

UPPER TRINITY REGIONAL WATER DISTRICT
CITY OF LADONIA, TEXAS

CONTRACT CONCERNING DEVELOPMENT OF
PROPOSED LAKE RALPH HALL
IN FANNIN COUNTY, TEXAS

THE STATE OF TEXAS §
 §
COUNTY OF DENTON §

This WATER SUPPLY DEVELOPMENT CONTRACT (the "Contract") is made and entered into as of the 2nd day of December, 2004 ("Contract Date"), by and among UPPER TRINITY REGIONAL WATER DISTRICT, (the "District"), a conservation and reclamation district created pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; and the CITY OF LADONIA, TEXAS, a Texas municipality in Fannin County (herein referred to as "Ladonia" or "the City"); and the two parties collectively may be referred to as the "Parties".

WITNESSETH:

WHEREAS, The District is composed of member entities in Denton, Dallas and Collin Counties in the Trinity River Basin of Texas; and

WHEREAS, both the District and Ladonia (including all of Fannin County) are in Region C of the State Water Plan pursuant to "Senate Bill One," and both parties are obligated to develop viable water supply plans for the next fifty years; and

WHEREAS, Ladonia and the District desire to develop a surface water supply lake in Fannin County on the North Sulphur River; and

WHEREAS, Ladonia and North Hunt County Water Supply Corporation (collectively, the "Initial Parties") have heretofore used their own funds to investigate the feasibility of a water supply lake in southeast Fannin County; and

WHEREAS, upon consulting with Congressman Ralph Hall, the Congressman advised the Initial Parties to get a larger, responsible partner to help them develop the proposed lake; and

WHEREAS, the Initial Parties asked the District to take the lead in a more thorough evaluation of the proposed lake and, if feasible, to develop said lake for mutual benefit; and

WHEREAS, in the records of the State of Texas and in the Texas Water Plan, this proposed lake is referred to as Lake Ralph Hall (the "Lake"); and

WHEREAS, the District has evaluated the feasibility of the proposed Lake and has filed an application with the Texas Commission on Environmental Quality ("TCEQ") for authorization to appropriate and divert waters of the State, which application as of the Contract Date is pending at the TCEQ; and

WHEREAS, the most feasible location of the proposed dam to create the impoundment for the Lake is on the North Sulphur River, east of State Highway 34, approximately 2.5 miles west of the east boundary of Fannin County; and

WHEREAS, to provide for improved agricultural conditions in the 1920's and 1930's, the North Sulphur River was straightened and channelized to improve drainage and to reduce flooding, resulting in severe erosion and environmental degradation of the channel and river environment; and

WHEREAS, construction of the Lake is expected to facilitate better water management strategies, improved habitat for fish and wildlife, and improved water quality for this segment of the North Sulphur River; and

WHEREAS, the District's goal is to develop a lake that will produce a water supply of approximately 30 million gallons per day ("MGD") on a firm yield basis for the District, its members and customers, including the Initial Parties; and

WHEREAS, it is mutually agreed that the intent of the Parties hereto is for the Lake to be owned and operated by the District or its designee; and

WHEREAS, the Parties desire that the Lake will promote economic development for Ladonia and the local region; and

WHEREAS, when the Lake is referred to herein, it is mutually agreed that said term shall refer to the body of water to be impounded, including any lands adjacent thereto and reasonably required for safe and reliable operation of such a water supply source, which lands the District may designate to be part of the project for development and operation of the Lake; and

WHEREAS, to enable its primary use as a dependable water supply, the level of water in the Lake will fluctuate considerably due to variable rainfall and runoff and due to withdrawal of water for its intended use, including the probability that the Lake could become totally dry as the result of a severe drought; and consequently, Ladonia, the Initial Parties, property owners and the public should never expect that the Lake can or will be maintained at a constant level; and

WHEREAS, it is mutually understood that the City of Irving (herein "Irving"), a member of the District, is expected to have a specific role and interest in the Lake, including sharing in the available water supply and participating in transportation of water from the Lake to the vicinity of Lewisville Lake in the Trinity River Basin; and

WHEREAS, the District desires to work with Ladonia and other parties administering Rails-to-Trails regarding a pipeline alignment along an abandoned railroad right of way to transport water from the Lake to an existing water transmission pipeline owned by Irving; and

WHEREAS, the Parties hereto desire to develop the Lake in such a manner that it will help address certain existing environmental problems along the North Sulphur River in the vicinity of the Lake, while at the same time providing new benefits for Ladonia and the surrounding region; and

WHEREAS, Ladonia and the District intend to develop the Lake giving due regard to environmental considerations, to protect water quality in the Lake, and to enable quality development around the Lake, all in a mutually beneficial manner in the spirit of partnership; and

WHEREAS, the District will be responsible for acquiring or providing the funds needed for development of the Lake.

NOW, THEREFORE, the District and Ladonia agree as follows:

Section 1. Adoption of Preamble. All of the matters stated in the preamble of this Contract are true and correct and are hereby incorporated into the body of this Contract as though fully set forth in their entirety herein.

Section 2. Purpose. The purpose of this Contract is to establish the respective responsibilities of the Parties in general terms concerning development and operation of the Lake, and to provide for future addendums to the Contract concerning each Party's role in planning, development, construction, completion, protection and operation of the Lake and in use of water from the Lake.

Section 3. City of Irving. The District reserves to itself the sole discretion to enter into a contract with Irving or others for participation in the Lake. Whether or not Irving participates in the Lake, as regards this Contract, the District will be responsible for the project to develop the Lake. However, in the sole discretion of the District, the District may enter into contracts with Irving or others to participate in the project to develop the Lake and may enter into agreements with other parties concerning any aspect of project development, construction or operation.

Section 4. Planning for Water Supply. To assist with meeting local needs for water supply in the general vicinity of the proposed Lake, the District will make available reasonable amounts of water from the Lake. Ladonia agrees to exercise stewardship of such water made available for local use by the District in a fair and equitable manner on behalf of nearby communities and utilities. Except as otherwise provided herein, and unless approved by the District, water to be made available from the Lake for local use shall be reserved to the Sulphur River Basin in Fannin County.

A. **Water For Initial Parties.** To assist the Initial Parties in meeting future water supply requirements of their respective service areas, the District will make available to the Initial Parties up to five percent (5.0%) of the firm yield of the Lake for local use, which firm yield shall be confirmed by the District after completion of the Lake. The initial capital cost of said five percent (5%) will be funded by the District at no cost to the Initial Parties. Parties other than the Initial Parties may purchase water pursuant to Paragraph B of this Section.

B. **Additional Water for Future Local Needs.** Subject to future availability, Ladonia shall have the option to purchase additional water from the District during the term of this Contract for sale or distribution within the Sulphur River Basin in Fannin County. The amount of such additional water will not exceed five percent (5%) of the firm yield of the Lake. Such future sales of water from the Lake will be subject to applicable terms, rates and policies then established by the District for sales to non-member agencies. Such sale of water from the Lake by Ladonia to entities other than the Initial Parties shall require written approval in advance by the District, and such sales will be managed and administered by Ladonia under general guidelines established by the District.

C. **Potential Water From Other Sources.** Because of the strategic location of the Lake, the District may determine to make future use of the Lake as an interim or balancing reservoir to receive water from other sources in the Red River Basin, the Sulphur River Basin or from the State of Oklahoma. If such projects and uses materialize, Ladonia will have the option to participate in such projects and to purchase up to five percent (5%) of any such water being discharged into the Lake from such

projects. Such future purchases by Ladonia will be subject to applicable terms, rates and policies then established by the District for sales to non-member agencies.

D. Responsibilities. The District shall have the right of review and approval of any sale of water from the Lake to parties other than the Initial Parties. Costs of water treatment and operating costs for a local water distribution system will be a local responsibility. Concerning water to be made available for local needs, the District at any time may use any portion of such water without charge, payment or compensation, to the extent the water is not then being used by local parties pursuant to this Contract. Unless otherwise agreed in writing, ownership of all water pursuant to this Section shall remain with the District until such water is withdrawn from the Lake according to this Contract.

Section 5. Project Support. Ladonia hereby agrees to provide it's full support for the proposed Lake and for associated improvements. In addition to providing a vital source of water, the District and Ladonia agree that the Lake will help improve certain environmental conditions and will facilitate economic development for Ladonia and nearby communities. Accordingly, on its own motion and as may be requested from time to time by the District, Ladonia will provide supportive statements or testimony for appropriate forums, including public meetings and hearings, County Commissioners Court, TCEQ and before federal agencies. It is further agreed that:

- A. Upon request by District, Ladonia will exercise its power of eminent domain, if necessary, to acquire real property on behalf of the District for development of the Lake;
- B. Upon request by District, Ladonia will annex into its municipal boundaries any portion, or all of, the Lake and any designated property owned by the District;
- C. Ladonia will assist District in implementing and managing programs to protect surrounding land values and water quality in the Lake and its tributaries;
- D. Ladonia will provide a suitable office building in downtown Ladonia to serve as a source of public information and for project management offices, subject to District paying reasonable rent;
- E. Ladonia will exercise its police powers to assist with development and operation of the Lake; and
- F. For any property of the District annexed into the municipal boundaries, Ladonia agrees to enact reasonable ordinances requested by District to protect the public interest concerning use and enjoyment of the Lake.

In future addendums to this Contract, Ladonia and District will address the necessary details for implementation of matters outlined above, including any cost sharing that may be indicated.

Section 6. Pipeline Right of Way. A water transmission pipeline will need to be constructed from the vicinity of the proposed dam, generally in a southwesterly direction, to deliver water from the Lake to the District. Along this general route is an existing railroad right of way that has been committed to the "rails-to-trails" program. Tentatively, the proposed pipeline is expected to transport the water to an existing interim reservoir located northeast of Lake Lavon on an existing pipeline that delivers water for Irving and the District from Chapman Lake to the vicinity of Lewisville Lake. Ladonia agrees to use its best efforts to help the District obtain a mutually

beneficial agreement with the party or parties holding ownership in the "rails-to-trails" right of way. The proposed agreement is intended to enable the District to use said right of way for the District's proposed pipeline, in exchange for the District's assistance in construction of a segment of the proposed trail. If District needs to construct a portion of said water transmission line in a location in or near Ladonia, Ladonia agrees that, without additional cost to the District, the District may use existing easements and rights-of-way under the City's control for the construction, operation and maintenance of said water transmission line.

Section 7. Wastewater Control. To protect the quality of water in the Lake and to encourage quality development around the Lake, it is the intent of the parties to promote policies and water quality regulations to protect quality of water in the Lake and in its tributaries. Accordingly, it is mutually agreed to promote policies and implement programs leading to future development projects near the Lake being served by a community wastewater collection system, rather than by on-site wastewater treatment systems. Exceptions may be made for individual systems by homeowners who are not a part of a conventional residential development, and who do not have access to a wastewater collection system, and if the proposed on-site system will comply with applicable construction and operational standards.

Section 8. Land Planning. If Ladonia desires to institute land planning and zoning regulations around any portion of the Lake, the District, if requested, will provide reasonable assistance to Ladonia and others in taking the appropriate steps, including enabling drafting and passage of legislation. An important purpose of such steps would be to protect water quality in the Lake.

Section 9. Cost Sharing. In consideration of the District advancing the funds to develop a water supply for local use pursuant to Section 4. A, Ladonia agrees to implement provisions to recover and refund a portion of said costs in the future. Specifically, Ladonia will collect a Water Supply Fee of \$500.00 for any new connections made to the Ladonia water distribution system after construction of the Lake has commenced. Said fee shall be administered per residential connection (or per Living Unit Equivalent for larger connections), which fees will be forwarded to the District on a monthly basis. Said Water Supply Fee shall be applicable to, and be collected by, the Initial Parties after construction of the Lake has commenced. Further, the amount of the fee will be modified on an annual basis according to changes in the standard Consumer Price Index applicable to utility systems. After the District has confirmed in writing that construction of the Lake has commenced, the \$500.00 Water Supply Fee shall apply and shall be adjusted annually thereafter. Said Water Supply Fee shall be collected at the time of commitment for any new customer connection on any extension of the then existing water distribution system operated by the Initial Parties within Fannin County and within that portion (which portion will be more clearly identified in an addendum to this Contract) of Hunt County approximately four (4) miles south of the south Fannin County Line. The total amount of Water Supply Fees collected and remitted to the District by the Initial Parties shall not exceed five percent (5%) of the original cost of the Lake.

Section 10. Creation of Lake Protection Fund. To provide funds for programs related to protection and oversight of the Lake, it is mutually agreed that after construction of the Lake has commenced, an allowance of \$0.25 per 1000 gallons of water shall be included in the retail water rates charged by Ladonia and other local entities who receive, or have a contract to receive, any water from the Lake pursuant to this Contract. Any agreement that Ladonia makes to sell water from the Lake to others shall contain the essential provisions of this Section. All funds collected from said \$0.25 per 1000 gallons allowance will be deposited into a separate and sacred fund to be managed according to a future addendum to the Contract. Said \$0.25 allowance may be increased in increments up to a maximum of \$0.50 by mutual agreement of Ladonia and District after the completion of the Lake and when the need for, and use of, such

funds can be more clearly outlined. The fund will be for the exclusive purpose of protection and oversight of the Lake, under guidelines jointly approved by Ladonia and the District. The separate and sacred fund will be administered by Ladonia with general guidance from the District, coordinated with other related programs being funded and administered by the District.

Section 11. Economic Development District. The Parties agree that an Economic Development District may be advantageous in promoting quality development and in protecting water quality in and around the Lake. However, it is specifically agreed that creation of any such district shall be a local decision. If requested by Ladonia or other local entities, the District will assist in drafting and in gaining passage of appropriate legislation for creation of such a district to include real property in a zone around a portion or all of the Lake.

Section 12. Infrastructure Requirements. District agrees to plan, finance and construct one intake structure to withdraw water from the Lake for both the District and Ladonia. District agrees that said intake structure will have sufficient capacity to withdraw the amount of water to be made available for local use pursuant to Sections 4.A and 4.B herein. Further, District agrees to provide suitable space in the intake structure for Ladonia to set its pumps and related appurtenances for withdrawal of water for local use. Ladonia will be responsible for all costs, plans, financing, construction and operation of such pumps and appurtenances, as well as pipelines and treatment works that may be necessary. Before any such pumps or appurtenances may be installed in or on facilities owned by the District, it will be necessary for Ladonia and District to develop an addendum to this Contract concerning such joint-use. Further, the District and Ladonia agree to coordinate planning for any pipeline rights-of-way, and any pump station or treatment plant sites that may need to be located on or near any lands to be purchased for development of the Lake.

Section 13. Future Addendums and Amendments. In carrying out the obligations of the Parties hereto as generally provided in this Contract, it is agreed that future addendums to this Contract that merely set forth procedures and steps for implementation may be approved by the Mayor of Ladonia and the Executive Director of the District. Addendums or amendments to this Contract involving new obligations for cost participation shall require approval of the respective governing bodies.

Section 14. Indemnification. The District and Ladonia agree to save and hold each other harmless, to the extent authorized by law, from all claims, demands, and causes of action that may be asserted by anyone on account of the construction of the lake and transportation and delivery of water. Both Ladonia and the District agree to be responsible for their own respective negligent acts.

Section 15. Term and Expiration. The term of this Contract shall be for an initial period of forty (40) years from the Contract Date and may be renewed by mutual agreement for an additional period of twenty five (25) years. The Contract may be terminated by the District without recourse by Ladonia or other parties if, in the sole opinion of the District, the requisite State and Federal permits for the Lake are not timely received by the District. After said permits have been received, the Parties sole remedy shall be to seek enforcement of the terms of the Contract.

Section 16. Addresses and Notice. Unless otherwise provided herein, any notice, communication, request, reply or advice (herein severally and collectively, for convenience, called "Notice") herein provided or permitted to be given, made or accepted by any party to any other party must be in writing and may be given or be served by depositing the same in the United States mail postpaid and registered or certified and addressed to the party to be notified,

with return receipt requested, or by delivering the same to an officer of such party, or by prepaid telegram when appropriate, addressed to the party to be notified. Notice deposited in the mail in the manner described above shall be conclusively deemed to be effective, unless otherwise stated herein, from and after the expiration of three days after it is so deposited. Notice given in any other manner shall be effective only if and when received by the party to be notified. For the purposes of notice, the addresses of the parties shall, until changed as hereinafter provided, be as follows:

If to the District, to: Executive Director
Upper Trinity Regional Water District
900 North Kealy
P.O. Drawer 305
Lewisville, Texas 75067

If to Ladonia, to: City of Ladonia
Attn: Mayor
P O Box 5
Ladonia, Texas 75449

The parties hereto shall have the right from time to time and at any time to change their respective addresses and each shall have the right to specify as its address any other address by at least fifteen (15) days' written notice to the other party hereto.

Section 17. State or Federal Laws, Rules, Orders or Regulations. This contract is subject to all applicable Federal and State laws and any applicable permits, ordinances, rules, orders and regulations of any local, state or federal governmental authority having or asserting jurisdiction; but, nothing contained herein shall be construed as a waiver of any right to question or contest any such law, ordinance, order, rule or regulation in any forum having jurisdiction.

Section 18. Venue. It is specifically agreed among the parties to this Contract that Denton County, Texas, is the place of performance of this Contract; and in the event that any legal proceeding is brought to enforce this Contract or any provision hereof, the same shall be brought in Denton County, Texas.

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

UPPER TRINITY REGIONAL WATER
DISTRICT

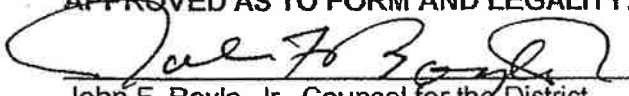
By: 
Oscar Burchard, President, Board of Directors

ATTEST:



Martha Mason, Secretary, Board of Directors

(DISTRICT SEAL)

APPROVED AS TO FORM AND LEGALITY:


John F. Boyle, Jr., Counsel for the District

CITY OF LADONIA

By: 
Leon Hurse, Mayor

ATTEST:


Vickie Shaw, City Secretary