

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON, TEXAS (“CITY”) AUTHORIZING THE EXECUTION OF A UTILITY SERVICE AGREEMENT WITH TCCI PONDER WPP LLC (“OWNER”) AND PONDER FARMS MUNICIPAL UTILITY DISTRICT OF DENTON COUNTY (“DISTRICT”) CONCERNING RETAIL WATER AND WASTEWATER SERVICE BY THE CITY TO FUTURE CUSTOMERS WITHIN APPROXIMATELY 31.434 ACRES OF LAND GENERALLY LOCATED SOUTH OF BLAIR ROAD, NORTH OF EAKIN CEMETERY ROAD, AND EAST OF FM 156 (“PROPERTY”); EFFLUENT OWNERSHIP; SALE OF GROUNDWATER RIGHTS; AND OTHER RELATED MATTERS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Property encompasses approximately 31.434 acres of land and is more particularly described and shown in Exhibit “A” of the Utility Service Agreement; and

WHEREAS, Owner expects that full development of the Property will require service to a maximum of 100 equivalent single-family connections; and

WHEREAS, Denton is a retail public utility that possesses certificated service areas for Water and Wastewater services under CCN Nos. 10195 and 20072, respectively; and

WHEREAS, the City, Owner, and District wish to enter into the Utility Service Agreement, attached hereto as Exhibit “A”, for utility service to Customers located within the Property; and

WHEREAS, Owner and District desire the City to provide retail water service to customers within the Property pursuant to the terms of the Utility Service Agreement; and

WHEREAS, Owner and District desire the City to provide retail wastewater service pursuant to the terms of the Utility Service Agreement and the terms of a separate Retail Wastewater Treatment Services Agreement; and

WHEREAS, water and wastewater infrastructure necessary to serve customers within the Property will be dedicated to the City by the District or Owner pursuant to the terms of the Utility Service Agreement; and

WHEREAS, portions of the water and wastewater infrastructure may be oversized to serve future growth pursuant to a separate Oversize Participation Agreement; and

WHEREAS, pursuant to the Utility Services Agreement, all title and ownership to wastewater flow from customers within the Property into Denton’s system will belong to Denton; and

WHEREAS, the Owner wishes to convey the groundwater rights associated with the Property to the City pursuant to the terms of the Utility Service Agreement and a separate Groundwater Rights Sale Agreement; and

WHEREAS, the City has determined that full development of the Property as provided herein will promote local economic development within the City and will stimulate business and

commercial activity within the City, which will drive infrastructure investment and job creation, and have a multiplier effect that increases both the City's tax base and utility revenues;

NOW, THEREFORE; THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The findings and recitations contained in the preamble of this Ordinance are incorporated herein by reference.

SECTION 2. The City Manager or their designee is hereby authorized to execute the Utility Service Agreement, attached hereto as Exhibit "A" and incorporated herein for all purposes, with TCCI Ponder WPP LLC and Ponder Farms Municipal Utility District of Denton County concerning retail water and wastewater service, ownership of effluent, the sale of groundwater rights, and other related matters.

SECTION 3. Minor adjustments to the attached Utility Service Agreement by the City Manager or their designee are authorized, such as filling in blanks and minor clarifications or corrections, and any modifications made by City Council in the approval of this ordinance.

SECTION 4. The City Manager, or their designee, is authorized to carry out all duties and obligations to be performed by the City under the Utility Service Agreement, unless otherwise reserved in the Utility Service Agreement for City Council approval.

SECTION 5. This Ordinance shall take effect immediately on its passage and approval.

The motion to approve this ordinance was made by \_\_\_\_\_ and seconded by \_\_\_\_\_, the ordinance was passed and approved by the following vote [\_\_\_ - \_\_\_]:

	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
Mayor Gerard Hudspeth:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Paul Meltzer, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____
Brandon McGee, At Large Place 5:	_____	_____	_____	_____
Jill Jester, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
GERARD HUDSPETH, MAYOR

ATTEST:

LAUREN THODEN, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY: Christopher Mullins

**EXHIBIT "A"**

**Utility Service Agreement**

**UTILITY SERVICE AGREEMENT  
BY AND BETWEEN  
THE CITY OF DENTON  
AND  
PONDER FARMS MUNICIPAL UTILITY DISTRICT OF DENTON COUNTY  
AND  
TCCI PONDER WPP, LLC  
(TexMix)**

This Utility Service Agreement (“Agreement”) is made and entered into by and between the City of Denton, Texas, a home rule municipality (“Denton” or the “City”), Ponder Farms Municipal Utility District of Denton County, a conservation and reclamation district operating under the authority of Chapters 49 and 54 of the Texas Water Code (“District”), and TCCI Ponder WPP, LLC, a Texas limited liability company (“Owner”), each collectively referred to as the “Parties”. This Agreement is effective as of November 19, 2024, being the date by which this Agreement is executed by the Parties (the “Effective Date”).

**RECITALS**

**WHEREAS**, Denton is a municipality, a duly incorporated political subdivision of the State of Texas operating under the Constitution and laws of the State of Texas, that provides retail and wholesale Water and Wastewater service to customers; and

**WHEREAS**, Denton is a retail public utility that possesses certificated service areas for Water and Wastewater services under CCN Nos. 10195 and 20072, respectively; and

**WHEREAS** District is a conservation and reclamation district operating under the authority of Chapters 49 and 54 of the Texas Water Code, as amended; and

**WHEREAS** Owner is the sole owner of the Property, possesses record title, and intends to develop the Property for single family residential purposes; and

**WHEREAS**, Owner expects that full development of the Property will require service to a maximum of 100 ESFCs; and

**WHEREAS**, the Property is not located within an area subject to a CCN issued by the Public Utility Commission of Texas; and

**WHEREAS**, Owner and District desire the City to provide retail Water service to Water Customers within the Property; and

**WHEREAS**, Owner and District desire the City to provide retail Wastewater service pursuant to the terms of this Agreement and the terms of a separate agreement for such purpose; and

**WHEREAS**, the City is willing and able to make retail Water service available pursuant to the terms of this Agreement; and

**WHEREAS**, the City is willing and able to make retail Wastewater service available pursuant to the terms of a separate agreement for such purpose; and

**WHEREAS**, the Parties agree that it is beneficial to the Parties, the Water Customers, and the region to prevent overproduction of Groundwater and the degradation of surface water quality; and

**WHEREAS**, Owner owns and wishes to convey all Groundwater Rights associated with the Property to the City; and

**WHEREAS**, City will ensure Groundwater is available for District’s use for irrigation purposes, subject to the terms of this Agreement; and

**WHEREAS**, the Parties recognize the importance and benefits of water conservation and drought contingency planning; and

**WHEREAS**, Denton wishes to reuse Wastewater originating from the Property.

**WHEREAS**, District and the City agree that reclaimed Water provided by the City, when available, should be used for irrigation in, at a minimum, commercial and public property within the District; and

**WHEREAS**, Owner and District want the City to possess title and ownership of all Wastewater flows originating from the Property and discharged into Denton’s System; and

**WHEREAS**, The Parties acknowledge and agree each is required to comply with applicable federal, state, and local laws, regulations, and permits.

**WHEREAS**, the Parties desire, and have independently determined, that it is in their best interest to enter into this Agreement; and

**WHEREAS**, Denton, by Council Ordinance No. \_\_\_\_\_, on November 19, 2024, approved and authorized its City Manager to execute this Agreement; and

**WHEREAS**, the District, at a meeting of its Board of Directors on November 18, 2024, has approved and authorized the President or Vice President of the Board of Directors to execute and the Secretary or Assistant Secretary of the Board of Directors to attest this Agreement; and

**WHEREAS**, Denton and the District are authorized to enter into this Agreement pursuant to Texas Government Code Chapter 791, and other applicable laws; and

**WHEREAS**, Denton and District individually have the authority to perform as set forth in this Agreement in accordance with Texas Government Code § 791.011(c); and

**NOW, THEREFORE**, for and in consideration of the premises and the mutual covenants and undertaking of the Parties hereto and the mutual consideration herein stated, the sufficiency of which is hereby acknowledged and agreed upon, the Parties hereby agree as follows:

**AGREEMENT OF THE PARTIES**

**ARTICLE I**  
**DEFINITIONS**

Some terms used herein are defined by the Texas Water Code or under the City ordinance. To the extent a defined term or phrase is used and not defined herein, each shall mean and refer to the definition prescribed by the Texas Water Code or under the City ordinance. If no such definitions are established by those laws, then common usage shall control. Accordingly, the following terms and expressions in this Agreement, unless the context clearly shows otherwise, shall have the following meanings:

“**CCN**” shall refer to and mean a Certificate of Convenience and Necessity issued by the Public Utility Commission of Texas (“PUC”) or its predecessor or successor agency, as prescribed by the Texas Water Code.

“**Denton**” or “**City**” shall refer to and mean the City of Denton, Texas, a Texas home-rule municipality.

“**Cost of Construction**” shall refer to and mean the actual costs of design, engineering, construction, acquisition, inspection, testing, surveying, staking, and other associated costs relating to the construction of the Water Facilities, as applicable. The estimated Cost of Construction of the Water Facilities attributable to the Property is included in **Exhibit “C”** attached hereto and incorporated herein.

“**Day**” means a 24-hour period from 12:00 a.m. to 11:59 p.m. of each calendar day.

**“Denton’s System” or “Denton System”** means all existing and future facilities utilized to provide Water or Wastewater services to Denton’s retail and wholesale customers including, but not limited to, Denton’s Water treatment and transmission systems, Water storage facilities, Wastewater collection systems, publicly owned treatment works, and administrative and personnel buildings.

**“District”** shall refer to and mean Ponder Farms Municipal Utility District of Denton County, a conservation and reclamation district operating under the authority of Chapters 49 and 54 of the Texas Water Code, as amended.

**“ESFC”** shall refer to and mean an equivalent single-family connection.

**“Groundwater”** means all of the underground water, percolating water, artesian water, and any other water from any and all depths and reservoirs, formations, depths and horizons beneath the surface of the Property, excluding underflow or flow in a defined subterranean channel.

**“Groundwater Rights”** means (1) the legal title to Groundwater and the right to test, explore for, drill for, develop, withdraw, capture, or otherwise beneficially use the Groundwater; (2) the right to use the surface of the real property for access to and to explore for, develop, treat, produce, and transport the Groundwater; and (3) all permits, licenses, or other governmental authorizations relating to any of the foregoing. If a separate easement agreement is required by this Agreement, the Groundwater Rights include the easement rights.

**“MGD”** means million gallons per day measured as a twenty-four-hour period and is not intended as an annual average unless expressly provided to the contrary.

**“Month”** means a calendar month.

**“Offsite”** means not located within the Property.

**“Offsite Water Facilities”** means Water Facilities to be constructed by Owner outside the boundaries of the Property for the purpose of providing treated water service to Water Customers located within the Property, particularly including those facilities described in that certain water study prepared by Kimley-Horn & Associates, Inc. attached hereto in **Exhibit “B”** (the “Water Study”). **“Outside Customers”** shall refer to and mean retail Water customers who are connected to Denton’s System and are billed as customers located outside the City’s corporate limits.

**“Points of Delivery”** means the locations where, and the Water Facilities through which, Water will enter the Water Facilities within the Property, pursuant to this Agreement. As of the Effective Date of this Agreement, the Points of Delivery are located as identified in **Exhibit “A”** attached hereto and incorporated herein.

**“Property”** shall refer to and mean the parcel of approximately 31.434 acres, more particularly described and shown in **Exhibit “A”**. The Property shall be developed into a single-family residential development.

**“Wastewater or “Effluent”** means all liquid or water-carried waste products from whatever source derived, whether treated or untreated, which are discharged into, or permitted to enter into, Denton’s System.

**“Transmission System”** means all of Denton’s water lines twelve (12) inches in diameter or larger used to transport Treated Water to its customers.

**“Wastewater Facilities”** shall refer to and mean all wastewater facilities to be constructed by Owner inside or outside the boundaries of the Property for the purpose of providing retail Wastewater service to customers located within the Property, particularly including those facilities described in the separate agreement for retail Wastewater service to the Property, as referenced in Section 5.4.

“**Water**” means raw water treated by Denton 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.

“**Water Customers**” shall mean and refer to Water customers that are located within the Property.

“**Water Facilities**” shall mean all Water conveyance facilities to be constructed by Owner inside or outside the boundaries of the Property for the purpose of providing treated water service to Water Customers located within the Property, particularly including those facilities described in that certain water study prepared by Kimley-Horn & Associates, Inc., attached hereto as **Exhibit “B”**.

## **ARTICLE II** **ADOPTIONS AND INTERPRETATIONS**

**Section 2.1. Adoption of Recitals.** All of the matters stated in the recitals of this Agreement are true and correct and are hereby incorporated into the body of this Agreement as though fully set forth in their entirety herein.

**Section 2.2. Adoption of Exhibits.** The following Exhibits and their attachments referenced in this Agreement are hereby incorporated into the body of this Agreement as though fully set forth in their entirety herein:

- Exhibit “A” Property
- Exhibit “B” Water Study
- Exhibit “C” Estimated Cost of Construction
- Exhibit “D” Form of Easement

**Section 2.3. Interpretations.** The following principles control the interpretation of this Agreement.

2.3.1. Unless otherwise stated, reference to any document means the document as amended or supplemented from time to time.

2.3.2. Reference to any party to this Agreement or to a governmental regulatory agency means that entity and its successors and assigns, unless expressly provided to the contrary in this Agreement.

2.3.3. Misspelling of one or more words in this Agreement shall not void the Agreement. Misspelled words shall be read to have the meaning apparently intended by the Parties.

2.3.4. Words in the singular number include the plural, unless the context otherwise requires.

2.3.5. References to “Article”, “Section”, Subsection”, and “Exhibit” are to the articles, sections, subsections and exhibits of this Agreement unless expressly stated to the contrary.

2.3.6. Article and section headings are for convenience and reference and are not intended to define, limit, or expand the scope of any provision of this Agreement.

## **ARTICLE III** **WATER AND FACILITIES**

**Section 3.1. Construction.** Owner, on behalf of the District, shall construct the Water Facilities necessary to connect to Denton’s System at agreed upon locations.

**Section 3.2. Design.** The Water Facilities shall be engineered and designed by a Texas Licensed Professional Engineer chosen by Owner, who shall design such facilities in accordance with the applicable standards and specifications of the City and all governmental agencies having jurisdiction, consulting with the City as needed to ensure conformance with the City specifications. Owner shall design and construct the Water Facilities in a good and workmanlike manner so they are fit for the intended purposes. Said design



and construction shall be at Owner's sole cost, except as set forth to the contrary in section 3.3 "Sizing" below.

Unless otherwise mutually agreed to in writing, Owner, on behalf of the District, shall be responsible for the design, construction, and financing of Water Facilities, and compliance with any applicable state or federal requirements, including, but not limited to, for water lines to metering points, meters, meter vaults and associated valves, and for acquisition of any rights-of-way for additional or future Points of Delivery to which Denton may consent.

**Section 3.3. Sizing.** The Water Facilities shall be sized to provide continuous and adequate retail water service to a maximum of 100 ESFCs on the Property. In the event the City requires any of the Water Facilities to be oversized to serve customers located outside the boundaries of the Property, terms and conditions related to oversizing shall be governed by an oversize participation agreement executed by the City and Owner based on the City's standard oversize participation agreement form.

**Section 3.4. Construction of Water Facilities.** The Water Facilities shall be constructed in accordance with the construction plans and specifications approved by the City pursuant to Section 3.5 and in compliance with:

- a. City's applicable ordinances, rules, and regulations; and
- b. The rules and regulations of any governmental agencies having jurisdiction.

**Section 3.5 Approval by the City's Designated Engineer.** The Water Facilities are subject to approval by the City's designated engineer in accordance with the City's standard review schedule. Construction shall not commence unless and until said plans and specifications have been approved by the City's designated engineer. To the extent there is a conflict between any portion(s) of an applicable ordinance, rule, regulation, or law related to the construction of the Water Facilities, the more restrictive and/or stringent of the conflicting portion(s) shall apply.

**Section 3.6. Conformity.** Owner agrees that Denton's engineers or other representatives may inspect and test the construction of the Water Facilities at any time to determine compliance with the approved designs, plans, and specifications. Owner must notify the City in writing of the date upon which construction is scheduled to commence on each phase so the City may assign an inspector. The City will charge reasonable fees related to inspecting the construction of the Water Facilities in accordance with applicable law.

**Section 3.7. Stoppage for Non-Conformance.** The City may stop work on any portion of the Water Facilities which are not being constructed in conformance with the City's regulations and standards and the approved plans and specifications until such time as Owner and Owner's contractor(s) agree to construct that portion of the Water Facilities in conformance and to demonstrate future conformance as requested by the City.

**Section 3.8. Acceptance, Dedication, Maintenance, and Repair.** Upon proper completion of construction of a phase of the Water Facilities, final inspection by the City, and the City's written approval of the Water Facilities, such portion of the Water Facilities shall be dedicated to the City without compensation by an appropriate legal instrument approved by the City Attorney. Thereafter, the Water Facilities shall be owned and solely operated, maintained, and repaired by the City. The City shall maintain the Water Facilities in good repair and working condition at all times.

**Section 3.9. Acquisition and Dedication of Easements for Water Facilities.**

3.9.1. Owner shall be responsible for acquiring and dedicating to the District, at Owner's sole expense, any easement encompassing areas across privately or publicly owned land or sites which the City determines are necessary for the construction, operation, and maintenance of the Water Facilities. After such easements are dedicated to the District, the District hereby agrees to assign such easements to the City.

3.9.2. Owner shall use its good faith efforts to acquire non-exclusive easements which allow for the City to install future water lines and other municipal utilities; provided, however, that such future facilities shall not interfere with the operation, maintenance, or use of the Water Facilities. If, however, Owner is unable to obtain such easements by private negotiation, District shall secure the non-exclusive easements after a finding of public necessity, through the use of the District's power of eminent domain.

3.9.3. The Parties agree that any easements acquired shall be on the form attached hereto as **Exhibit "D"** and incorporated herein for all purposes. Unless otherwise set forth in this Agreement to the contrary, the District shall be responsible for funding all reasonable and necessary legal proceeding/litigation costs, attorney's fees, and related expenses; property acquisition costs; and appraiser and expert witness fees paid or incurred in the exercise of its eminent domain powers. The District will use all reasonable efforts to expedite such condemnation procedures so that the Water Facilities can be constructed as soon as reasonably practicable.

3.9.4. Owner shall obtain all governmental approvals necessary to construct the Water Facilities in public land or rights-of-way.

**Section 3.10. Easement Form.** All easements acquired by Owner or District for the Water Facilities shall:

- a. Be the widths shown in **Exhibit "B"** attached hereto;
- b. Be adequate to allow the City to install water lines and other municipal utilities; and
- c. Be situated in the public right-of-way or in existing easements specifically dedicated for the Water Facilities as set forth hereunder.

**Section 3.11. Development Contracts for Public Improvements and Bonds.** For all Water Facilities, Owner and any contractor performing construction shall execute a Development Contract for Public Improvements with the City using a contract form approved by the City Attorney. Additionally, for all Water Facilities, Owner or Contractor shall obtain and tender payment bonds and performance bonds in the full amount of the construction cost. The performance bonds shall be for a term of two years from the date of final acceptance of the Water Facilities by the City and shall name the City as an obligee with a surety acceptable to the City guaranteeing the work and materials of the Water Facilities to be free from defects or need for repair. The bond forms and the sureties are subject to the City Attorney's approval.

**Section 3.12. Copies of Plans.** Owner shall furnish the City with one reproduction and two copies of the as-built or record drawings in an appropriate AutoCAD format for the Water Facilities promptly upon completion of construction and acceptance by the City. The drawings must be GIS compatible.

**Section 3.13. No Grant of Equity or Ownership.** No provision of this Agreement may be interpreted or construed to create any type of joint or equity ownership of any property or to create any partnership or joint venture. Neither this Agreement, nor any acts of the Parties hereunder, nor any payments, may be interpreted or construed as granting or otherwise vesting in District or Owner any right, title, interest, or equity in the Denton System, or any element thereof.

## **ARTICLE IV** **RETAIL WATER SERVICE**

**Section 4.1. Agreement to Provide Retail Water Service.** Denton hereby agrees, subject to the terms of this Agreement, to provide retail Water service to the Water Customers.

**Section 4.2. Sole Provider.** Denton shall be the sole provider of retail Water service to all Water Customers.

**Section 4.3. Billing and Rates.**

4.3.1. The City shall bill the Water Customers for the City's provision of retail Water service when such service is available.

4.3.2. Water Customers shall pay the City's rate for retail Water service to Outside Customers, as the rate may be amended from time to time in the City's sole discretion.

4.3.3. All of the standard rates, fees, and charges adopted by the City shall apply to retail Water service provided pursuant to this Agreement.

**Section 4.4. Conditions Precedent.** It is understood and agreed by the Parties that the obligation of the City to provide retail Water service in the manner contemplated by this Agreement is subject to (i) the issuance of all permits, certificates, or approvals required to lawfully provide retail Water service by the PUC, Texas Commission on Environmental Quality, and all other governmental agencies having jurisdiction, which Owner, District, and City shall use its good faith efforts to timely acquire, if necessary; (ii) designation of the City as the sole provider of retail Wastewater service to customers within the Property; (iii) execution of the Retail Wastewater Treatment Services Agreement pursuant to Article V; and (iv) completed conveyance of Groundwater Rights from the Owner to the City pursuant to Article VI.

**Section 4.5. Service Limitations.** Notwithstanding any other provisions of this Agreement, Denton's obligation under this Agreement to supply retail Water service is subject to and limited by Denton's available raw water supply and the capabilities of Denton's System, as determined by Denton in its sole discretion. Denton will use reasonable efforts consistent with prudent operation of the Denton's System and with the terms of this Agreement, to furnish and remain in position to provide service to Water Customers. Retail Water service pursuant to this Agreement is further limited pursuant to Section 4.6 of this Agreement.

**Section 4.6. Water Conservation and Drought Contingency.**

4.6.1. City shall develop and implement Water conservation and drought contingency plans using applicable elements of Chapter 288 of Title 30 of the Texas Administrative Code, as may be amended from time to time. District agrees to pursue and encourage conservation for the benefit of all customers of the District and the Denton System.

4.6.2. District agrees that Denton may limit or curtail Water supplies or services pursuant to this Agreement consistent with Denton's duly adopted water conservation and drought contingency plans or for other reasons in the public interest. Denton agrees to impose such restrictions equitably and in a non-discriminatory fashion. District agrees to coordinate and cooperate with Denton concerning the implementation of any action to conserve or otherwise limit or curtail Water supplies in order to minimize adverse impact on Denton's System operation, on adequacy of service, and to promote public understanding of the need for and terms of such limitation or curtailment.

4.6.3. To the extent Denton imposes restrictions of general availability requiring curtailment or rationing of Water delivery and availability other than as provided under Denton's duly adopted water conservation and drought curtailment plans, Denton agrees to impose such restrictions equitably and in a non-discriminatory fashion. Such curtailments or rationing shall be limited to the extent that such supplies and service are curtailed due to a lack of raw water supply or because of Denton System failure or malfunction, contamination, acts of God, civil disturbances, war, regulatory delay, or other causes beyond Denton's control.

**Section 4.7. No Conveyance of Water Rights.** The Parties acknowledge that nothing in this Agreement is intended to sell, encumber, transfer, or convey any water rights from Denton to District, Owner, or any other entity and no such rights are sold, encumbered, transferred, or conveyed. No entitlement to Water supply is created other than as expressly provided in this Agreement. If this Agreement is ever construed to effect an entitlement in, or sale, encumbrance, transfer, or conveyance of, Water rights from Denton to District or Owner, then the entirety of the Agreement shall be null and void.

**Section 4.8. No Continuation of Services.** District and Owner acknowledge there is no right to continuation of retail water service by Denton in the event this Agreement is terminated and that no such right(s) may be implied.

**Section 4.9. Temporary Discontinuance.** Denton expressly reserves the right to temporarily discontinue the retail Water service provided for in this Agreement, in the same manner as the City would temporarily discontinue retail Water service provided to any of its other retail Water customers, whenever it is necessary to do so to ensure proper operation of Denton's System or to protect the health and safety of the public.

**Section 4.10. Water Impact Fees.**

4.10.1. Impact fees for connection to any Water Facilities shall be charged for each ESFC located within the Property (the "Impact Fees"), subject to the conditions in Sections 4.10 and 4.11 and in accordance with Chapter 395 of the Texas Local Government Code.

4.10.2. The Impact Fees shall refer to the fees due under this Agreement per ESFC from any builder within the Property who connects to the Water Facilities, in an amount equal to the City's existing Water impact fee stated on the City's impact fee schedule in effect at the time of said connection to the Water Facilities. The Impact Fee shall be charged once per ESFC subject to Sections 4.10 and 4.11.

4.10.3. The Impact Fees shall be due for each connection made for each ESFC located within the Property at the time such connection is made. No connection to the Water Facilities may occur until the Impact Fees have been paid to the City for such connection.

4.10.4. The Parties hereby agree that the amount of the Impact Fee shall be based on an impact fee study completed by the City, as amended. Any change to the amount of the Impact Fee shall be effective upon passage of the new Impact Fee amount by the Denton City Council and shall apply to any connections made after the new Impact Fee amount becomes effective.

**Section 4.11. Impact Fee Credits for Offsite Water Facilities.**

4.11.1. This section shall be limited to Offsite Water Facilities included in the City's impact fee study in effect at the time the City accepts the Offsite Water Facilities.

4.11.2. Upon the City's acceptance of any Offsite Water Facilities, Owner shall provide the City with evidence of the Cost of Construction for the Offsite Water Facilities.

4.11.3. Owner will be eligible to receive an impact fee credit amount equal to the Cost of Construction for the Offsite Water Facilities in accordance with the City's Impact Fee ordinances and regulations. However, the amount credited shall not be greater than the amount included in the City impact fee study in effect at the time of the City's acceptance of the Offsite Water Facilities. The estimated Cost of Construction of the Water Facilities attributable to the Property that are included in the City's most recent impact fee study in effect as of the Effective Date of this Agreement is attached hereto as Exhibit "C". Owner and City agree that the most recent impact fee study is subject to change and may be amended by the Denton City Council in its sole discretion.

4.11.4. Owner and the City agree that once Owner is credited in accordance with Section 4.11.3, the City shall collect the Impact Fees per ESFC pursuant to Section 4.10.

4.11.5. Nothing in this Agreement shall limit the ability of the Denton City Council to amend the City's impact fee study or schedule.

4.11.6. Nothing in this Agreement binds the Denton City Council to include any Offsite Water Facilities in its impact fee study or capital improvement plan.

**ARTICLE V**

**RETAIL WASTEWATER TREATMENT SERVICE AND FACILITIES**

**Section 5.1. Sole Provider.** The Parties hereby agree, subject to this Agreement and the Agreement referenced in Section 5.4, that Denton shall be the sole provider of retail Wastewater treatment service to all customers within the Property.

**Section 5.2. Retail Wastewater Service.** Subject to the terms of this Agreement and the separate agreement referenced in Section 5.4, Denton agrees to provide retail Wastewater to customers located within the Property. Retail Wastewater service capacity for the Property shall be limited to that which is needed to serve a maximum of 100 ESFCs.

**Section 5.3. Effluent Title and Ownership.** All title and ownership to Wastewater flow from wastewater customers within the Property into the Denton System shall belong to Denton. Denton may, after treatment of Wastewater, reclaim, use, or sell the water, sludge, or any other product for reuse. Wastewater entering the Denton system becomes the property of Denton. Title to water from Wastewater that is treated and returns to a natural watercourse remains with Denton.

**Section 5.4. Retail Wastewater Treatment Services Agreement Required.** The City's provision of retail Wastewater service to the Property is contingent on Owner, District, and City entering into a Retail Wastewater Treatment Services Agreement. Owner and District will agree in the Retail Wastewater Treatment Services Agreement that customers within the property are subject to the City of Denton Approved Pretreatment Program, approved by TCEQ in accordance with 40 C.F.R. Section 403.8, as amended. The Retail Wastewater Treatment Services Agreement will also comply with applicable law including, without limitation, all applicable portions of the Code of the City of Denton, Texas, Ch. 26.

**Section 5.5. Retail Wastewater Rate.** Wastewater customers shall pay the rate applicable for wastewater service to Customers outside the City's Corporate limits, as may be amended from time to time in the City's sole discretion.

**Section 5.6. Wastewater Facilities.** District and Owner shall be responsible for the design, contracting, construction, and financing of all Wastewater Facilities including acquisition of any necessary rights-of-way and easements for such facilities. District and/or Owner shall provide all lines, metering station(s), lift stations, and other associated Wastewater Facilities and shall acquire all property, interests, licenses, and permits that are necessary to complete construction and dedication of the Wastewater Facilities to the City without compensation by an appropriate legal instrument approved by the City Attorney. Terms and conditions related to oversizing shall be governed by an oversize participation agreement executed by the City and Owner based on the City's standard oversize participation agreement form.

**Section 5.7. Temporary Discontinuance.** Denton expressly reserves the right to temporarily discontinue Wastewater treatment referenced in this Agreement whenever it is necessary to do so to ensure proper operation of the Denton System or to protect the health and safety of the public.

**Section 5.8. Conditions Precedent.** In addition to the terms and conditions stated in this Article V, it is understood and agreed by the Parties that the obligation of the City to provide retail wastewater service in the manner contemplated by this Agreement is subject to (i) the issuance of all permits, certificates, or approvals required to lawfully obtain retail wastewater service by the PUC, Texas Commission on Environmental Quality, and all other governmental agencies having jurisdiction which the Owner, District, and the City shall use its good faith efforts to timely acquire, if necessary; (ii) Denton being the sole provider of retail Water service to all Water Customers; and (iii) completed conveyance of Groundwater Rights from the Owner to the City pursuant to Article VI of this Agreement.

## **ARTICLE VI GROUNDWATER**

**Section 6.1. Groundwater Rights.** Owner warrants and represents that it owns the Groundwater Rights attributable to the Property in fee simple and that the Groundwater Rights have not been severed from the surface estate.

**Section 6.2. Groundwater Rights Sale Agreement Required.** Owner shall enter into a Groundwater Rights Sale Agreement with the City, the form of which shall be mutually agreed upon by Owner and the

City, wherein the Owner agrees to sell the Groundwater Rights attributable to the Property to the City in fee simple. The Groundwater Rights Sale Agreement shall be accompanied by a deed, the form of which shall also be mutually agreed upon by Owner and the City, and both instruments shall be filed and recorded in the real property records of Denton County. The City will not use the surface of any finished lots within the Property to access, explore for, develop, treat, produce, or transport the Groundwater.

**Section 6.3. Irrigation License.** After closing on the Groundwater Rights in accordance with Section 6.2 herein, the City shall grant the District a license, the form of which shall be mutually agreed upon by the City and District, to produce Groundwater for irrigation purposes in amounts sufficient to ensure the maximum amount of Groundwater is conserved, based on documentation provided to the City. Conditions relating to the siting and operation of any Groundwater wells will be addressed in the license contemplated by this Section 6.3, which shall be mutually agreed upon by the City and District.

**Section 6.4. GCD Approvals and Filings.** Owner and/or District shall obtain all the regulatory approvals from the North Texas Groundwater Conservation District (“NTGCD”) necessary to effectuate the sale and license contemplated by this Agreement. Owner and/or District are also responsible for the filing of all documents required by NTGCD to effectuate the sale and license contemplated by this Agreement.

**Section 6.5. Other Regulatory Approvals.** Owner and/or District shall be responsible for obtaining all regulatory approvals necessary to produce the Groundwater allowed under the license referenced in Section 6.3.

## **ARTICLE VII OPERATION AND REGULATORY APPROVALS**

**Section 7.1. Operation and Maintenance of Denton’s System.** Denton recognizes its right and duty to operate Denton’s System under this Agreement in a prudent and economical manner for the benefit of its retail customers. Denton will use due diligence to comply with appropriate water quality standards and will guard carefully against all forms of contamination to Denton’s System employed in performance of this Agreement.

**Section 7.2. State or Federal Laws, Rules, Orders or Regulations.** This Agreement is subject to all applicable Federal and State laws and any applicable permits, ordinances, rules, orders, and regulations of any local, 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, ordinance, order, rule or regulation in any forum having jurisdiction.

**Section 7.3. City Permits and Regulatory Authorizations.** District and Owner will support and coordinate with the City in all its efforts to obtain permits and/or regulatory authorizations related to this Agreement from State and Federal agencies having jurisdiction including, without limitation, efforts by the City involving water reuse and bed and banks permitting.

**Section 7.4. Certificates of Convenience and Necessity and Extraterritorial Jurisdiction.**

7.4.1. District agrees that it will not provide any Water or Wastewater services to any customer within an area included within Denton’s single, dual, or multiple certificated areas, unless expressly approved in writing by Denton.

7.4.2. With the exception of Denton’s respective Water and Wastewater CCNs, the Property shall not be located within an area subject to a CCN issued by the Public Utility Commission of Texas or successor agency.

7.4.3. To the extent the Property, or any portion thereof, is not subject to any CCN, Denton has the option to extend its water and/or wastewater CCN to cover the property at the City’s sole cost and expense.

7.4.4. The Owner agrees that it will not take any steps to include the Property in the extraterritorial jurisdiction of any political subdivision other than Denton.

**Section 7.5. Compliance with Applicable Laws.**

7.5.1. This Agreement is entered subject to and controlled by the Charter and Ordinances of the City of Denton, Texas and all applicable laws, rules, and regulations of the State of Texas and the United States of America (collectively, "Applicable Laws"), as amended. The Parties shall, during the performance of this Agreement, comply with all applicable City codes, ordinances, and regulations, as amended, and all applicable State and Federal laws, rules, and regulations, as amended.

7.5.2. Notwithstanding any provision of this Agreement, to the extent there is a conflict between any portion(s) of an applicable City ordinance, rule, or regulation related to service to Outside Customers and this Agreement, the provisions of this Agreement shall apply.

7.5.3. The Owner or District shall file this Agreement with the appropriate State or Federal agency, if required under State or Federal law.

**ARTICLE VIII  
MISCELLANEOUS PROVISIONS**

**Section 8.1. INDEMNIFICATION.**

**8.1.1. TO THE EXTENT ALLOWED BY LAW, DISTRICT AGREES TO DEFEND, INDEMNIFY, AND HOLD DENTON, ITS OFFICERS, AGENTS, AND EMPLOYEES, HARMLESS FROM ANY LIABILITY IN CLAIMS, ADMINISTRATIVE PROCEEDINGS OR LAWSUITS FOR JUDGMENTS, PENALTIES, FINES, COSTS, EXPENSES AND ATTORNEY'S FEES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE, OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, OR FOR VIOLATIONS OF STATE OR FEDERAL LAWS OR REGULATIONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY: (A) A BREACH OF THIS AGREEMENT BY DISTRICT; (B) THE NEGLIGENT ACT OR OMISSION OF DISTRICT IN THE PERFORMANCE OF THIS AGREEMENT OR IN DISTRICT'S OPERATIONS; OR (C) THE CONDUCT OF DISTRICT THAT CONSTITUTES A VIOLATION OF STATE OR FEDERAL LAWS OR REGULATIONS OR OF PERMIT PROVISIONS. HOWEVER, THE INDEMNITY STATED ABOVE SHALL NOT APPLY TO ANY LIABILITY RESULTING EXCLUSIVELY FROM THE SOLE NEGLIGENCE OF DENTON, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS.**

**8.1.2. IN THE EVENT OF JOINT AND CONCURRING RESPONSIBILITY OF THE DISTRICT AND DENTON, RESPONSIBILITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT WAIVING GOVERNMENTAL IMMUNITY OR ANY OTHER DEFENSES OF THE PARTIES UNDER APPLICABLE TEXAS LAW.**

**8.1.3. NOTHING IN THIS SECTION 8.1 REQUIRES DENTON OR DISTRICT TO ASSESS OR COLLECT FUNDS OR TO CREATE A SINKING FUND.**

**8.1.4. OWNER AGREES TO DEFEND, INDEMNIFY, AND HOLD DENTON, ITS OFFICERS, AGENTS, AND EMPLOYEES, HARMLESS FROM ANY LIABILITY IN CLAIMS, ADMINISTRATIVE PROCEEDINGS OR LAWSUITS FOR JUDGMENTS, PENALTIES, FINES, COSTS, EXPENSES AND ATTORNEY'S FEES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE, OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, OR FOR VIOLATIONS OF STATE OR FEDERAL LAWS OR REGULATIONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY:**

**(A) A BREACH OF THIS AGREEMENT BY OWNER; (B) THE NEGLIGENT ACT OR OMISSION OF OWNER, ITS DIRECTORS, AGENTS, EMPLOYEES, OR SEPARATE CONTRACTORS IN THE PERFORMANCE OF THIS AGREEMENT OR IN OWNER'S OPERATIONS; OR (C) THE CONDUCT OF OWNER, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS THAT CONSTITUTES A VIOLATION OF STATE OR FEDERAL LAWS OR REGULATIONS OR OF PERMIT PROVISIONS. HOWEVER, THE INDEMNITY STATED ABOVE SHALL NOT APPLY TO ANY LIABILITY RESULTING EXCLUSIVELY FROM THE SOLE NEGLIGENCE OF DENTON, ITS OFFICERS, AGENTS, EMPLOYEES, OR SEPARATE CONTRACTORS.**

**Section 8.2. Force Majeure.** In the event any Party is rendered unable by force majeure to carry out any of its obligations under this Agreement, in whole or in part, then the obligations of that Party, to the extent affected by the force majeure shall be suspended during the continuance of the inability, provided however, that due diligence is exercised to resume performance at the earliest practical time. As soon as reasonably possible after the occurrence of the force majeure relied upon to suspend performance, the Party whose contractual obligations are affected thereby shall give written notice and full particulars of the force majeure to the other Party, shall provide weekly written updates describing its efforts to mitigate or cure the force majeure condition(s), and shall provide written notice at the time that the force majeure conditions have ceased.

The cause, as far as possible, shall be remedied with all reasonable diligence. The term "force majeure" includes acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, orders of the government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightening, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, restraints of government and civil disturbances, explosions, breakage or accidents to equipment, pipelines or canals, partial or complete failure of water supply, epidemic, pandemic, and any other inability of either Party to be able to perform, whether similar to those enumerated or otherwise, that are not within the control of the Party claiming the inability and that could not have been avoided by the exercise of due diligence and care.

**Section 8.3. Term of Agreement.** This Agreement shall commence on the Effective Date and shall end, unless terminated, when the actions necessary to effectuate the purposes and intent of this Agreement are completed.

**Section 8.4. Termination.**

8.4.1 The City, at the City's option and without prejudice to any other remedy City may be entitled to at law, in equity, or elsewhere under this Agreement, may terminate this Agreement in whole or in part for breach that is not cured in compliance with Section 8.6 or for non-appropriation under Section 8.24.

8.4.2 Notwithstanding any other provision of this Agreement, this Agreement shall terminate if after eight (8) years from the Effective Date ("Deadline") (i) construction of the Water Facilities or Wastewater Facilities is incomplete; (ii) dedication of the Water Facilities or Wastewater Facilities to the City has not occurred; (iii) execution of the Retail Wastewater Treatment Services Agreement has not occurred pursuant to Article V; or (iv) conveyance of Groundwater Rights from the Owner to the City has not occurred pursuant to Article VI.

8.4.3 If this Agreement is terminated pursuant to Section 8.4, all Offsite Water Facilities and/or Offsite Wastewater Facilities constructed, including any portions partially constructed, shall nevertheless be dedicated to the City by Owner and/or District without compensation by an appropriate legal instrument approved by the City Attorney along with any associated easements and rights of way.

8.4.4 The Deadline under Section 8.4.2 may be extended no later than one (1) year prior to the Deadline, without triggering the termination of this Agreement, by written consent of Denton's City Manager.



**Section 8.5. Addresses and Notice.** Unless otherwise provided herein, any notice, communication, request, reply or advice (herein severally and collectively, for convenience, called "Notice") herein provided or permitted to be given, made or accepted by any party to any other party 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. Notice deposited in the mail in the manner described above shall be conclusively deemed to be effective upon receipt, unless otherwise stated herein. For the purposes of notice, the addressed of the parties shall, until changed as hereinafter provided, be as follows:

If to Denton, to: City Manager  
City of Denton  
215 E McKinney St  
Denton, Texas 76201

If to the District, to: Ponder Farms Municipal Utility District of Denton County  
c/o Coats Rose, P.C.  
16000 North Dallas Parkway, Suite 350  
Dallas, Texas 75248  
Attn: Mindy L. Koehne

If to the Owner, to: TCCI Ponder WPP, LLC  
*14675 Dallas Parkway, Suite 575*  
*Dallas Texas 75254*  
*Attn: Tommy Casler*

The parties hereto 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 fifteen (15) days' prior written notice to the other parties hereto.

**Section 8.6. Breach.** If a Party breaches any term or condition of this Agreement, the non-breaching Party shall provide the breaching Party with notice of the breach. Upon its receipt of a notice of breach, the breaching Party shall have sixty (60) days to cure the breach. If the breaching Party does not cure the breach within the sixty (60) days, the non-breaching Party shall have all rights and remedies at law and in equity including, without limitation, the right to enforce specific performance of this Agreement by the breaching Party and the right to perform the obligation in question and to seek restitution for all damages incurred in connection therewith. However, this Agreement may only be terminated due to breach as stated in Section 8.4.1.

**Section 8.7. Survival of Certain Rights and Obligations.**

Notwithstanding any provision of this Agreement to the contrary and without limitation of any other provisions of this Agreement that specify survival of rights and obligations, all rights and obligations of the Parties under this Agreement which by their nature are intended to survive including, but not limited to, those listed below shall survive:

- a. Section 3.11 Development Contracts for Public Improvements and Bonds;
- b. Section 3.13. No Grant of Equity or Ownership;
- c. Section 4.7. No Conveyance of Water Rights;
- d. Section 4.8. No Continuation of Services;
- e. Section 7.3. City Permits and Regulatory Authorizations;

- f. Section 7.4. Certificates of Convenience and Necessity and Extraterritorial Jurisdiction;
- g. Section 8.1. Indemnification;
- h. Section 8.9. No Third-Party Beneficiaries;
- i. Section 8.12. Nonwaiver and Remedies; and
- j. Section 8.16. Venue; and
- k. Section 8.20. Necessary Documents and Actions.

**Section 8.8. Severability; Interpretation.** The provisions of this Agreement are severable, and if any word, phrase, clause, sentence, paragraph, section, or other part of this Agreement or the application thereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such word, phrase, clause, sentence, paragraph, section, or other Party of this Agreement to other persons or circumstances shall not be affected thereby and this Agreement shall be construed as if such invalid or unconstitutional portion had never been contained therein. The Parties agree that they have equally participated in the drafting of this Agreement with the assistance of legal counsel, and that neither Party shall receive any benefit of interpretation of its terms on the basis of relative contribution to the drafting process.

**Section 8.9. No Third-Party Beneficiaries.** This Agreement is solely for the benefit of the Parties hereto, and no other person or entity has any right, interest or claim under this Agreement nor shall be considered to be a third-party beneficiary.

**Section 8.10. Captions.** The captions of the various sections and paragraphs herein are intended for convenience or reference only and shall not define or limit any of the terms or provisions hereof.

**Section 8.11. Governmental Immunity Not Waived.** Neither Denton or the District waives, nor shall be deemed hereby to waive, any immunity or defense that would otherwise be available against claims made or arising from any act or omission resulting from the Agreement.

**Section 8.12. Nonwaiver and Remedies.**

8.12.1. A Party's right in the future to demand strict compliance and performance under this Agreement is not diminished because, whether through decision or oversight, that Party has not enforced a provision of this Agreement or has not enforced breach or nonperformance in the past, whether periodically or for long duration. Also, a Party's right in the future to demand strict compliance and performance with this Agreement is not diminished because, whether through decision or oversight, the other Party has not enforced the same or a similar provision of this Agreement or does not enforce the same or a similar breach or nonperformance, whether periodically or for long duration. To the extent a right or benefit in this Agreement is expressly waived by a Party such waiver will not be applied other than strictly in accordance with the conditions expressed in such express waiver and will not be implied to be continuing in nature.

8.12.2. Except to the extent expressly provided otherwise, all remedies existing at law or in equity may be availed of by the City and shall be cumulative including, without limitation, specific performance, and the City shall be entitled to any reasonable attorney's fees, costs, or other expenses incurred in bringing or defending any action, as may be awarded by a tribunal of competent jurisdiction.

**Section 8.13. Entire Agreement.** This Agreement, including any exhibits and/or addendums attached hereto and made a part hereof, constitutes the entire agreement between the Parties relative to the subject matter of this Agreement. All prior agreements, covenants, representations, or warranties, whether oral or in writing, between the Parties are merged herein.

**Section 8.14. Amendment.** No amendment of this Agreement shall be effective unless and until it is duly approved by each Party and reduced to a writing signed by the authorized representatives of the City,

District, and Owner respectively, which amendment shall incorporate this Agreement in every particular not otherwise changed by the amendment.

**Section 8.15. Governing Law.** This Agreement shall be construed under and in accordance with the laws of the State of Texas and all obligations of the Parties are expressly deemed performable in Denton County, Texas.

**Section 8.16. Venue.** Any action at law or in equity brought to enforce or interpret any provision of this Agreement shall be brought in a state court of competent jurisdiction with venue in Denton County, Texas.

**Section 8.17. Successors and Assigns.** This Agreement shall be binding on and shall inure to the benefit of the Parties and their successors and assigns.

**Section 8.18. Assignment.** The rights and obligations of the Owner and/or District hereunder may not be assigned without the prior written consent of Denton's City Manager. Any assignment of, or attempt to assign, rights, or delegation of duties under this Agreement without the consent of Denton's City Manager is void. No assignment by Owner or District shall release Owner or District from any obligations, rights, title, or interests under this Agreement or from any liability that resulted from any act or omission by Owner or District, unless the City Manager approves such a release in the written consent provided by the City Manager.

**Section 8.19. Counterparts.** This Agreement may be executed in multiple counterparts, which, when taken together, shall be deemed one original.

**Section 8.20. Necessary Documents and Actions.** Each Party agrees to execute and deliver all other and further instruments and undertake actions as are or may become necessary or convenient to effectuate the purposes and intent of this Agreement.

**Section 8.21. Authority.** By execution of this Agreement on its behalf, each Party represents that it has full capacity and authority to grant all rights and assume all obligations that it has granted and assumed under this Agreement, and that this Agreement has been authorized by its governing body. The Parties represent and warrant that their respective signatories to this Agreement have corporate or organizational authority to execute this Agreement.

**Section 8.22. Form 1295.** Submitted herewith, if required by applicable law, is a completed Form 1295 generated by the Texas Ethics Commission's ("TEC") electronic filing application in accordance with the provisions of Section 2252.908 of the Texas Government Code and the rules promulgated by the TEC (the "Form 1295"). The City hereby confirms receipt of the Form 1295 from Owner, and the City agrees to acknowledge such form with the TEC through its electronic filing application not later than the 30th day after the receipt of such form. The Parties understand and agree that, with the exception of information identifying the City and the contract identification number, neither the City nor its consultants are responsible for the information contained in the Form 1295; that the information contained in the Form 1295 has been provided solely by Owner; and, neither the City nor its consultants have verified such information.

**Section 8.23. Certifications.**

8.23.1. Pursuant to Texas Government Code Chapter 2271, as amended, Owner verifies that at the time of execution and delivery of this Agreement and for the term of this Agreement, neither Owner, its parent companies, nor its common-control affiliates currently boycott or will boycott Israel. The term "boycott Israel" as used in this paragraph has the meaning assigned to the term "boycott Israel" in Section 808.001 of the Texas Government Code, as amended.

8.23.2. Pursuant to Texas Government Code, Chapter 2252, as amended, Owner represents and verifies that at the time of execution and delivery of this Agreement and for the term of this Agreement, neither Owner, its parent companies, nor its common-control affiliates (i) engage in business with Iran, Sudan, or any foreign terrorist organization as described in Chapters 806 or 807 of the Texas Government Code, or

Subchapter F of Chapter 2252 of the Texas Government Code, or (ii) is a company listed by the Texas Comptroller of Public Accounts under Sections 806.051, 807.051, or 2252.153 of the Texas Government Code.

8.23.3. Pursuant to Chapter 2276 of the Texas Government Code (as added by Senate Bill 13, 87<sup>th</sup> Texas Legislature, Regular Session and redesignated by House Bill 4595, 88<sup>th</sup> Texas Legislature, Regular Session), Owner certifies that it is not a Company that boycotts energy companies and agrees it will not boycott energy companies during the term of this Agreement. The terms “boycotts energy companies” and “boycott energy companies” have the meaning assigned to the term “boycott energy company” in Section 809.001, Texas Government Code. For purposes of this paragraph, “Company” means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations, that exists to make a profit, but does not include a sole proprietorship.

8.23.4. Pursuant to Chapter 2274 of the Texas Government Code (as added by Senate Bill 19, 87<sup>th</sup> Texas Legislature, Regular Session, “SB 19”), Owner certifies that it is not a Company that has a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and agrees it will not discriminate against a firearm entity or firearm trade association during the term of this Agreement. The terms “discriminates against a firearm entity or firearm trade association” and “discriminate against a firearm entity or firearm trade association” have the meaning assigned to the term “discriminate against a firearm entity or firearm trade association” in Section 2274.001(3), Texas Government Code (as added by SB 19). For purposes of this paragraph, “Company” means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations, that exists to make a profit, but does not mean a sole proprietorship.

8.23.5. Owner further certifies that, notwithstanding anything contained in this Agreement, the representations and covenants contained in this Section 8.22 shall survive termination of the Agreement until the statute of limitations has run. The liability for breach of the representations and covenants contained in this Section 8.22 during the term of the Agreement shall survive until barred by the statute of limitations, and shall not be liquidated or otherwise limited by any provision of the Agreement, notwithstanding anything in the Agreement to the contrary.

**Section 8.24 Non-Appropriation.** Notwithstanding any provisions contained herein, the obligations of the City under this Agreement are expressly contingent upon the availability of funding for each item and obligation contained herein. Neither the Owner or the District shall have a right of action against the City in the event the City is unable to fulfill its obligations under this Agreement as a result of lack of sufficient funding for any item or obligation from any source utilized to fund this Agreement or failure to budget or authorize funding for this Agreement during the current or future fiscal years. If the City is unable to fulfill its obligations under this Agreement as a result of lack of sufficient funding, or if funds become unavailable, the City, at its sole discretion, may provide funds from a separate source or may terminate this Agreement by written notice at the earliest possible time prior to the end of its fiscal year.

**Section 8.25 Reservations of Capacity.** Any reservation of water and/or wastewater capacity by the City stated or implied by this Agreement shall not be construed to extend beyond the Deadline, unless the Deadline under Section 8.4.2 of this Agreement is extended pursuant to Section 8.4.4 of this Agreement in which case any stated or implied reservation shall only extend for the period consented to by Denton’s City Manager.

**IN WITNESS WHEREOF**, the Parties hereto acting under authority of their respective governing bodies have caused this Agreement to be duly executed in several counterparts, each of which shall constitute an original, all as of the day and year first above written, which is the Effective Date.

**[SIGNATURE PAGES FOLLOW]**

**CITY OF DENTON**

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

Sara Hensley, City Manager

**ATTEST:**

\_\_\_\_\_

Lauren Thoden, City Secretary

**APPROVED AS TO FORM AND LEGALITY:**

\_\_\_\_\_

Mack Reinwand, City Attorney


**DISTRICT**

By:   
\_\_\_\_\_  
President, Board of Directors

**ATTEST:**


  
\_\_\_\_\_  
Secretary, Board of Directors

**APPROVED AS TO FORM AND LEGALITY:**

  
\_\_\_\_\_  
Mindy L. Koehne, Attorney for the District

**OWNER**

**TCCI PONDER WPP, LLC,**  
a Texas limited liability company

By:       
Name: Tommy Cansler  
Title: Director



**EXHIBIT "A"**  
**THE PROPERTY**

**PROPERTY DESCRIPTION**

**BEING** a tract of land situated in the Ignacio Elde Survey, Abstract Number 387, Denton County, Texas and being a portion of a called 31.43-acre tract of land described in a Deed of Trust and Security Agreement recorded in Instrument Number 2022-13224, Official Records of Denton County, Texas, which was referenced in the Correction Instrument recorded in Instrument Number 2022-13964, Official Records of Denton County, Texas that also included an unrecorded Warranty Deed with Vendor's Lien to TCCI Ponder WPP, LLC, and being more particularly described as follows:

**BEGINNING** at a 1/2" iron rod found with a cap stamped "EAGLE SURVEYING" at the northeast corner of said 31.43-acre tract, being on the northerly side of asphalt road within Blair Road (a called 60-foot right-of-way);

**THENCE** South 00°09'47" East, departing said Blair Road and along the east line of said 31.43-acre tract, passing a 60d Nail found for the northwest corner of a called 11.971-acre tract described in a deed to Kenneth Aaron Shinedling II, Trustee of the Addison Shinedling 2017 Irrevocable Trust dated October 19, 2017, as recorded in Instrument Number 2022-123809, Official Records of Denton County, Texas, at a distance of 5.76 feet, continuing for a total distance of 2,109.39 feet to a 5/8" iron rod with plastic cap stamped "KHA" set for the southeast corner of said 31.43-acre tract, from which a 1/2" iron rod found for the southwest corner of said 11.971-acre tract bears South 00°09'47" East a distance of 285.15 feet;

**THENCE** departing the westerly line of said 11.971-acre tract, along the westerly line of said 31.43-acre tract, and generally along the meanders of Hog Branch Creek the following courses and distances:

North 61°13'45" West, a distance of 379.87 feet to a point for corner;

North 32°25'16" West, a distance of 278.34 feet to a point for corner;

North 73°14'47" West, a distance of 102.56 feet to a point for corner;

North 48°06'33" West, a distance of 433.68 feet to a point for corner;

North 01°34'11" East, a distance of 195.88 feet to a point for corner;

North 46°28'41" East, a distance of 69.87 feet to a point for corner;

North 74°07'33" East, a distance of 202.55 feet to a point for corner;

North 02°51'55" East, a distance of 154.28 feet to a point for corner;

North 20°26'13" East, a distance of 183.18 feet to a point for corner;

North 08°35'26" East, a distance of 196.13 feet to a point for corner;

North 39°15'58" West, a distance of 181.45 feet to a point for corner;

North 52°54'41" West, a distance of 436.15 feet to a point for corner;

North 00°13'24" West, a distance of 101.58 feet to a 5/8" iron rod with plastic cap stamped "KHA" set for the westerly northwest corner of said 31.43-acre tract, on the southerly line of a called 0.396-acre tract of land described in the deed to Denton County, Texas recorded in Instrument Number 2005-24203, Official Records of Denton County, Texas, and the southerly right of way line of said Blair Road;

**THENCE** North 89°53'29" East, along the northerly line of said 31.43-acre tract, the southerly line of said 0.396-acre tract and the southerly right of way line of said Blair Road, a distance of 203.73 feet to a 5/8" iron rod with plastic cap stamped "KHA" set for corner, from which a 3/8" iron rod with a cap stamped "ALLIANCE" found for witness bears South 02°37'18" East, a distance of 6.11 feet;

**THENCE** North 76°55'59" East, continuing along the northerly line of said 31.43-acre tract, the southerly line of said 0.396-acre tract and the southerly right of way line of said Blair Road, a distance of 51.87 feet to a 5/8" iron rod with plastic cap stamped "KHA" set for the southeast corner of said 0.396-acre tract, common to an ell corner of said 31.43-acre tract;

**THENCE** North 00°06'31" West, departing the southerly right of way line of said Blair Road, along the easterly line of said 0.396-acre tract and continuing along the northerly line of said 31.43-acre tract, and crossing said Blair Road, a distance of 29.42 feet to a 5/8" iron rod with plastic cap stamped "KHA" set for the northeast corner of said 0.396-acre tract, same being the northerly northwest corner of said 31.43-acre tract near the northerly side of the asphalt road within Blair Road, from which a 1/2" iron rod found for the northwest corner of a called 92.50-acre tract described in the Special Warranty Deed to Tex-Mix Land, LTD. recorded in Instrument Number 2021-24240 Official Records of Denton County, Texas bears South 89°28'45" West, a distance of 951.95 feet;

**THENCE** North 89°28'45" East, along the north line of said 31.43-acre tract and along or near the asphalt road within said Blair Road, a distance of 754.41 feet to the **POINT OF BEGINNING** and containing a computed area of 1,369,265 square feet or 31.434 acres of land more or less.

**EXHIBIT "B"**  
**WATER STUDY**

# EXHIBIT B

## West Denton County Area Water Analysis Denton, Texas

FEBRUARY 2024

02/14/2024



Prepared By:

**Kimley»»Horn**

801 Cherry Street, Unit #11, Ste. 1300  
Fort Worth, Texas 76102  
TBPE No. F-928

KHA No. 068301401

For:

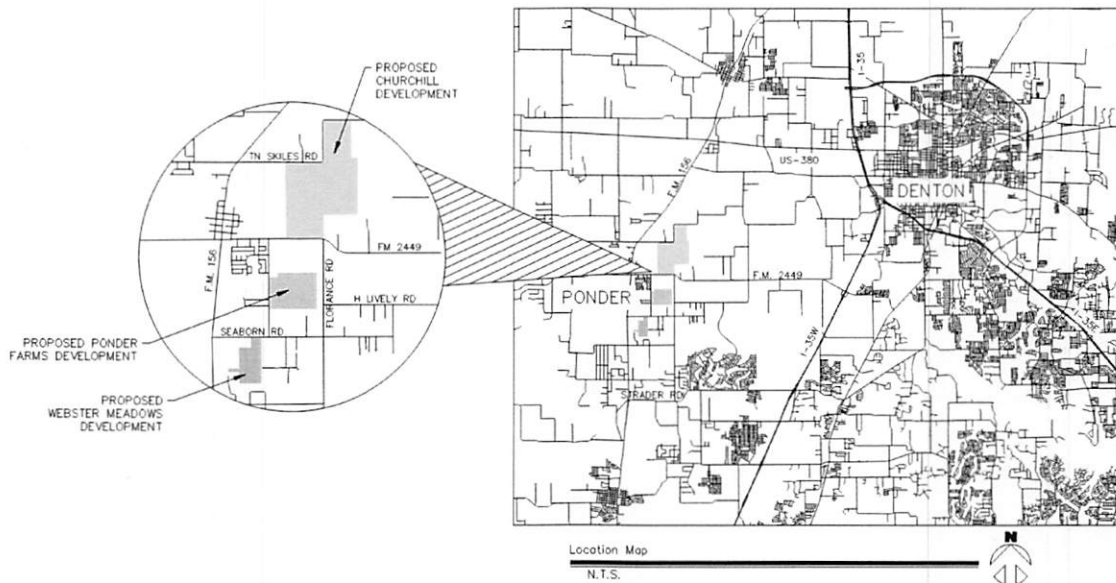
**D·R·HORTON®**  
*America's Builder*

# INTRODUCTION

The proposed West Denton County Area Developments are located west of the Southwest EST and northwest of Robson Ranch outside of the corporate limits of the City of Denton and City of Ponder, but within the City of Denton and City of Ponder extraterritorial jurisdictions. The developments consist of the Churchill, Ponder Farms, and Webster Meadows developments.

Kimley-Horn (KH) performed a hydraulic analysis to determine impacts to the City of Denton's water system and infrastructure required to serve the proposed developments. The developments are comprised of approximately 2,750 single family units, as well as approximately 250 multi-family units. Below is an exhibit showing the location of the proposed developments.

The analysis was performed in accordance with the "City of Denton Water and Wastewater Criteria Manual" dated October 2022.



Location Map Exhibit

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## WATER DEMAND LOAD PROJECTIONS

As part of the water analysis, Kimley-Horn assessed the Maximum Day + Fire Flow and the Peak Hour scenarios as required by the Texas Commission on Environmental Quality (TCEQ). Kimley-Horn assessed the peak flows in the water system using the existing water system model provided by the City as part of the Legends Ranch water study in May 2019. Kimley-Horn used the following assumptions for water demands per the current model, industry standards, and the City of Denton Water and Wastewater Criteria Manual:

- 3.2 people per single-family unit
- 2.5 people per multi-family unit
- 2,750 single-family units
- 250 multi-family units
- 170 gallons per capita per day for average water demand
- 2.0 average day to maximum day water demand peaking factor
- 1.5 maximum day to peak hour water demand peaking factor

Using the above assumptions, Kimley Horn calculated the following:

**Table 1 – Water System Demands**

Development	Water Average Day Demand (gpm)	Water Max Day Demand (gpm)	Water Peak Hour Demand (gpm)
<b>Churchill</b>	<b>736</b>	<b>1,472</b>	<b>2,208</b>
<b>Ponder Farms</b>	<b>152</b>	<b>304</b>	<b>456</b>
<b>Webster Meadows</b>	<b>227</b>	<b>454</b>	<b>681</b>
<b>Total</b>	<b>1,115</b>	<b>2,230</b>	<b>3,345</b>

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## WATER ANALYSIS

Based on the analysis, the developments ultimately will require the following improvements to the existing water system:

- One (1) 24-inch water line from Southwest EST to the Ponder Farms Development
- One (1) 20-inch water line through the Ponder Farms Development to serve wholesale water to the City of Ponder
- One (1) 16-inch water line from Ponder Farms through the Churchill Development
- One (1) 12-inch water line from Ponder Farms to the Webster Meadows Development

Kimley-Horn assessed two different scenarios: Peak Hour and Maximum Day + Fire Flow. The model received from the City included 2018\_MAX\_DAY\_EPS and 2018\_MD\_FIREFLOW scenarios. Diurnal patterns were applied to all demand nodes in the existing models. The existing water model has three built-in diurnal curves. The 2018\_DIURNAL\_CENTRAL was utilized for this proposed development. This development is ultimately proposed to receive water from the Southwest Pressure Plane.

During analysis, it was determined that the proposed 20-inch wholesale water line serving the City of Ponder could only provide 850 gpm during the proposed developments buildout scenario without requiring additional infrastructure improvements to the existing southwest pressure plane water system.

## PEAK HOUR ANALYSIS

For the Peak Hour scenario, Kimley-Horn added the projected Peak Hour demand to the proposed nodes as described above. Kimley-Horn then ran the Maximum Day Extended Phase Simulation (EPS). The peaking induced in the Maximum Day EPS model run simulates the Peak Hour event. Kimley-Horn compared model results both before and after the development. TCEQ requires that a minimum pressure of 35 psi be maintained in the water system during peak flow events.

Comparing the before and after ultimate Peak Hour results, there are no new additional nodes that drop below 35 psi. In the ultimate demand conditions for the proposed developments, the lowest pressure is 41 psi, which exceeds the required 35 psi.

## MAXIMUM DAY + FIRE FLOW ANALYSIS

The existing model includes a 2018\_MD\_FIREFLOW scenario that calculates available fire flow at various nodes throughout the City's water system. This would roughly simulate a Maximum Day + Fire Flow Analysis. Kimley-Horn added the baseline demands of the proposed developments in nodes to the model and added these nodes to the fire flow list to calculate available fire flow.

TCEQ requires that a minimum pressure of 20 psi be maintained in the water system during fire flow events. After development demands are added, no additional nodes fall below the required fire flow threshold. In the ultimate demand conditions for the proposed developments, the lowest pressure will exceed 31 psi while meeting fire flow demands. These pressures meet the minimum TCEQ criteria.



## CONCLUSIONS

Per our analysis, the proposed infrastructure satisfies the Peak Hour and the Max Day + Fire Flow scenarios for the proposed developments. The findings of this water capacity analysis are summarized in **Table 2** below:

*Table 2 – Water System Analysis*

<b>Development</b>	<b>Peak Hour Pressure Range</b>	<b>Maximum Day + Fire Flow Pressure Range</b>
<b>Churchill</b>	<b>41 – 87</b>	<b>35 – 86</b>
<b>Ponder Farms</b>	<b>49 – 91</b>	<b>48 – 92</b>
<b>Webster Meadows</b>	<b>68 – 90</b>	<b>31 – 81</b>

As demonstrated in the findings above, the Denton water system and Southwest Pressure Plane can accommodate the proposed Churchill, Ponder Farms, and Webster Meadows developments with the following infrastructure improvements:

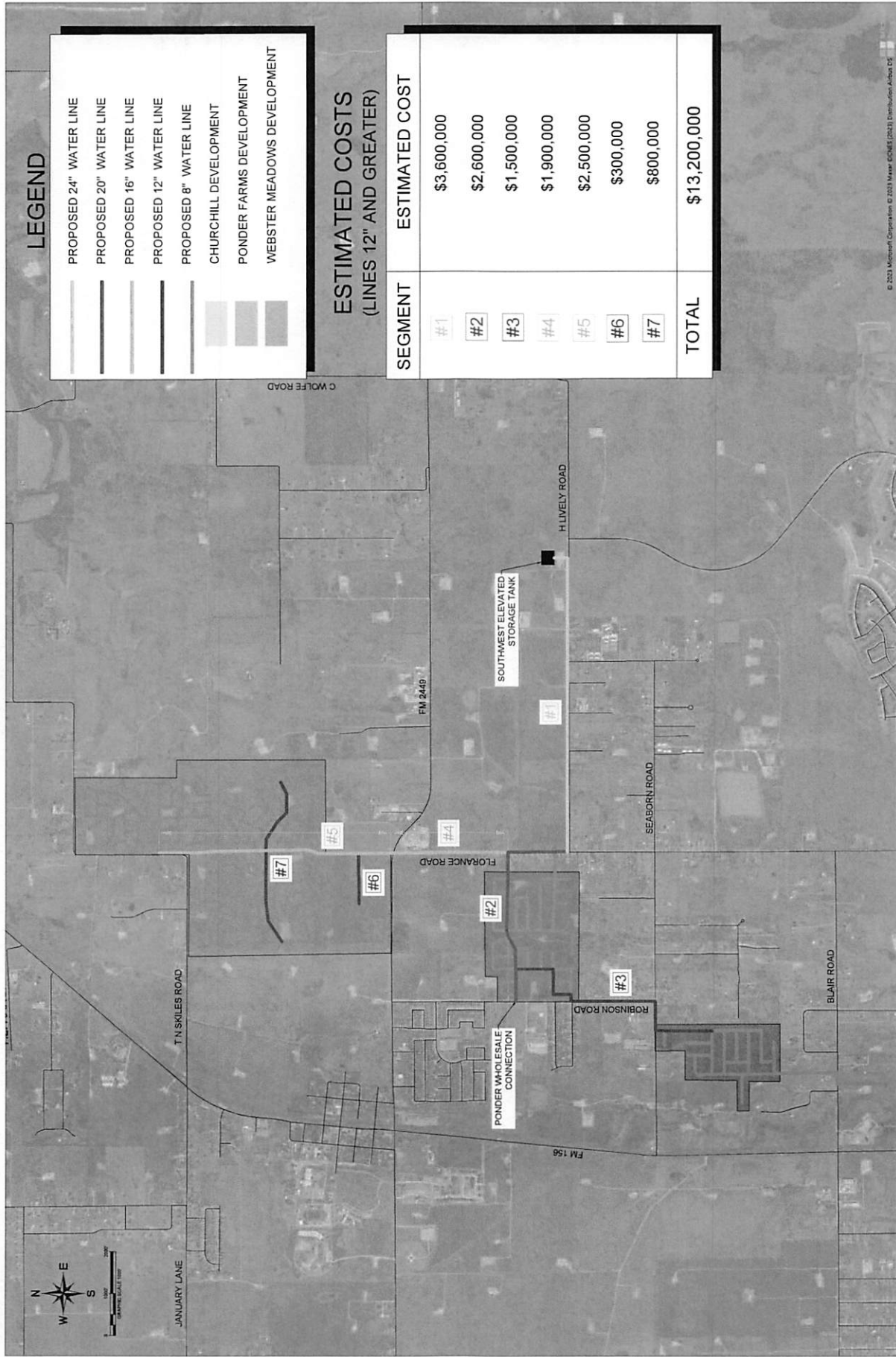
- Proposed 24-inch water main from Southwest EST to Ponder Farms Development constructed.
- Proposed 20-inch water main through Ponder Farms Development constructed.
- Proposed 16-inch water main from Ponder Farms through Churchill Development constructed.
- Proposed 12-inch water main from Ponder Farms to Webster Meadows Development constructed.

# EXHIBIT B



**EXHIBIT "C"**  
**ESTIMATED COST OF CONSTRUCTION**

# EXHIBIT C



## LEGEND

- PROPOSED 24" WATER LINE
- PROPOSED 20" WATER LINE
- PROPOSED 16" WATER LINE
- PROPOSED 12" WATER LINE
- PROPOSED 8" WATER LINE
- CHURCHILL DEVELOPMENT
- PONDER FARMS DEVELOPMENT
- WEBSTER MEADOWS DEVELOPMENT

## ESTIMATED COSTS (LINES 12" AND GREATER)

SEGMENT	ESTIMATED COST
#1	\$3,600,000
#2	\$2,600,000
#3	\$1,500,000
#4	\$1,900,000
#5	\$2,500,000
#6	\$300,000
#7	\$800,000
<b>TOTAL</b>	<b>\$13,200,000</b>

**EXHIBIT "D"**  
**FORM OF EASEMENT**

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: [YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.]**

**WATER EASEMENT**

**THE STATE OF TEXAS**  
**COUNTY OF DENTON**

§  
§  
§

**KNOW ALL MEN BY THESE PRESENTS:**

THAT \_\_\_\_\_, (Grantor) whose mailing address is \_\_\_\_\_, in consideration of the sum of ONE DOLLAR and NO CENTS (\$1.00) and other good and valuable consideration in hand paid by PONDER FARMS MUNICIPAL UTILITY DISTRICT OF DENTON COUNTY (Grantee), the receipt of which is hereby acknowledged, does by these presents grant, bargain, sell and convey unto Grantee the free and uninterrupted use, liberty and privilege of the passage in, along, upon and across the following described property, owned by Grantor and situated in Denton County, Texas, in the \_\_\_\_\_ Abstract No. \_\_\_\_\_.

**PROPERTY AREA DESCRIBED IN EXHIBIT "A"**  
**AND ILLUSTRATED IN EXHIBIT "B"**  
**ALL ATTACHED HERETO AND MADE A PART HEREOF**

And it is further agreed that Grantee, in consideration of the benefits above set out, will remove from the property above described, such fences, buildings and other obstructions as may now be found upon said property.

For the purpose of constructing, reconstructing, installing, repairing, and perpetually maintaining water facilities and related appurtenances in, along, upon and across said premises, with the right and privilege at all times of the Grantee herein, his or its agents, employees, workmen and representatives having ingress, egress, and regress in, along, upon and across said premises for the purpose of making additions to, improvements on and repairs to the said water facilities or any part thereof.

This instrument shall be binding on, and inure to the benefit of, Grantee and Grantor and their respective successors and assigns. Grantee may assign this easement to any entity maintaining any portion of the said water facilities, including the City of Denton, Texas, without the consent of Grantor, so long as doing so does not interfere with Grantor's rights hereunder.

TO HAVE AND TO HOLD unto the said Grantee as aforesaid for the purposes aforesaid the premises above described.

Witness its hand, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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

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

Print Name: \_\_\_\_\_

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

ACKNOWLEDGMENT

THE STATE OF \_\_\_\_\_ §  
COUNTY OF \_\_\_\_\_ §

Before me, the undersigned authority, on this day personally appeared \_\_\_\_\_

\_\_\_\_\_

of \_\_\_\_\_, a Texas limited liability company, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed, in the capacity therein state and as the act and deed of said \_\_\_\_\_.

Given under my hand and seal of office on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public, in and for the State of \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

Accepted this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ for the City of Denton, Texas  
(Resolution No. 91-073).

BY: \_\_\_\_\_

AFTER RECORDING RETURN TO:

Development Services – Real Estate Division  
401 N. Elm Street  
Denton, Texas 76201  
Attention: Mark Laird

