

## **AGREEMENT TO PURCHASE CCN AREAS AND FACILITIES FROM WESTON WATER SUPPLY CORPORATION**

This Agreement to Purchase CCN Areas and Facilities From Weston Water Supply Corporation (“the Agreement”) is made on this \_\_\_\_ day of \_\_\_\_\_, 2006 (“the Effective Date”) by and between the City of Weston, Texas (“City”), a Texas type A general law municipality and Weston Water Supply Corporation (“Corporation”), a Texas nonprofit corporation. The City and Corporation may be individually referred to as “Party” and collectively referred to herein as the “Parties.”

### **RECITALS**

**WHEREAS**, Corporation is a nonprofit water supply corporation, organized and operating pursuant to Chapter 67 of the Texas Water Code, which holds Certificate of Convenience and Necessity (“CCN”) No. \_\_\_\_\_ and owns water wells, pumps, storage, transmission lines and distribution lines and other related water facilities in Collin County, including areas in and around the City, and provides retail water utility service to customers within its certificated service area;

**WHEREAS**, City does not currently own or operate any utility service although the City has initiated the application process for wastewater CCN and it is acknowledged and agreed that the future of the community will be favorably impacted if the City is the operator and regulator of water utility services (both potable water and wastewater service); and

**WHEREAS**, City has recently approved annexation and zoning of over eighteen hundred (1,800) acres of property intended for urban development;

**WHEREAS**, it is clear that the northward progression of development pressure is now impacting Weston necessitating a solution for the long-term provision of water utility services including a contractual relationship to access a source of surface water; and

**WHEREAS**, urban design standards including fire protection and utility service in the City and surrounding urban growth areas will now be required for all new development; and

**WHEREAS**, Corporation is organized and operated as a rural water supply corporation; and

**WHEREAS**, City has development agreements with private developers which will help upgrade utility services to urban standards and has the potential to secure an agreement for connection to a surface supply of water under an agreement with the Greater Texoma Utility Authority and an alliance of small communities including Melissa, Anna, Van Alstyne, and Howe through the North Texas Municipal Water District; and

**WHEREAS**, it is proposed that City and Corporation enter into an agreement for City to acquire the assets and liabilities of the Corporation, including the CCN, and ultimately become the provider of both potable water supply and wastewater collection / treatment; and

**WHEREAS**, it is in the best interest of the members / customers of the Corporation that the Agreement provide for certain protections and commitments by City relative its service to properties both in and out of the City Limits of the City of Weston; and

**WHEREAS**, Corporation agrees with the concept of City acquiring all Corporation assets and becoming the sole operator and provider of all water and wastewater utilities in the Weston Water Supply Corporation CCN area and Corporation desires to transfer said CCN and all other water system assets to City under the terms and conditions as delineated in this Agreement pursuant to the Texas Water Code and other applicable statutes and regulations, and subject to approval by the TCEQ and the USDA Rural Development Agency;

**WHEREAS**, in accordance with Texas Water Code §13.301 and other applicable statutes and regulations, Corporation desires to transfer or release the rights to all Corporation CCN areas to the City, and the City desires to acquire said CCN service areas as more precisely defined in this Agreement.

**NOW, THEREFORE**, for and in consideration of the foregoing mutual benefits, covenants, and agreements herein expressed and other good and valuable consideration, the receipt of which is hereby acknowledged, the City of Weston and the Weston Water Supply Corporation agree as follows:

## **Section I – TERMS OF AGREEMENT**

(1) Transfer Areas. The City and Corporation specifically agree that all the areas within Corporation’s certificated water service area will be transferred to the City under the terms of this Agreement. The water utility service area intended to be 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 Corporation. 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) Ability to Transfer/Acquisition Effective Date. Subject to the terms and conditions of this Agreement, the City may request and shall receive the Acquired Area after the

delivery of written notice to Corporation documenting that the conditions as provided for in Section I(6) have been fulfilled (the "Acquisition Effective Date").

(3) Transfer to the City. The City and Corporation agree that, after the Acquisition Effective Date, the City shall have the sole right to provide retail water service within the Acquired Area transferred to the City, and Corporation will cease to exist as a non-profit corporation, subject to completing all dissolution requirements of the TCEQ, the USDA, and other regulatory authorities and at the completion of the dissolution shall have no further obligation or right to provide water service to any existing or future customers in the Acquired Area transferred to the City.

(4) Current Customers in Transfer Area. Except as stated below, all current retail water customers of Corporation 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 Effective Date. Attached hereto and incorporated herein for all purposes as Exhibit "B" is a list of the current customers of the Corporation. City shall provide Corporation notice that the conditions for Acquiring the CCN have been completed a minimum of 45 days before the actual transition of assets and indebtedness occurs. Within 20 calendar days of the receipt of said notice, Corporation 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.

(5) Compensation to Corporation / Members. It is understood and agreed that Corporation shall be dissolved as an entity, and that all assets and indebtedness of Corporation shall become assets and indebtedness of City, thus there shall be no monetary compensation for the acquisition of the Corporation's assets by City. The Parties hereby agree that said transfer and assumption shall constitute sufficient consideration for the transactions contemplated by this Agreement. Consideration to individual members / customers of Corporation for said acquisition shall be in the form of services and commitments. Corporation members / customers shall continue to have the right to receive water service as customers of City and "Special Existing Customer Consideration" as defined hereinafter in Section II.

(6) Transfer and Amendment of the City's CCN. After the Effective Date of this Agreement, City and Corporation shall jointly pursue approval of the assumption of the Corporation's debt (including USDA and any other debt) from Corporation to City. The official "Acquisition Closing Date" shall be the later of (i) the date that the City receives approval of the USDA of the transfer of debt or otherwise retires the USDA debt, or (ii) the date of the connection of three hundred (300) new houses (residential water customers) in City approved subdivisions being completed and issued a certificate of occupancy or other certification of completion allowing the house to be occupied (connection of rural water meters shall not apply). Within 45 days after making application for the assumption of debt, the City will file a TCEQ Form 10516 ("STM Form") or other appropriate application with the Texas Commission on Environmental

Quality ("TCEQ") to formally transfer the Acquired Area from Corporation's CCN to the City's CCN. City will endeavor to obtain TCEQ approval in an expeditious manner and Corporation will cooperate with the City and the TCEQ 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 Corporation shall further jointly pursue transfer of any and all service accounts and operational contracts from Corporation to City during the first 30 days following the Acquisition Closing Date.

(7) Transfer of Property, Facilities, Waterlines, and Improvements on the Acquisition Closing Date. On the Acquisition Closing Date, the Corporation shall deliver to the City a Special Warranty Deed and other instruments of conveyance transferring to the City: all rights, title and interest in certain real property (approximately \_\_\_\_\_ acres), said real property and facilities thereon being further described in Exhibit "C" 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.

On the Acquisition Closing Date, Corporation shall also deliver to the City a Bill of Sale transferring to the City all rights, title and interest in all the facilities, 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 Corporation. Attached hereto and incorporated herein for all purposes as Exhibit "D" is a list that more particularly describes the facilities, waterlines, equipment and other fixtures and improvements to be transferred to the City. On the Acquisition Closing Date, Corporation shall also grant to the City, by assignment, any easements owned by Corporation to the extent they are located within the Acquired Area and which 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 on the Acquisition Closing Date.

(8) Transfer of Customers. The City and Corporation shall cooperate in providing any required notice to the member-customers located within the Acquired Area.

(9) Debt, Federal and Other. Corporation and City shall cooperate in securing transfer of the debt obligations to the USDA RWA Corporation Debt to City or release of said debt if refinanced by the City. Further, the Corporation shall notify the City and secure approval of any new debt that is pursued subsequent to the execution of this Agreement, which approval shall not be unreasonably withheld. It is specifically noted that the current Corporation Debt is subject to the provisions of 7 USC §1926(b). It is understood and agreed that the Corporation and the City shall work cooperatively to secure the approval of the USDA RWA of this Agreement and the subsequent transfer

of all Corporation assets and liabilities to City. It is not the intent of this provision to prevent the Corporation from securing debt from any established lender typically providing financing to rural water supply entities or small cities as may be necessary to assure the viability of the subject water system including its capacity to deliver water to system customers; however, the Corporation shall provide City notice and full information relative to the rationale and need for said debt a minimum of 30 days before such debt is issued, or in the case of an emergency as such is defined by statute said notice shall be provided within 24 hours of the determination of said need and a minimum of 48 hours before said debt is approved it being the intent of this provision to assure that City has an opportunity to question the issue of any proposed debt.

(10) Notice. 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 Corporation:

President  
Weston Water Supply Corporation

Weston, Texas

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) Miscellaneous. Within thirty days of the Effective Date of this Agreement, Corporation shall provide City with copies of the following:

- (i) Map depicting current location and size of water utility lines and associated Corporation-owned infrastructure;
- (ii) Profit and loss statements for prior two fiscal years; and
- (iii) Balance sheet for prior two fiscal years.

## **Section II – CONDITIONS / CRITERIA OF AGREEMENT**

(1) Transition Period. The following shall represent three distinct components of the Transition Period for the transfer of the assets of the Corporation to the City and are

intended to provide for the orderly transition of operations and to facilitate member-customer understanding and communications.

- A. Pre-Transition shall mean the period time from execution of this Agreement as authorized by an affirmative vote of the Corporation (WWSC) Membership, but prior to Acquisition Closing Date. During the Pre-Transition period, the Corporation shall continue to operate under the existing bylaws and tariffs. Further, during the Pre-Transition period, the City shall be entitled to approve (such approval not to be unreasonably withheld) any new debt as provided for in Section I(1)-(9) above (debt being defined as a fiscal obligation extending beyond a twelve (12) month period of time, to be considered by Corporation, before such debt is incurred by Corporation. The intent of this provision is to make the City aware of and concur with the issuance of said debt before any debt beyond that which exists at the time of execution of this Agreement is incurred for which the City would assume liability at the time of acquisition provided for below.
- B. Transition Period shall mean the two (2) year period of time following the Acquisition Closing Date. Upon transfer of ownership of the assets on the Acquisition Closing Date, City shall secure and be responsible for all assets and liabilities of Corporation. During the Transition Period, City shall appoint and maintain a water utility advisory board or committee, which shall consist of not less than six (6) members, no more than three (3) of which shall be residents of the City.
- C. Post-Transition Period shall mean the period of time following completion of the two-year Transition Period as defined above in (1-B). At this point in time, the City shall be under no obligation to continue or maintain any form of water utility advisory board or committee.

(2) Current Member Rate Consideration. City hereby grants to all existing member-customers (existing at the time of execution of this Agreement) as consideration for the equity contributions of said member-customers assurance that any increase in rates for water service (including monthly minimums and usage charges) shall not exceed three percent (3%) for any increase on an annual basis so long as there is a corresponding increase of three percent (3%) or more for all other city water customers. Existing member-customers are defined as existing members of the WWSC who own property within the WWSC service area. The intent of this provision is to recognize that these existing member-customers of the WWSC have been responsible for establishing the system and have contributed to the equity of such system. In addition, the rate differential provided for herein is hereby acknowledged to provide an appropriate and rational consideration to the current member-customers for any equity they may have or be perceived to have in the WWSC. It is expressly provided that the limitation on rate adjustments benefit rests solely with the member-customer, is non-assignable, non-transferable, and shall terminate upon the sale of any member-customers' property , 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 member-customers have made a \$100 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 the current member-customer selling, moving, or otherwise terminating water service, said member-customer shall be entitled to a refund of the deposit if the member-customer produces a receipt for said deposit or the system records duly indicate that said deposit was made, subject to said member-customer's account being current. Any outstanding charges may be deducted from said deposit refund.

(3) Minimization of Impact on Current Member-Customers. It is agreed that all reasonable efforts will be made to minimize any service interruption or other negative impact on the quality or dependability of water service to the current member-customers. In addition, all existing WWSC members shall be assured the right to continued water service such as existed on the Acquisition Effective Date. Member-customers shall continue to have the right to a utility meter with the City being responsible for maintenance and replacement of that meter and the distribution lines serving said meter. Service lines from the meter to a structure (home, barn, out-building, or business) shall be the responsibility of the property owner as is currently the case.

(4) Legal and Engineering Fees Responsibility of City. The City shall be responsible for any legal fees each incurred in the drafting or negotiation of this Agreement. 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.

(5) Separation of Potable Water and Wastewater Charges. It is agreed by City that potable water rates and charges shall be distinct and separated from wastewater rates and charges at such time as City may operate and / or bill member-customers for wastewater services; provided, however, that this continued obligation shall be tied to the same limitations set forth in Section II(2) hereof.

(6) Additional Encroachments or Easements on Current Member-Customers. It is not the intent to require any additional easements for the continuity of water service to existing rural (not in city limits) member-customers, except however, that road widening or abandonment or improvement of cross-county lines may force existing water mains and lines to be relocated. The City hereby commits to minimize the impact on any existing customers and will agree to secure the minimum cross country easements necessary (20 feet wide) from existing member-customers, and to locate such easements adjacent to public right of ways whenever practical.

(7) No Mandate for Existing Customers to Connect to Sewer System. City shall not require existing rural (not in city limits) member-customers to connect to the City sanitary sewer lines or require City wastewater service where such rural member-customer has an existing septic system operating in compliance with all regulations, health, and capacity standards for the property being served; provided, however, that this covenant shall be tied to the same limitations set forth in Section II(2) hereof.

(8) Existing Corporation Employees. Upon the Acquisition Closing Date, City agrees to exercise good faith in retaining the existing employees of WWSC at not less than the then current wage rates of WWSC to operate and maintain the acquired water system and provide service continuity, conditioned on such employees providing the expected standard of performance.

### **Section III - MISCELLANEOUS**

(1) Applicable Law. This Agreement shall be governed by and construed and enforced under the laws of the State of Texas.

(2) Performance. 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 TCEQ (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.

(3) Entire Agreement. This Agreement contains the entire agreement of the City and WWSC with respect to the subject matter of the Agreement. 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 Agreement shall be valid, binding, or of any force or effect. Any amendments to this Agreement must be in writing.

(4) Successors and Assigns. This Agreement shall be binding upon the Parties hereto and their respective successors, heirs, representatives, and assigns.

(5) Agreement Drafted Equally. 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.

(6) Severability. 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.

(7) Attorney Fees. 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.

(8) Covenant of Authority. The respective signatories to this Agreement covenant that they are fully authorized to sign this Agreement on behalf of their respective Party.

(9) Filing of Agreement. After execution of the Agreement by the Parties, a copy of this Agreement shall be filed with the TCEQ pursuant to Section 13.248 of the Texas Water Code.

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

(11) No Waiver. 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.

**IN WITNESS HEREOF, EXECUTED** by Corporation and City under the authority of their respective governing bodies in Duplicate Originals on the dates indicated below.

**CITY OF WESTON, TEXAS**

**WESTON WATER SUPPLY CORPORATION**

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

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

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

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

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

ATTEST:

ATTEST:

\_\_\_\_\_  
City of Weston, City Secretary

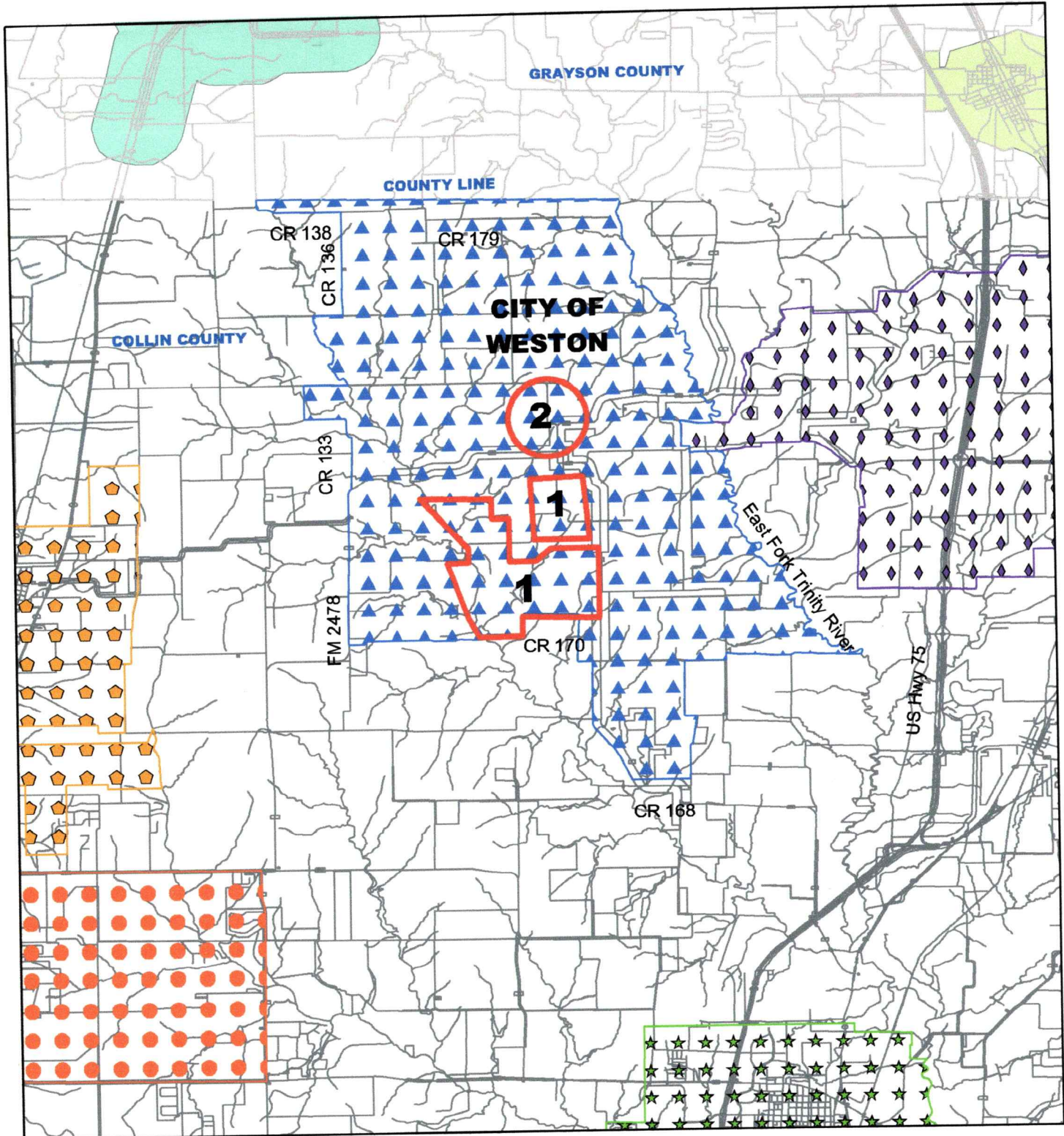
\_\_\_\_\_  
Weston Water Supply Corporation,  
Secretary

Exhibit A – Map of Certificate of Convenience and Necessity

Exhibit B – List of Current Customer (at time of agreement execution)








Exhibit C – List of Real Property and Facilities

Exhibit D – List / Inventory of Assets  
(At time of agreement execution, to be updated 30 days  
before Acquisition Closing Date)



0 5,000 10,000 20,000 Feet

1 inch equals 10,000 feet

-  Anna Sewer
-  Weston Sewer CCN
-  Celina Sewer
-  Prosper Sewer
-  McKinney Sewer
-  Gunter Sewer
-  Van Alstyne Sewer

Sewer CCN Application-City of Weston  
 P O Box 248 / 301 Main Street  
 Weston TX 75097

Map created by GTUA  
 Revised August 2004

Area 1 - Master Planned Community  
 Area 2 - Estate Subdivision