



**RESOLUTION NO. 2019-078**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, APPROVING AN INTERLOCAL AGREEMENT WITH THE CITY OF DALLAS GRANTING TO THE CITY OF DALLAS A LICENSE FOR THE INSTALLATION, OPERATION, AND MAINTENANCE OF A 72-INCH WATER TRANSMISSION MAIN WITHIN THE RIGHT-OF-WAY OF VARIOUS FARMERS BRANCH STREETS; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Dallas (“Dallas”) desires to install, operate, and maintain a 72-inch water transmission main (“the Water Main”) along the north/south rail right-of-way west of I-35E and within the corporate city limits of Farmers Branch; and

**WHEREAS**, City Administration has negotiated an interlocal agreement with Dallas granting to Dallas a license to construct, operate, and maintain the Water Main across and under various Farmers Branch streets for the foregoing purposes and recommends approval of said agreement; and

**WHEREAS**, the City Council of the City of Farmers Branch finds it to be in the public interest to enter an interlocal agreement/license as recommended.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS THAT:**

**SECTION 1.** The City Manager is authorized to sign, on behalf of the City, an interlocal agreement/license with the City of Dallas, for the foregoing described purposes the provisions of which shall be substantially as set forth in Exhibit “A”, attached hereto and incorporated herein by reference.

**SECTION 2.** This Resolution shall become effective immediately upon approval.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, THIS 4th DAY OF JUNE 2019.**

ATTEST:

APPROVED:

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Amy Piukana, City Secretary

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Robert C. Dye, Mayor

APPROVED AS TO FORM:

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Peter G. Smith, City Attorney  
(kbl:5/24/19:108283)

**Resolution No. 2019-078**  
**EXHIBIT “A”**

Resolution No. 19 - \_\_\_\_\_,

**STATE OF TEXAS**                   §  
  §  
**COUNTY OF DALLAS**           §

**INTERLOCAL AGREEMENT/LICENSE**  
**FOR THE ELM FORK 72-INCH WATER TRANSMISSION MAIN PROJECT**

This INTERLOCAL AGREEMENT/LICENSE (“Agreement”) is entered this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between the City of Dallas, a Texas home rule municipality, (“Dallas”) and the City of Farmers Branch, a Texas home rule municipality (“Farmers Branch”) (Dallas and Farmers Branch hereafter collectively referred to as “the Parties” and separately as “Party”).

**RECITALS**

WHEREAS, Dallas plans to design and construct a 72-inch water transmission pipeline within the corporate limits of Farmers Branch, (hereinafter called the “Transmission Main Project”); and

WHEREAS, the Transmission Main Project is necessary for Dallas to transfer treated potable water from the Elm Fork Water Treatment Plant located in Carrollton to the Bachman Water Treatment Plant in Dallas, in order to provide redundancy and backup service for the existing 66/54-inch water main and increase service reliability to Dallas’ customer cities, including Farmers Branch; and

WHEREAS, Farmers Branch currently purchases wholesale treated water from Dallas, and Dallas currently delivers and sells wholesale treated water to Farmers Branch as set forth under the terms, covenants, and conditions stated in the current contract dated June 23, 2010 (“the Water Supply Contract”); and

WHEREAS, Section 10.2 of the Water Supply Contract provides that, subject to the prior written approval of Farmers Branch, Dallas may use Farmers Branch streets, alleys and other public rights-of-way and public utility easements within Farmers Branch’s boundaries for pipeline purposes to provide treated water to customers; and

WHEREAS, Dallas desires to enter into an agreement with Farmers Branch for the use of existing public right-of-way to accommodate the Transmission Main Project; and

WHEREAS, Dallas will procure the necessary property rights for those portions of the Transmission Main Project crossing private properties within the corporate limits of Farmers Branch; and

WHEREAS, Dallas will submit preliminary and final construction plans for the construction of the Transmission Main Project, including plans for the horizontal and vertical alignment of the pipeline and construction details for the pipeline and necessary appurtenances, to Farmers Branch for its review; and

WHEREAS, Farmers Branch will review said preliminary and final construction plans and approve them prior to construction; and

WHEREAS, both Parties agree that it is in the public interest that this license be granted; and

WHEREAS, Chapter 791 of the Texas Government Code provides authorization for a local government to contract with one or more local governments to perform governmental functions and services under the terms of the Act;

NOW, THEREFORE, Dallas and Farmers Branch hereby enter into this Agreement for the mutual consideration stated herein:

#### W I T N E S S E T H:

#### ARTICLE I. ELM FORK 72-INCH WATER TRANSMISSION MAIN PROJECT SCOPE

Dallas, at no expense to Farmers Branch, hereby desires to construct a 72-inch water transmission main including isolation valves, air release/vacuum valves, blow-off valves, vent stacks, vaults, manholes, tunneled sections, and all other water pipeline appurtenances necessary for operation and maintenance of the water transmission main to be located within existing right-of-way, easements, and real property (hereinafter called the "Transmission Main"). The intended alignment of the Transmission Main is shown on Exhibit A, attached to and made part of this Agreement.

#### ARTICLE II. ELM FORK 72-INCH WATER TRANSMISSION MAIN PROJECT: PIPELINE LICENSE

(A) In consideration of the sum of TEN AND NO/100 (\$10.00) DOLLARS, receipt of which is hereby acknowledged, Farmers Branch hereby grants to Dallas the non-exclusive right, privilege, and license to own, lay, construct, operate, repair and replace the Transmission Main, along with any and all appurtenances thereto, and such additional pipes and/or appurtenances as are needed in the future incidental to the use, operation, maintenance (including increased capacity), or replacement of the Transmission Main within the Farmers Branch's public right-of-way, as shown on Exhibit A, attached to and made a part of this Agreement and all public easements adjacent to the Transmission Main alignment (all hereinafter called the "Licensed Area"), but only to the extent that Farmers Branch has sufficient title and rights to grant such license.

(B) Dallas agrees to construct the Transmission Main within a reasonable length of time and to maintain and operate the Transmission Main so as to not unreasonably interfere with existing utilities located within the Licensed Area or with the general public's use thereof. Dallas, at its sole cost, agrees to relocate any permanent utility facilities that must be relocated as a result of construction and installation of the Transmission Main.

(C) Dallas shall not be required to alter, change, or relocate the Transmission Main once it is complete and in place, unless Farmers Branch determines that the relocation is necessary and in the public interest. In that event, Farmers Branch shall pay for the design and construction of such relocation. All plans that result in the alteration, change, or relocation of the Transmission Main within the Licensed Area shall be reviewed and approved by Dallas. No work shall commence until Dallas has approved the proposed plans, which approval shall not be unreasonably withheld or delayed.

(D) The permission granted to Dallas for the Transmission Main Project within the Licensed Area does not authorize Dallas to serve any property in Farmers Branch in or along the route of the Transmission Main. By authorizing this Agreement, Farmers Branch agrees to abstain from connecting its water distribution system directly to the Transmission Main. In the event Farmers Branch becomes aware of any third party who has tapped or connected or is attempting to tap or connect to the Transmission Main within the Licensed Area, Farmers Branch will notify Dallas as soon as reasonably possible after obtaining such knowledge. Dallas shall be solely responsible for taking such action against such third parties who have tapped or connected or are attempted to tap or connect to the Transmission Main without authorization from Dallas as it deems in its sole discretion necessary. Dallas agrees to notify Farmers Branch regarding any authorization Dallas has granted to a third party to tap or connect to the segment of the Transmission Main within the Licensed Area.

(E) Dallas agrees to notify Farmers Branch in the event it wishes to abandon the Transmission Main, in which case this Transmission Main Project License shall terminate. Farmers Branch agrees to notify Dallas in the event it wishes to abandon any part of the Licensed Area; said abandonment, however, will not require that Dallas relocate the Transmission Main unless Farmers Branch agrees to pay, or otherwise arrange for the payment by a third party, for the design and reconstruction of the relocation.

(F) Dallas agrees to repair and replace all Farmers Branch right-of-way and easement surfaces, paved or unpaved, within the Licensed Area which may be cut or damaged in the course of construction and installation of the Transmission Main. Dallas agrees that it will restore those right-of-way cuts to their original condition of such rights-of-way as existed prior to construction and installation of the Transmission Main. Notwithstanding anything herein to the contrary, all repairs and/or replacements of any pavement, curbs, sidewalks or other street appurtenances within the Licensed Area or any other area affected by construction, repair, maintenance, reconstruction, replacement or removal of the Transmission Main or any of its related appurtenances shall be conducted in accordance with the then current construction specifications for such public improvements adopted by Farmers Branch and be completed within a commercially reasonable period of time following the completion of Dallas's work on the Transmission Main. Dallas will coordinate and provide reasonable notice to Farmers Branch, to the extent possible, prior to

scheduled cessation of access to any roadway or intersection within the Licensed Area. Farmers Branch may require a traffic control plan to be submitted for review and comment prior to implementation.

(G) Farmers Branch may enter and utilize the Licensed Area at any time for the purpose of performing, installing, or maintaining improvements necessary for the health, safety, and welfare of the public or for any other public purpose whatsoever, and may authorize, allow, license, and permit other utilities to use the Licensed Area, so long as such other utilities do not unreasonably interfere with Dallas's use or maintenance of the Transmission Main. Farmers Branch agrees that before performing work, except in an emergency situation, Farmers Branch will give Dallas reasonable notice and opportunity to coordinate its work to prevent unnecessary damage or disruption of the Transmission Main. Farmers Branch agrees to use reasonable efforts to not damage or disrupt the Transmission Main.

(H) Farmers Branch agrees not to install or approve the installation of any utility crossing above or under the Transmission Main in the Licensed Area, prior to review and written approval from Dallas, which approval shall not be unreasonably withheld, delayed, or denied. Utility crossings within five (5) feet vertically of the Transmission Main (crossings shall be measured from the outside of the Transmission Main to the outside of the pipe, cable, duct bank or casing, as applicable) will not be approved without a special exception from Dallas. Overhead wires crossing the Transmission Main shall have a minimum vertical clearance above the natural ground at the centerline of the Transmission Main of not less than 22 feet for power lines and 18 feet for communication and cable television lines. These clearances may be greater, as required by the National Electric Safety Code and governing laws. Dallas shall be solely responsible for enforcing this Section (H) with respect to third-parties that install utility crossings not in compliance with this Section (H) without authorization from Farmers Branch.

(I) Farmers Branch agrees not to install or approve the installation of any parallel utility in the Licensed Area, prior to review and written approval from Dallas, which shall not be unreasonably withheld, delayed, or denied. Parallel utilities within 15 feet horizontally from the Transmission Main (outside of pipe to outside of pipe, cable, duct bank, casing or overhead wire, as applicable) will not be approved without a special exception from Dallas, which shall not be unreasonably withheld, delayed, or denied.

(J) In addition to the restrictions noted in Article II, sections H and I, there shall be no construction of any structures including, but not limited to, manholes, vaults, poles, transformers, control boxes, retaining walls, fences or landscape items such as shrubs, trees or planting beds directly above or immediately adjacent to the Transmission Main such that inspection, repair, operation and maintenance of the Transmission Main from the surface would be unreasonably hindered as reasonably determined by Dallas.

(K) Plans shall be submitted to Dallas to determine if the crossing utilities, parallel utilities, or other items as noted above impact the integrity of the Transmission Main. Exceptions regarding horizontal and vertical separation may be granted on a case by case basis after review and written approval by Dallas, which shall not be unreasonably withheld, delayed, or denied. Dallas may require the utility owner to perform and submit Level "A" Subsurface Utility

Engineering (as defined by the American Society of Civil Engineers), a structural analysis and/or a Geotechnical Engineering analysis for approval of exceptions. Analysis shall also include impacts to the cathodic protection system and other appurtenances. If the utility is deemed to adversely impact the Transmission Main, Dallas reserves the right to deny installation of parallel or crossing utilities or require specific design elements such as but not limited to casing, special backfill, shoring, compaction requirements, an increase in the separation distance, etc.

### ARTICLE III. DESIGN

Dallas hereby agrees to be responsible and pay for the design and obtain approval of all engineering plans, specifications and design changes related to the Transmission Main Project, and to provide such plans and specifications to Farmers Branch for review and approval, which approval shall not be unreasonably denied or delayed.

### ARTICLE IV. CONSTRUCTION ADMINISTRATION

Dallas shall be solely responsible for the solicitation and award of the bid, in Dallas's sole discretion, for the construction of the Transmission Main Project. Dallas shall be solely responsible for the construction administration and inspection of the Transmission Main.

### ARTICLE V. DESIGN OR CONSTRUCTION CHANGES

Prior to implementing any design or construction change to the Transmission Main required during construction, Dallas hereby agrees to advise Farmers Branch of such design or construction change and provide copies of affected plan drawing sheets and/or specifications for Farmers Branch's review and approval. Farmers Branch hereby agrees to review and approve or deny any such design or construction change not later than fifteen (15) business days for design changes and three (3) business days for construction changes after Dallas provides the amended plans and specifications to Farmers Branch showing such change, which approvals shall not be unreasonably denied.

### ARTICLE VI. PROJECT COSTS

Dallas hereby agrees to be responsible for the entire cost of the Transmission Main Project, including, without limitation, the costs of design, engineering, specifications, materials, installation, construction, inspection, and change orders related to the Transmission Main Project.

### ARTICLE VII. QUALITY ASSURANCE

Dallas agrees to provide inspection and quality assurance testing for the construction of the Transmission Main in coordination with Farmers Branch, through the Farmers Branch Engineering Department.

## ARTICLE VIII. OPERATION AND MAINTENANCE

Dallas, its agents, representatives and employees, are hereby granted the right, as part of this Transmission Main Project License, to have free access to Farmers Branch's right-of-way and easement for purposes of operation and maintenance of the Transmission Main subject to the following:

1. In the event of planned operation and maintenance activities, Dallas shall notify Farmers Branch in writing not later than ten (10) business days in advance of any entry for purposes of operation and maintenance of the Transmission Main, which notice shall include the dates and times of the intended entry, whether or not any lane closures will be required, and a traffic control plan related to any work that requires lane closures. In the event lane closures are required, no work shall commence until Farmers Branch has approved the proposed traffic control plan, which approval shall not be unreasonably withheld or delayed. Dallas shall submit, or require any contractor(s) engaged by Dallas to submit, an application for a right-of-way construction permit to Farmers Branch pursuant to applicable provisions of Article IV of the Farmers Branch Code of Ordinances, as amended or replaced ("the Farmers Branch ROW Ordinance"), and obtain such permit and approval prior to any construction within the Licensed Area, including, but not limited to, the initial construction of the Transmission Main Project and all subsequent work involving maintenance, repairs, replacement, or removal of the Transmission Main. To the extent of any irreconcilable conflicts between the provisions of this Agreement and the Farmers Branch ROW Ordinance, the more stringent of the provisions shall control; provided, however, with respect to Dallas (but not its contractors), the provisions of Farmers Branch Code of Ordinances Section 70-183 relating to indemnification in favor Farmers Branch shall not apply.
2. In the event emergency operation and maintenance activities must be conducted, Dallas shall verbally notify Farmers Branch no later than two hours after the emergency becomes known to Dallas, which notification shall be followed up with a written notification not later than seventy-two (72) hours after the emergency becomes known to Dallas. The written notification shall include a description of the traffic control plan imposed by Dallas around the affected site within the Licensed Area. Written notification can be sent via electronic transmission. Dallas shall modify the traffic control plan imposed at the time the emergency maintenance and operations commenced in the manner Farmers Branch reasonably directs. For purposes of this paragraph, an "emergency" exists if the maintenance or repair operations are necessary to require the reestablishment of flow through the Transmission Main, to restore pressure in the Transmission Main after an unexpected and unsafe drop in flow of water, or a break in the Transmission Main, regardless of cause, which, if not repaired immediately, would reasonably be expected to be harmful to the health and safety of Dallas or Farmers Branch citizens or could reasonably be expected to cause damage to persons or property within the area of the break.



## ARTICLE IX. NO AGENCY OR JOINT VENTURE RELATIONSHIP

Farmers Branch and Dallas agree and acknowledge that each entity is not an agent of the other entity and that each entity is responsible in accordance with the laws of the State of Texas for its own acts, forbearance, negligence and deeds, and for those of its officers, agents or employees in conjunction with the performance of work covered under this Agreement, provided, however, that neither this nor any other provision in this Agreement is intended to be, or should be construed as, a waiver of any sovereign or governmental immunity available to either party. Dallas is solely responsible for the sufficiency, form, content, and engineering requirements for the design and construction of the Transmission Main Project. Farmers Branch's review and/or approval of any plans or specifications related to the project shall not constitute an acceptance or assumption of liability by Farmers Branch for the accuracy, safety, sufficiency, form, content and/or engineering requirements of such plans or specifications.

## ARTICLE X. NO THIRD-PARTY BENEFICIARY

This Agreement is solely for the benefit of the Parties and is not intended to and shall not create or grant any rights, contractual or otherwise, to any other person or entity.

## ARTICLE XI. BINDING ON SUCCESSORS

This Agreement shall be binding upon the Parties, their successors and assigns. Neither Party will assign or transfer any interest in this Agreement without the written consent of the other Party.

## ARTICLE XII. NOTICES

Except as otherwise provided in this Agreement, any notice to be given by either Party to the other shall be required to be in writing and shall be deemed given when personally delivered, or three (3) business days after being deposited in the United States Mail, postage prepaid, certified, return receipt requested, or registered addressed as follows:

To Farmers Branch:

Public Works Director  
City of Farmers Branch  
Public Works Department  
13000 William Dodson Parkway  
Farmers Branch, Texas 75234

To Dallas:

Department Director  
City of Dallas  
Water Utilities Department  
1500 Marilla Street, Room 4A North  
Dallas, Texas 75201

If the notice relates to default of this Agreement, proposed amendments to this Agreement, or changes of the name and/or address of who is to receive notices, copies of notices herein shall also be provided as follows:

To Farmers Branch:  
City Manager  
City of Farmers Branch  
13000 William Dodson Parkway  
Farmers Branch, Texas 75234

With copy to:

Peter G. Smith  
Nichols, Jackson, Dillard, Hager & Smith, LLC  
500 N. Akard, Suite 1800  
Dallas, Texas 75201

Either Party may change its address for notice by giving the other Party notice of the change in the manner described above.

#### ARTICLE XIII. AUTHORITY TO ENTER AGREEMENT

This Agreement has been duly executed and delivered by all Parties and constitutes a legal, valid and binding obligation of the Parties, their successors and permitted assigns. Each person executing this Agreement on behalf of each Party represents and warrants that the person has full right and authority to enter into this Agreement.

#### ARTICLE XIV. AMENDMENTS

This Agreement may not be amended except in a written instrument specifically referring to this Agreement and signed by the Parties.

#### ARTICLE XV. SOVEREIGN IMMUNITY; GOVERNING LAW; VENUE

Notwithstanding any other provision of this Agreement, this Agreement shall be expressly subject to the governmental immunity of Farmers Branch and Dallas, Title 5 of Texas Civil Practice and Remedies Code, and all applicable federal and state law. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas. Exclusive venue for any legal action regarding this Agreement filed by either Farmers Branch or Dallas shall be in Dallas County, Texas. This Agreement is subject to the provisions of Section 2-86 of the Dallas City Code, as amended, relating to requirements for filing a notice of breach of contract claims against Dallas. Section 2-86 of the Dallas City Code, as amended, is expressly incorporated by reference and made part of this Agreement as if written word for word in this Agreement. Farmers Branch shall fully comply with the requirements of the ordinance as a condition precedent to any claim relating to this Agreement, in addition to all other requirements in this Agreement related to claims and notice of claims.

## ARTICLE XVI. INSURANCE

Dallas acknowledges and agrees that prior to commencement of any work within the Licensed Area, Dallas' contractor(s) shall be required to obtain a right-of-way construction permit from Farmers Branch in accordance with Chapter 70, Article IV of the Farmers Branch Code of Ordinances, as amended or succeeded, and shall procure for the benefit and protection of Farmers Branch insurance as required under Farmers Branch Code of Ordinances Section 70-169, as amended, with such minimum limits as may be reasonably required in accordance with the terms of such permit.

## ARTICLE XVII. GENDER NEUTRAL LANGUAGE

Words of any gender used in this Agreement shall be held and construed to include any other gender and words in the singular shall include the plural and vice versa, unless the context clearly requires otherwise.

## ARTICLE XVIII. MULTIPLE COUNTERPARTS

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

## ARTICLE XIX. SEVERABILITY

In the event that one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability of this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein, but shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect.

## ARTICLE XX. TERMINATION

This Agreement may be terminated in the following manner.

1. By mutual agreement and consent of both Parties in writing; or
2. By either Party upon the failure of the other Party to fulfill the obligations set forth herein; provided, however, such termination shall not occur earlier than the thirtieth (30<sup>th</sup>) day after the Party seeking termination has provided written notice to the other Party detailing the obligation(s) the Party has failed to fulfill and the Party receiving the notice has failed within said ninety (90) day period cured the described default.

## ARTICLE XXI. CURRENT FUNDS

Dallas and Farmers Branch acknowledge and agree that all expenditures made by the respective parties shall be from current funds appropriated for the purposes for which such funds are expended.

ARTICLE XXII. ENTIRE AGREEMENT; NO ORAL MODIFICATIONS

This Agreement (with all referenced Exhibits, attachments, and provisions incorporated by reference) embodies the entire agreement of both Parties, superseding all oral or written previous and contemporary agreements between the Parties relating to matters set forth in this Agreement. Except as otherwise provided elsewhere in this Agreement, this Agreement cannot be modified without written supplemental agreement executed by both Parties.

EXECUTED this the \_\_\_\_ day of \_\_\_\_\_, 2019, by DALLAS, signing by and through its City Manager, duly authorized to execute same by Resolution No. 19 - \_\_\_\_\_, adopted by the City Council on \_\_\_\_\_, 2019, and by FARMERS BRANCH, acting through its duly authorized officials.

CITY OF FARMERS BRANCH  
CHARLES S. COX  
City Manager

CITY OF DALLAS  
T. C. BROADNAX  
City Manager

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

By: \_\_\_\_\_  
Assistant City Manager

APPROVED AS TO FORM:  
PETER G. SMITH  
City Attorney

APPROVED AS TO FORM:  
CHRISTOPHER J. CASO  
City Attorney

By: \_\_\_\_\_  
Assistant City Attorney

By: \_\_\_\_\_  
Assistant City Attorney

# Exhibit A

## Transmission Main Location Within Farmers Branch City Limits and Licensed Area

