to cure. It is also provided that many Current Customers have made a deposit to guarantee or assure payment of the monthly water bill, which deposit shall continue to be honored by City upon system acquisition and it is further provided that upon any Current Customer selling, moving, or otherwise terminating water service, said Current Customer shall be entitled to a refund of the deposit if the Current Customer produces a receipt for said deposit or the system records duly indicate that said deposit was made, subject to said Current Customer's account being current. Any outstanding charges may be deducted from said deposit refund.
- VI. The third party water system operator contracted by Weston WSC as of the Acquisition Closing Date shall continue to operate the facilities and water system, and shall assume additional responsibilities in order to ensure that billing and all aspects of water system management are accounted for to ensure an effective and orderly transition for customers. City shall contract with the third party water system operator pursuant to this section for not less than two (2) years following the Acquisition Closing Date.
- VII. City agrees that no Current Customer shall be required by City to connect to City's wastewater/sewer system or be charged a base rate for wastewater/sewer service by virtue of the City providing water service only. Current Customers may voluntarily connect to the City's wastewater/sewer system in their sole discretion, in accordance with the City's connection policies.

# DRAFT

VIII. To the extent permitted by Texas law, City agrees to not forcibly/involuntarily annex, as the law has historically allowed and may change in the future from time to time, Current Customers outside the City territorial boundaries as of the Effective Date.

9. City shall bear all reasonable costs associated with the transfer of CCN or the transfer of debt. Further, City shall be responsible for any engineering fees or costs it may incur should the City elect to perform any due diligence or system evaluation. It is agreed that it will be to the mutual benefit of each Party and the member-customers hereof that the Agreement and implementation thereof be structured to minimize the legal expense of drafting contracts and securing approvals from lenders and regulatory agencies. Notwithstanding anything to the contrary contained herein, each Party shall bear the expense of its own legal fees.

10. Any notice provided for under the terms of this Agreement by either Party to the other shall be in writing and may be effected by registered or certified mail, return receipt requested addressed and delivered to the following:

To City: Mayor  
City of Weston  
P.O. Box 248  
Weston, Texas 75097

To Weston WSC: President  
Weston Water Supply Corporation  
406 Chicken Street  
Weston, Texas 75097

Each Party may change the address to which notice may be sent to that Party by giving notice of such change to the other Party in accordance with the provisions of this Agreement.

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

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

13. This Agreement contains the entire agreement of the City and Weston WSC with respect to the subject matter of the Agreement, and shall supersede any prior agreements or understandings of the Parties related to acquisition of Weston WSC CCN and Facilities, whether written or verbal. No agreement, statement, or promise made by any Party or to any employee, agent, or officer of any Party, that is not contained in this

# DRAFT

Agreement shall be valid, binding, or of any force or effect. Any amendments to this Agreement must be in writing.

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

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

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

17. In the event that the terms and conditions of this Agreement are breached by either Party, and the Parties participate in a proceeding before any state or federal tribunal because the terms and conditions of this Agreement are not being complied with by one of the Parties, the prevailing Party shall recover its fees, damages, costs, attorney fees, and such other and further relief from the non-prevailing Party, general or special, at law or in equity, to which the prevailing Party may show itself justly entitled.

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

19. After execution of the Agreement by the Parties, a copy of this Agreement shall be filed with the PUC pursuant to Section 13.248 of the Texas Water Code.

20. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

21. Notwithstanding anything to the contrary contained herein, it is agreed that in the execution of this Agreement, no Party waives any immunity or defense that would otherwise be available to it against claims arising from the exercise of governmental powers and functions.

# DRAFT

**IN WITNESS HEREOF, EXECUTED** by Weston WSC and City under the authority of their respective governing bodies in Duplicate Originals on the dates indicated below, and which shall become effective on the last date of execution of the Parties below (the "Effective Date").

## CITY OF WESTON, TEXAS

## WESTON WATER SUPPLY CORPORATION

By: \_\_\_\_\_  
Patti Harrington, Mayor

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

ATTEST:

\_\_\_\_\_

\_\_\_\_\_

DRAFT

**EXHIBIT "A"**  
**WATER UTILITY SERVICE AREA**

DRAFT

**EXHIBIT "B"**  
**INVENTORY OF REAL PROPERTY AND IMPROVEMENTS**

DRAFT

**EXHIBIT "C"**  
**INVENTORY OF FACILITIES**

DRAFT

EXHIBIT "D"

LIST OF THE CURRENT WESTON WSC CUSTOMERS