

RESOLUTION NO. 2113

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KELLER,
TEXAS, APPROVING AN INTERLOCAL AGREEMENT WITH THE CITY OF
SOUTHLAKE, TEXAS, GOVERNING THE FUNDING, CONSTRUCTION,
AND MAINTENANCE OF WATER TRANSMISSION LINES; AND
AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT ON
BEHALF OF THE CITY OF KELLER, TEXAS.

WHEREAS, in 1984, the City of Keller, Texas, and the City of Southlake, Texas, entered into an interlocal agreement, governing the financing, construction, and maintenance of shared existing water supply facilities that included the Keller-Southlake Pump Station at Alta Vista, and the 36-inch and 30-inch water supply lines, servicing Keller and Southlake's ground storage facilities near Pearson Lane; and

WHEREAS, the 1984 interlocal agreement included a provision for the City of Southlake to sell the City of Keller treated water, obtained from the City of Fort Worth, through these shared facilities; and

WHEREAS, the City of Keller and the City of Southlake own and operate their own water distribution systems, and each city has a contract with the City of Fort Worth to purchase wholesale, treated water; and

WHEREAS, the City of Keller and the City of Southlake have determined that it is in the best interest of the citizens of their respective cities to adopt a new interlocal agreement, for the construction of new water supply facilities; to meet current and future demand; to provide for the operation and maintenance of existing and new water supply facilities; and to incorporate changes, as a result of amendments to each cities' contracts with the City of Fort Worth, including an amendment, whereby, the City of Keller will

buy all of its water from the City of Fort Worth; and

WHEREAS, the City of Keller and the City of Southlake have determined that it is in the best interest of the citizens of their respective cities to fund and construct new water facilities, including a portion of the 48-inch waterline that the City of Fort Worth intends to construct, from the Harmon Road Tank in the City of Fort Worth to the Westport Parkway site; and

WHEREAS, the City of Southlake intends to construct and maintain a 42-inch waterline from the Caylor Water Tank in the City of Fort Worth to Pearson Lane, and a 30-inch waterline from the Pearson Lane and Florence Road intersection to the Keller Pearson Lane Pump Station and the Southlake Pearson Lane Pump Station, the cost of which, under the terms of the new interlocal agreement, shall be funded in part by the City of Keller, and shall be jointly used for the transmission of water to both the City of Keller and the City of Southlake; and

WHEREAS, the City of Keller's estimated cost share in the 42-inch and 30-inch water supply lines to be constructed by the City of Southlake, is estimated to be \$1,963,500.00, and its estimated cost share in the 48-inch Fort Worth water supply line is \$450,000.00, resulting in a total estimated project cost of \$2,413,500.00, that includes engineering design and related cost, and is to be paid to the City of Southlake within thirty (30) days of the publication of the Notice to Bidders; and

WHEREAS, the City of Keller's final actual cost shall be determined, based on Keller's proportionate share, as stated, and the 48-inch Fort Worth water supply line, when construction is complete with the City of Keller receiving a credit or debit, based on the difference between the estimated

amounts paid, compared to the actual construction cost to complete the said improvements; and

WHEREAS, Sections 402.001 and 402.075 of the Texas Local Government Code, and Chapter 791 of the Texas Government Code, authorizes the City of Keller, Texas, and the City of Southlake, Texas, to enter into this interlocal agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF KELLER, TEXAS:

Section 1: THAT, the above findings are hereby found to be true and correct and are incorporated herein in their entirety.

Section 2: THAT, the City Council of the City of Keller, Texas hereby approves the Interlocal Agreement with the City of Southlake, Texas, governing the funding, construction, and maintenance of water transmission lines, to serve both the City of Keller, Texas, and the City of Southlake, Texas; and further authorizes the City Manager to execute said agreement on behalf of the City of Keller, Texas.

Section 3: THAT, the City of Keller's estimated cost share in the 42-inch and 30-inch water supply lines to be constructed by the City of Southlake, is estimated to be \$1,963,500.00, and its estimated cost share in the 48-inch Fort Worth water supply line is \$450,000.00, for a total estimated project cost of \$2,413,500.00, that includes engineering design and related cost, and is to be paid to the City of Southlake within thirty (30) days of the publication of the Notice to Bidders.

Section 4: THAT, the funding for project cost for the City of Keller, Texas, shall be provided from 2004 Certificates of Obligation.

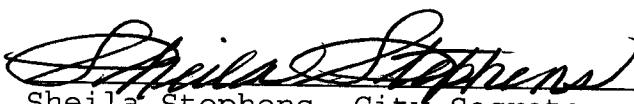
1 AND IT IS SO RESOLVED.

2 Passed by a vote of 5 to 0 on this the 20th day of
3 January, 2004.

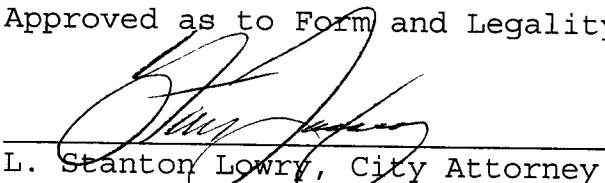
4 CITY OF KELLER, TEXAS

5
6 BY: 
7 Julie A. Tandy, Mayor
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9 ATTEST:

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11 Sheila Stephens, City Secretary

12 Approved as to Form and Legality:

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14 L. Stanton Lowry, City Attorney
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CITY SECRETARY
CONTRACT NO.
OK-15

**AGREEMENT FOR FUNDING, CONSTRUCTION AND MAINTENANCE
OF WATER TRANSMISSION LINES**

BETWEEN

THE CITY OF SOUTHLAKE, TEXAS

AND

THE CITY OF KELLER, TEXAS

Dated as of January 20, 2004.

**INTERLOCAL AGREEMENT FOR
FUNDING, CONSTRUCTION AND MAINTENANCE
OF WATER TRANSMISSION LINES**

STATE OF TEXAS **§**
 §
COUNTY OF TARRANT **§**

This Interlocal Agreement for the Funding, Construction and Maintenance of Water Transmission Lines (this "Agreement") is entered into as of the 20th day of January, 2004, between the City of Southlake, Texas ("Southlake") and the City of Keller, Texas ("Keller").

RECITALS

1. On May 14, 1984, Southlake and Keller entered into a contract for the financing, construction, and maintenance of a water transmission line from the City of Fort Worth to the Pearson Pump Station and for the sale of treated water to Keller (the "1984 Contract"); and

2. Both Keller and Southlake own, operate and maintain a water distribution system, and each furnishes water service to the customers within its respective boundaries, and

3. Southlake and Keller each have a contract with the City of Fort Worth, Texas to purchase wholesale treated water; and

4. Southlake and Keller desire to adopt a new contract to provide for the construction of new water supply facilities to meet demand, to provide for the operation and maintenance of existing and new water supply facilities, and to incorporate changes as a result of amendment to the Cities' contracts with the City of Fort Worth, including an amendment whereby Keller shall purchase water directly from Fort Worth; and

5. Southlake and Keller have determined it to be in the best interest of their citizens in their respective cities to fund and construct new water supply facilities, including a portion of the 48 inch water line Fort Worth intends to construct from the Harmon Road tank in Fort Worth to the Westport Parkway site; and

6. Southlake intends to construct and maintain a 42" water line from the Caylor Water Tank in the City of Fort Worth to Pearson Lane, and a 30" water line from Pearson Lane and Florence Road intersection to the Keller Pearson Lane Pump Station and the Southlake Pearson Lane Pump Station, the costs of which, under the terms of this Agreement, shall be funded in part by Keller and shall be jointly used for the transmission of water to both Southlake and Keller; and

7. Sections 402.001 and 402.075 of the Texas Local Government Code, and Chapter 791 of the Texas Government Code authorize Southlake and Keller to enter into this Agreement;

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, Southlake and Keller agree as follows:

1. PURPOSE.

1.1 The purpose of this Agreement is to provide for the joint ownership, construction, operation and maintenance of water supply facilities.

2. DEFINITIONS.

2.1 **Capital Improvements** means any of the following facilities which provide utility services and benefits common to all customers and that have a life expectancy of three or more years, whether such capital improvements are located within the jurisdictional limits of Southlake or Keller: water treatment facilities, metering facilities, control systems and appurtenances, storage facilities, pumping facilities and all water transmission mains sixteen inches (16") and greater in diameter.

2.2 **Construction Costs** means the costs of design, legal, consulting and engineering fees, permitting, land and easement acquisition and construction costs for any General Benefit Facility or Facility Expansion, including water treatment facilities, metering facilities, control systems, and appurtenances, pumping facilities and water transmission mains, and the cost of capital.

2.3 **Cost of Capital** means all costs and expenses, debt service, principal, interest and other common debt service costs, included like fees, closing costs, engineering fees, bond costs and legal expenses, and lender or bank fees associated with each such financing.

2.4 **Director** is the Director of Public Works for the City of Southlake or his or her designated representative.

2.5 **Existing General Benefit Facilities** are the 36 inch and 30 inch water pipelines constructed pursuant to the 1984 Contract which have a total capacity of 20 MGD.

2.6 **Facility Expansion** is the expansion of the capacity of an existing facility that serves the same function as an otherwise necessary new capital improvement, in order that the existing facility may serve new development. The term does not include the repair, maintenance, modernization, or an expansion of an existing facility to better serve existing development.

2.7 **Fiscal Year** is the fiscal year of Southlake from October 1 through September 30.

2.8 **Fort Worth General Benefit Facilities** are general benefit facilities constructed by Fort Worth under the Fort Worth Contract.

2.9 **General Benefit Facilities** are water facilities shared by Southlake and Keller (other than Fort Worth General Benefit Facilities) which provide utility

services and benefits common to customers of both cities which include water treatment facilities, metering facilities, control systems and appurtenances, storage facilities, pumping facilities and all water transmission mains that are sixteen inches (16") and greater in diameter.

2.10 **Keller System** is the Keller water treatment and distribution system.

2.11 **MGD** is million gallons per day.

2.12 **Operation and Maintenance Costs** are the costs incurred to operate and maintain the Existing General Benefit Facilities, the Caylor/Pearson Line and the Pearson Pump Station Line, and related Capital Improvements including, but not limited to, direct expenses, personnel and personnel related expenditures, utilities, and all other costs required to operate and maintain the foregoing facilities.

2.13 **Southlake System** is the Southlake water treatment and distribution system.

2.14 **System Cost** is the operating expense and capital related cost incurred by Southlake pursuant to the provision of water treatment and transmission to Keller's and Southlake's water customers.

3. CONSTRUCTION OF GENERAL BENEFIT FACILITIES.

3.1 Facilities to be Constructed. Keller agrees to pay Southlake the Construction Costs for the following General Benefit Facilities as detailed below:

A. 42-inch pipeline from the Caylor Water Tank on Caylor Lane to the intersection of Florence and Pearson Lane (the "Caylor/Pearson Line"), as depicted on Exhibit "A" attached hereto. The pipeline is designed for a capacity of 29 MGD, with Southlake to bear 75% of the cost of the line and Keller to bear 25%.

B. 30-inch pipeline from the intersection of Pearson Lane and Florence Lane to the Pearson Lane Pump Station (the "Pearson Pump Station Line"), as depicted on Exhibit "A" attached hereto. The pipeline is designed for a capacity of 16.5 MGD, with Southlake to bear 58% of the cost of the line and Keller to bear 42%; and

C. 48-inch pipeline from the Harmon Road Elevated Tank to Westport Parkway (the "Northside 2-11 Line"), as depicted on Exhibit "B" attached hereto. The pipeline, to be constructed by Fort Worth, is designed for a capacity of 90 MGD. Southlake's and Keller's collective share of the capacity in said line is 29 MGD, with Southlake's share being 22 MGD, or 75% and Keller's share being seven (7) MGD, or 25%, as billed by Fort Worth.

3.2 Construction Costs.

A. The estimated cost to construct the Caylor/Pearson Line (3.1.A) and the Pearson Pump Station Line (3.1.B) is \$7,225,000.

B. The estimated cost of Southlake's and Keller's collective share to construct the Northside 2-11 Line (3.1.C.) is estimated to be \$1,800,000.

C. Keller shall pay Southlake for its estimated proportionate share of the Construction Costs of the Caylor/Pearson Line, the Pearson Pump Station Line, and the Northside 2-11 Line (as outlined in Section 3 above) within 30 days of the date of publication of the Notice to Bidders for the construction contracts for the Caylor/Pearson Line and the Pearson Pump Station Line. Southlake agrees to give Keller notice 90 days before the date of publication of the Notice to Bidders for the construction contract. Prior to any and all notices and payments referred to in this Section, Keller and Southlake shall review all project construction cost estimates to ensure general compliance with the estimated costs in Subsections 3.1. A. and 3.1. B. above.

D. Upon completion of the construction of lines 3.1.A, 3.1.B. and 3.1.C., Keller's costs shall be recalculated using the actual costs Southlake incurred for construction of the Caylor/Pearson Line (3.1.A.) and the Pearson Pump Station Line (3.1.B.), and the actual costs billed by Fort Worth for the Northside 2-11 Line (3.1.C.), with Keller's obligation limited to all prorated actual cost up to the Keller Pearson Lane Pump Station with Keller's participation in the review of all construction costs and change orders after the award of the original contract.

E. Management Fee – Keller shall pay Southlake a construction management fee of one percent of the Construction Cost of these facilities. The fee shall be adjusted upon the completion of construction to reflect actual construction costs, and shall be payable upon execution of the construction contract for the new General Benefit Facilities.

F. Should Southlake ever terminate this Agreement or refuse to enter into a Contract in the future for the transmission of water through the General Benefit Facilities (Lines), Southlake shall pay Keller for the depreciated value of the pipelines. It is agreed that the General Benefit Facilities lines will be fully depreciated after 30 years.

4. OPERATION AND MAINTENANCE COSTS OF GENERAL BENEFIT FACILITIES.

4.1 Southlake and Keller agree to share the Operation and Maintenance costs of the General Benefit Facilities as follows: Southlake shall pay 75 percent of the operation and maintenance costs of the Caylor/Pearson Line (3.1.A.), and the Pearson Pump Station Line (3.1.B.) and 50 percent of the operation and maintenance costs of the Existing General Benefit Facilities. Keller agrees to pay 25 percent of the operation and maintenance costs of the Caylor/Pearson Line (3.1.A.) and the Pearson Pump Station Line (3.1.B.), and 50 percent of the Operation and Maintenance costs of the Existing General Benefit Facilities. Based upon the foregoing, Keller agrees to pay Southlake for 17/49ths of the costs of annual operation and maintenance of the foregoing General Benefit Facilities. The 17/49ths is based upon a maximum capacity of 49 MGD with 10 MGD capacity allocated to Keller for existing General Benefit Facilities and 7 MGD capacity allocated to Keller on the Caylor/Pearson

Line and the Pearson Pump Station Line. System water losses shall be borne by the parties according to their respective reserved capacities. System water losses shall be determined by calculating the difference between the amount of water measured from the meter readings at the Beach Street and Caylor Lane meters and the amount of water measured from the meter readings at the Keller Pearson Lane and the Southlake Pearson meters.

4.2 Southlake shall bill Keller monthly an estimated amount as set forth in Section 4.1 for the costs for operation and maintenance of the Existing General Benefit Facilities and the Caylor/Pearson Line and the Pearson Pump Station Line. Each October, Southlake shall calculate the annual System Costs of the General Benefit Facilities and use these costs to calculate Keller's proportionate share of the costs. Southlake shall bill Keller for the difference in the actual costs and the amount Keller has paid for its share of Operating and Maintenance Costs for the previous 12 months. If the actual cost of Keller's proportionate share is less than the amount that Keller has paid over the previous 12 months, Keller shall be entitled to a credit on its next monthly payment. The monthly charges for Operation and Maintenance Costs for the General Benefit Facilities for the next 12 months shall be determined by the annual costs divided by 12. The October bill for September usage shall reflect any necessary annual adjustments due to actual costs.

4.3 Keller shall pay for its obligations hereunder as follows: All such bills shall be due and payable by Keller within 20 calendar days from the billing date; provide however, in the event that Keller submits to Southlake within 20 calendar days a legitimate written dispute of the amount billed detailing the reason for the dispute, the bill shall not be considered late until 45 days from the billing date. The undisputed portion of the bill shall be due within 20 calendar days from the billing date. The bills will show current charges, as well as past-due charges, if any. Past-due charges shall be the total amount unpaid from all prior billings as of the current billing date. A late fee of five percent of the total billing shall be added to payments made after the due date. Payments received by Southlake shall first be applied to the past-due charges, if any, and thereafter to the current charges.

4.4 The parties hereto agree that services obtained pursuant to this Agreement are essential and necessary to the operation of Keller's and Southlake's waterworks facilities and that all payments made by Keller and Southlake hereunder shall constitute reasonable and necessary operating expenses of Keller's and Southlake's waterworks and wastewater systems within the meaning of Chapter 1502, Texas Government Code, and the provisions of any and all ordinances of Keller and Southlake authorizing the issuance of any long term debt of Keller and Southlake which are payable from its waterworks and wastewater systems.

4.5 Keller agrees, throughout the term of this Agreement, to fix utility rates and collect such fees and charges for water service to be supplied to its customers as will produce revenues in an amount equal to at least: (i) all of operation and maintenance expenses of its water system, including specifically its payments under this Agreement; and (ii) all other amounts as required by law and the provisions of the ordinances or resolutions authorizing its long term debt or other obligations now

or hereafter outstanding, including the amounts required to pay all principal of and interest on such bonds and other obligations.

4.6 Keller understands that Southlake may annually revise the utility rates, fees and charges charged to cover all reasonable, actual, and expected operation and maintenance costs. Any allocable operation and maintenance cost adjustment rate increase shall be based upon a rate study performed or obtained by Southlake during October 1 and December 30 of the preceding year, with adjustments due as of January 1 of the following year.

4.7 If Keller disputes a bill and is unable to resolve the difference informally, Keller shall notify the Director in writing. If the Director and Keller are unable to resolve the disputed bill, agreement on the bill will be determined by third party mediation, as hereinafter provided. Dispute of a bill shall not be grounds for non-payment. In the event a payment is not paid as specified in this Agreement, the late fee provided in Section 4.6 shall be imposed. In the event that a billing adjustment is agreed upon or established by mediation the amount found to be incorrect will be adjusted in accordance therewith to Keller's account.

4.8 The parties agree that one-half of the balance of funds, if any, in the joint maintenance account established pursuant to the 1984 Contract shall be credited towards Keller's obligations under this Section.

5. EFFECTIVE DATE AND TERM.

5.1 The effective date of this Agreement is the date the Agreement is entered into as set forth in the introductory paragraph.

6. METERING AND BILLING SERVICES

6.1 Keller and Southlake are constructing meter stations at their respective metering points that meet the operational specifications of the City of Ft. Worth that will accomplish metering for wholesale water consumptions. These metering stations shall be turned over to the City of Ft. Worth for ownership, maintenance, and operation. The City of Ft. Worth shall read the meters monthly and submit a water bill to the City of Keller and Southlake representing their respective water consumptions. Both cities agree that payment terms for water loss will be similar for both cities and shall be included in the revised water purchase agreement with the City of Ft. Worth.

7. RIGHTS-OF-WAY.

7.1 Each party shall grant, without charge to the other party, such easements and rights-of-way along public highways or other property owned by such party, as requested by the other party, in order to construct or maintain water transmission mains or facilities within the service area of either party to provide water to Keller and to Southlake. Keller agrees to assist Southlake in acquiring any additional easements or rights-of-way necessary for the construction or maintenance of these facilities, including exercising Keller's power of eminent domain, if necessary. Southlake agrees to assist Keller in acquiring any additional easements or rights-of-way

necessary for the construction or maintenance of these facilities, including exercising Southlake's power of eminent domain, if necessary.

7.2 All work done by or on behalf of Southlake under this Section will be performed in accordance with specifications equal to those applying to work of a similar nature performed within Southlake, but neither party hereto will be required to restore the other's property to a condition equal to its original condition, unless otherwise mutually agreed in writing.

7.3 Southlake and Keller agree to coordinate the location of the mains and/or facilities in the other's easements and rights-of-way in order to prevent further conflicts insofar as it is reasonably practicable.

8. TERMINATION

8.1 This Agreement may be terminated in whole or in part by the mutual consent of Keller and Southlake. Notwithstanding anything contained herein to the contrary, any breach by either party hereto to perform any of the duties or the obligations assumed by such party hereunder or to faithfully keep and perform any of the terms, conditions and provisions hereof shall be cause for termination of this Agreement by either party in the manner set forth in this Section. Either party desiring to terminate this agreement shall deliver to the other party 90 days prior written notice, except that in the event of nonpayment, Southlake shall be required to give 30 days prior notice, or the number of days notice which Southlake is required to give pursuant to its contract with Fort Worth of its intention to so terminate this Agreement if Keller fails to cure or adjust such breach, including in such notice a reasonable description of the breach. If, within said notice period, Keller shall fail or refuse to cure such material breach to the satisfaction of Southlake, then and in such event, Southlake shall have the right without any liability whatsoever on the part of Southlake, to declare this Agreement terminated. In the event of termination of this Agreement, all rights, powers, and privileges of Keller hereunder shall cease and terminate and Keller shall make no claim of any kind whatsoever against Southlake, its agents or representatives, by reason of such termination or any action incident thereto. Southlake shall advise Keller in writing immediately upon acceptance of the cure of any breach.

8.2 Upon termination of this Agreement, Keller shall pay to Southlake all amounts owed or accrued for the operation and maintenance of the General Benefit Facilities through the date of termination.

9. LIABILITY FOR DAMAGES.

9.1 Liabilities for damages arising from the treatment, transportation and delivery of water provided hereunder shall be borne by and remain with each city according to its proportionate share of the costs as provided in Section 4.1. In the event of a claim for capacity in the Existing General Benefit Facilities, Keller and Southlake shall share equally in the responsibility for defending the claim, and for the costs of any settlement or judgment resulting from the claim.

9.2 Each party hereto agrees to save and hold the other party harmless from all claims, demands, and causes of action that may be asserted by anyone on account of the quality, transportation and delivery while water is in the control of such party. This covenant is not made for the benefit of any third party.

9.3 Contracts made and entered into by either Keller or Southlake for the construction, reconstruction or repair of any Delivery Facility shall include the requirement that the independent contractor(s) must provide adequate insurance protecting both Keller and Southlake as co-insureds. Such contract must also provide that the independent contractor(s) agree to indemnify, hold harmless and defend both Keller and Southlake against any and all suits or claims for damages of any nature arising out of the performance of such contract.

10. FORCE MAJEURE.

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

10.2 The term "force majeure", as employed herein, shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of public enemy, orders of any kind of the government of the United States or the State of Texas, or any civil or military authority, insurrection, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, arrests, restraints of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, partial or entire failure of water supply, and inability on the part of Southlake to deliver water hereunder or Keller to receive water hereunder on account of any other cause not reasonably in the control of the party claiming such inability.

11. NOTICE.

11.1 All notices, requests and communications under this Agreement shall be given in writing, addressed to Southlake or Keller at their respective addresses set forth below and either (i) hand delivered, (ii) sent by telecopy or a nationally recognized overnight courier service, or (iii) mailed by registered or certified mail, return receipt requested, postage prepaid:

To Keller: City of Keller, Texas
P.O. Box 770
Keller, TX 76244
Attn: City Manager

To Southlake: City of Southlake
1400 Main Street, Suite 460
Southlake, TX 76092
Attn: City Manager

Any notice under or pursuant to this Agreement and given in accordance with this Section shall be deemed received upon the earlier of: (1) actual receipt, (2) if mailed, three (3) days after deposit in an official depository of the United States Postal Service, and (4) if sent by a nationally recognized overnight courier service, the day following the mailing. Any party may change its address for notice purposes by sending the other party a notice of the new address.

12. MEDIATION.

12.1 Whenever any disputed matter is specifically authorized by this Agreement to be determined by the use of a mediator, the following procedure is to be followed. The party requesting that the dispute be settled by mediation shall serve on the other party a request in writing that such matter be submitted to mediation. Keller and Southlake shall mutually agree in writing on the selection of any mediator. Such agreement shall be made within 10 days from the date that the request for mediation is received. If an agreement is not reached on the selection of the impartial mediator on or before the 10th day after the date that notice is received, the Director shall immediately request a list of seven qualified neutral mediators from the Federal Mediation and Conciliation Service, or either's successor in function. Keller and the Director may mutually agree on one of the seven mediators on the list to mediate the dispute. If they do not agree within five working days after the receipt of the list, Keller and the Director shall alternate striking a name from the list and the name remaining shall be the mediator. Keller and the Director shall mutually agree on a date for the mediation hearing. The decision of the mediator shall not be final, but shall be a condition precedent to filing suit. All costs of mediation shall be considered an Operation and Maintenance Cost. Mediation shall take place in Tarrant County, Texas.

13. INSPECTION AND AUDIT.

13.1 Each party hereto shall keep complete records and accounts pertaining to this Agreement in accordance with State Law or for a minimum period of five years. Each party shall at all times, upon notice, have the right at reasonable times to examine and inspect said records and accounts during normal business hours; and further, if required by any law, rule or regulation, make said records and accounts available to federal and/or state auditors.

14. MISCELLANEOUS.

14.1 This Agreement is subject to all applicable federal and state laws and any applicable permits, amendments, orders, or regulations of any 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, order, rule or regulation in any forum having jurisdiction.

14.2 Keller agrees to abide by any changes in this Agreement made necessary by any new, amended, or revised state or federal regulation.

14.3 Upon prior notice by either party, any authorized employee or representative of such party bearing identification shall notify the other party of need for

access to any premises located within the other party's service area or served by the other party as may be necessary for the purpose of inspections and observation, measurements, sampling and testing and/or auditing, in accordance with the provisions of this Agreement. The other party may elect to accompany the requesting party's representative. To the extent permitted by law, the requesting party agrees to indemnify the other party for any damage or injury to person or property caused by the negligence of such duly authorized employee while such employee is in the course and scope of his employment.

14.4 In addition to any other remedy as may be provided by law, this agreement shall be specifically enforceable by the parties hereto. Venue for any action shall be in Tarrant County, Texas.

14.5 It is agreed that, in the event any term or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of such term or provision shall in no way affect any other term or provision contained herein; further, this Agreement shall then continue as if such invalid term or provision had not been contained herein.

14.6 Keller may not assign this Agreement without the prior written consent of Southlake. Southlake may not assign this Agreement without the prior written consent of Keller.

15. INDEMNIFICATION.

15.1 To the extent permitted by law, Keller agrees to indemnify and save and hold Southlake harmless from all claims, liabilities, demands, attorneys' fees and causes of action arising from any negligent act or omission of Keller. This covenant is not made for the benefit and shall not inure to the benefit of any third party.

15.2 To the extent permitted by law, Southlake agrees to indemnify and save and hold Keller harmless from all claims, liabilities, demands, attorneys' fees and causes of action arising from any negligent act or omission of Southlake. This covenant is not made for the benefit and shall not inure to the benefit of any third party.

16. AMENDMENT.

16.1 Any agreement hereafter made between Southlake and Keller shall be ineffective to modify, release, or otherwise affect this Agreement, in whole or in part, unless such agreement is in writing and signed by both parties.

17. WAIVER.

17.1 The failure of either party to this Agreement to complain of any action, non-action, or default of the other party shall not constitute a waiver of any of such party's rights under this Agreement.

17.2 Waiver by either party to this Agreement of any right for any default of the other party shall not constitute a waiver of any right for either party for a prior or

subsequent default of the same obligation or for any prior or subsequent default of any other obligation.

17.3 No right or remedy of either party under this Agreement or covenant, duty, or obligation of either party under this Agreement shall be deemed waived by the other party to this Agreement unless such waiver is in writing and signed by the waiving party.

18. PARTIES AND SUCCESSORS.

18.1 Subject to the limitations and conditions set forth elsewhere herein, this Agreement shall bind and inure to the benefit of the respective heirs, legal representatives, successors, and assigns of the parties hereto.

19. CAPTIONS.

19.1 The captions in this Agreement are inserted only as a matter of convenience and for reference and they in no way define, limit, or describe the scope of this Agreement or the intent of any provision hereof.

20. NUMBER AND GENDER.

20.1 All genders used in this Agreement shall include the other genders, the singular shall include the plural, and the plural shall include the singular, whenever and as often as may be appropriate.

21. ENTIRE AGREEMENT.

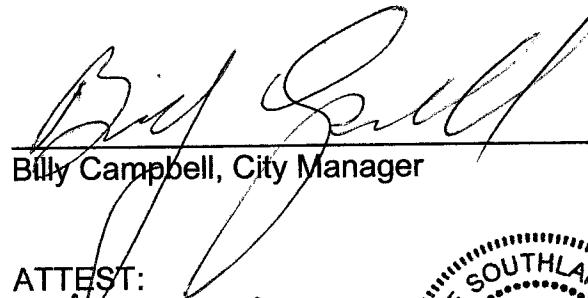
21.1 This Agreement, including all exhibits which may be attached hereto (which exhibits are hereby incorporated herein and shall constitute a portion hereof) contains the entire agreement between Keller and Southlake with respect to the subject matter hereof. Further, the terms and provisions of this Agreement shall not be construed against or in favor of a party hereto merely because such party or its counsel is the drafter of this Agreement.

22. ATTORNEY'S FEES.

22.1 In the event Southlake or Keller defaults in the performance of any of the terms, agreements or conditions contained in this Agreement and the enforcement of this Agreement, or any part thereof, is placed in the hands of any attorney who files suit upon the same, the non-prevailing party shall pay the reasonable attorneys fees, expenses and costs of the prevailing party.

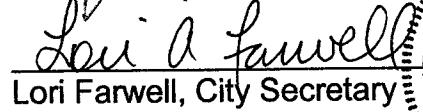
EXECUTED as of the date hereinabove first set forth.

CITY OF SOUTHLAKE, TEXAS



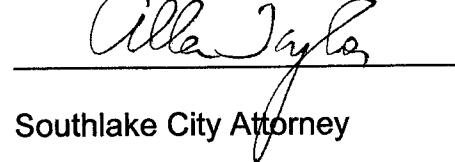
Billy Campbell, City Manager

ATTEST:



Lori Farwell, City Secretary

Approved as to Form



Alla Taylor

Southlake City Attorney

CITY OF KELLER, TEXAS



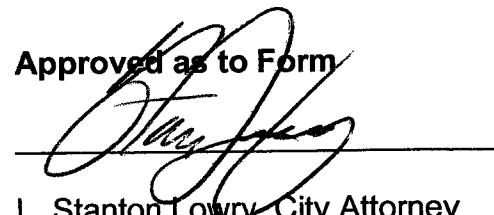
Lyle H. Dresher, City Manager

ATTEST:



Sheila Stephens, City Secretary

Approved as to Form



L. Stanton Lowry

L. Stanton Lowry, City Attorney

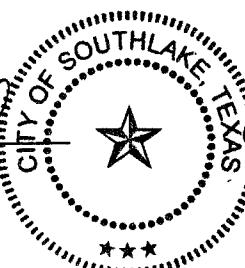


EXHIBIT "A"

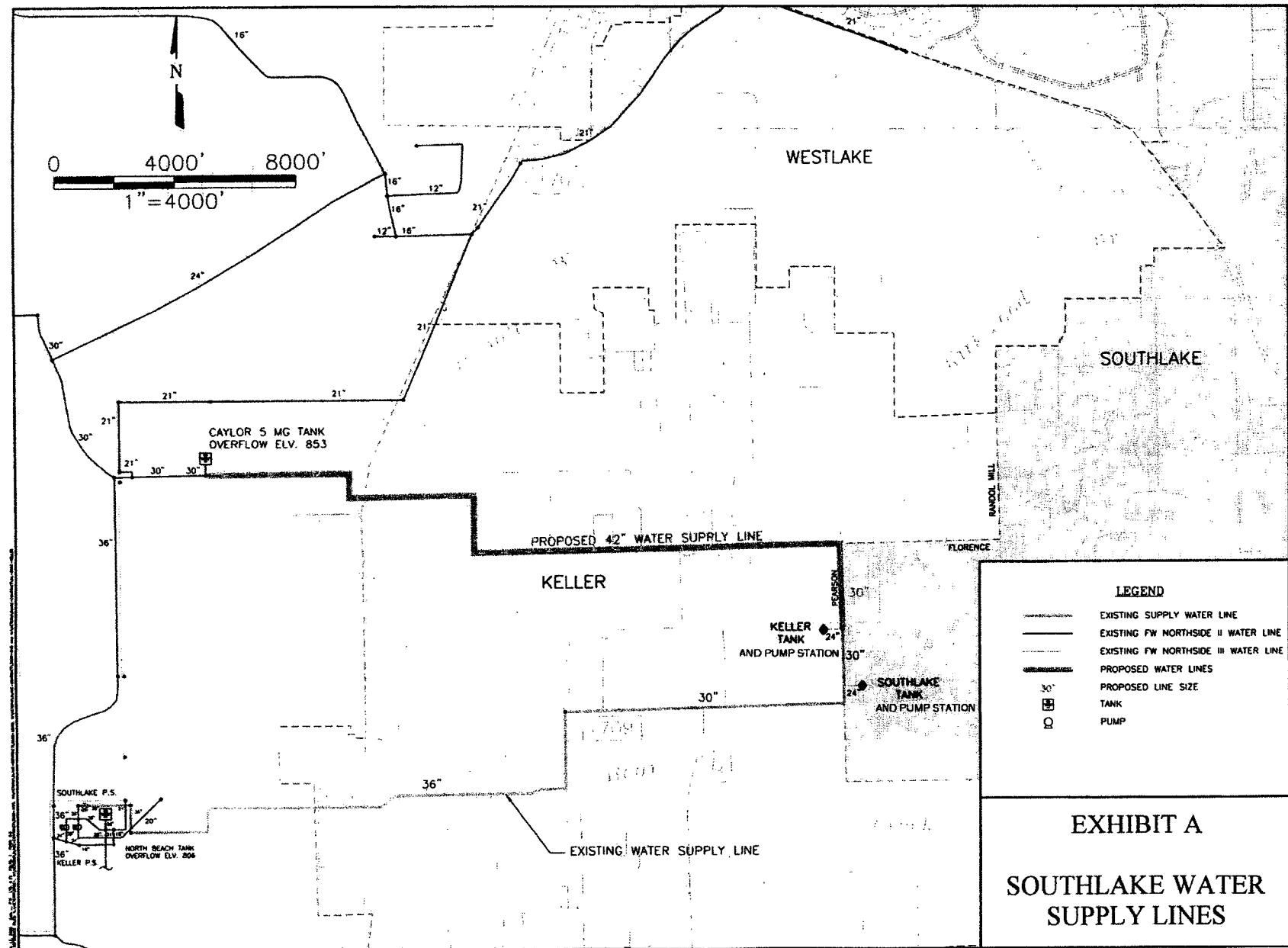


EXHIBIT "B"

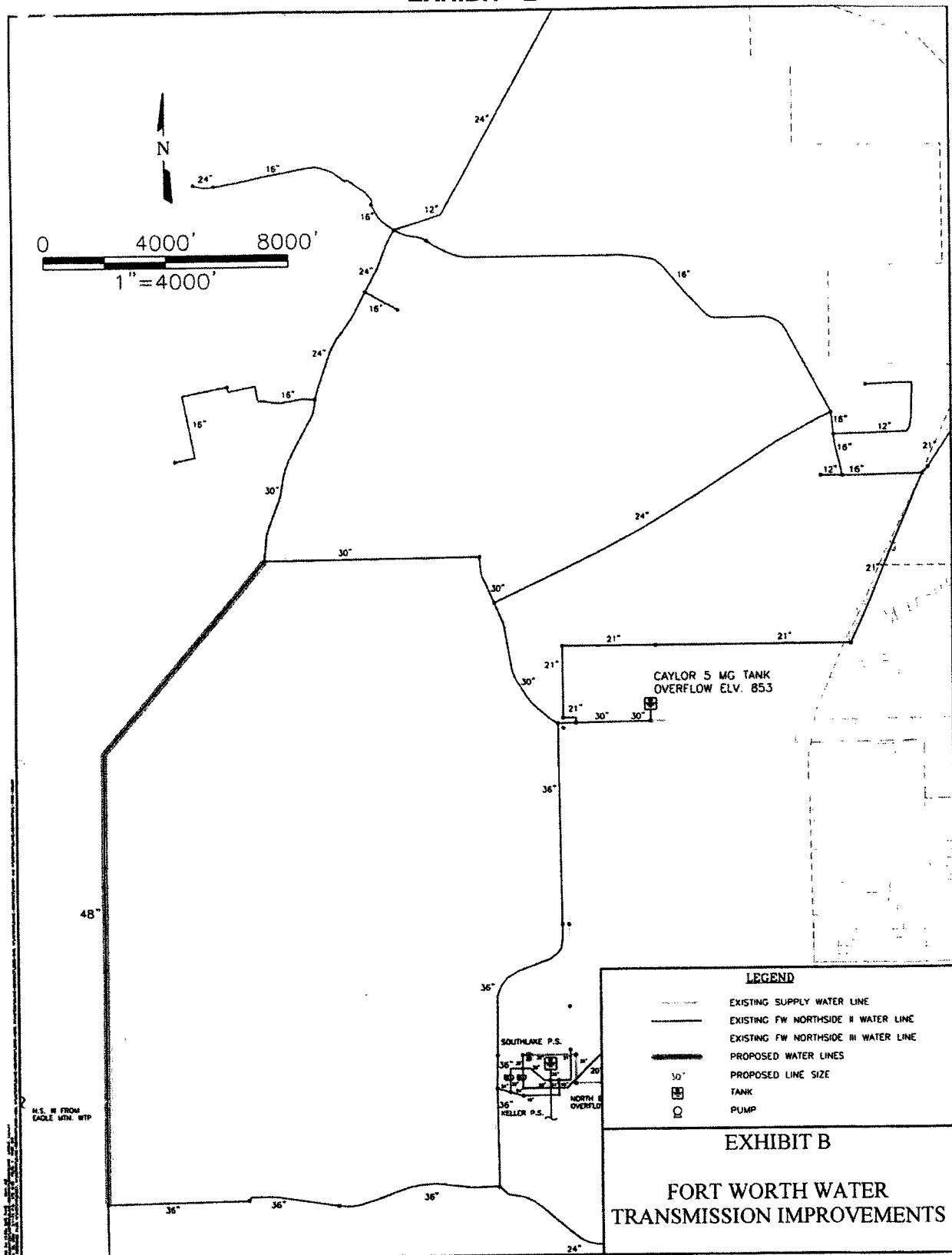


EXHIBIT "C"

Existing Connections Outside of the Keller System

None

Existing Connections Outside of the Southlake System

None