

**AGREEMENT CONCERNING CREATION AND OPERATION
OF FAR NORTH FORT WORTH MUNICIPAL UTILITY DISTRICT NO. 1**

STATE OF TEXAS	§
	§
COUNTIES OF TARRANT, DENTON AND WISE	§ §

This Agreement Concerning Creation and Operation of Far North Fort Worth Municipal Utility District No. 1 (this “Agreement”) is entered into by the City of Fort Worth, Texas, a home-rule municipal corporation situated in Tarrant, Denton, Johnson, Parker and Wise Counties, Texas (the “City”), acting by and through its duly authorized Assistant City Manager; Lackland Holdings, LLC, (“Owners”); and Far North Fort Worth Municipal Utility District No. 1, a municipal utility district created pursuant to Article XVI, Section 59, of the Texas Constitution, Chapters 49 and 54 of the Texas Water Code, located within Tarrant, Denton and Wise Counties (the “District”), which District, after the District Confirmation Date, will become a party to this Agreement.

ARTICLE I
RECITALS

A. Owner has represented to the City that Owner is the owner of approximately 741.99 acres in Tarrant, Denton and Wise Counties, Texas, as shown on **Exhibit A** and described in **Exhibit B** attached to this Agreement (the “Development”). The Development lies entirely within the City’s extraterritorial jurisdiction (“ETJ”). Owner intends the Development to be a master-planned community depicted for informational purposes only on the attached **Exhibit A**.

B. On December 3, 2015, Owner, or its predecessor in title, petitioned the City to obtain the City’s consent to the creation of the District of 741.99 acres within the Development (the “Consent Petition”).

C. On December 3, 2015, Owner, or its predecessor in title, petitioned the City requesting that certain commercial portions of the Development be annexed into the corporate limits of the City for the limited purpose of allowing the City to impose a sales and use tax.

D. The purposes of this Agreement are to set out the mutually agreeable terms and conditions relating to the creation and operation of the District, which are the provisions under which the City has adopted its resolution consenting to the creation of the District consistent with Section 42.042 of the Local Government Code and Section 54.016 of the Water Code. It is an essential element of the granting of the City’s consent to the creation of the District that, after the District Confirmation Date, the District will approve and execute this Agreement and become a Party to it.

E. On _____, 2015, pursuant to the Consent Petition, the City Council of the City adopted Resolution No. _____ consenting to the creation of the District (the "Consent Resolution"), which Consent Resolution approved, and is subject to, the terms and conditions of this Agreement.

NOW THEREFORE, for and in consideration of the mutual agreements, covenants, and conditions hereinafter set forth, the Parties contract and agree as follows:

ARTICLE II **DEFINITIONS**

"Agreement" means this Agreement Concerning Creation and Operation of Far North Fort Worth Municipal Utility District No. 1.

"Assignee" means a successor to Owner as defined in **Section 14.10(b)** of this Agreement.

"Attorney General" means the Attorney General of the State of Texas.

"Board" means the Board of Directors of the District.

"Bond" means (a) any instrument, including a bond, note, certificate of participation, or other instrument evidencing a proportionate interest in payments, due to be paid by the District, or (b) any other type of obligation that (1) is issued or incurred by the District under the District's borrowing power, without regard to whether it is subject to annual appropriation, and (2) is represented by an instrument issued in bearer or registered form or is not represented by an instrument but the transfer of which is registered on books maintained for that purpose by or on behalf of the District. The term shall include obligations issued to refund outstanding Bonds, but shall not include reimbursement agreements entered into between the District and a developer of the Development or bond anticipation notes.

"Bond Limit Amount" means the maximum amount of Bonds, excluding refunding Bonds, that may be issued by the District pursuant to **Section 5.04** of this Agreement.

"CFA Policy" means the City's "Policy for the Installation of Community Facilities" as amended March 20, 2001 (M & C G-13181) and in effect on the Effective Date, and any amendments approved after the Effective Date.

"City" means the City of Fort Worth, Texas, a home rule municipality located in Tarrant, Wise, Johnson, Parker and Denton Counties.

"City Attorney" means the City Attorney of the City.

“City Code” means the Code of the City of Fort Worth.

“City Council” means the City Council of the City.

“City Manager” means the City Manager of the City.

“City Objection” means an objection by the City to a Bond issue as defined in **Section 5.10** of this Agreement.

“City Review Fees” means: (a) the fees and charges applicable to the City’s preliminary and final plat review and approval process according to the fee schedule adopted by the City Council and in effect on the date of submittal of each plat application; and (b) fees and charges applicable to the review of plans relating to construction of Infrastructure according to the fee schedule adopted by the City Council and in effect on the date of submittal of such plans.

“City Secretary” means the City Secretary of the City.

“Consent Petition” means the petition dated December 3, 2015, submitted by Owner or its predecessor in title to the City requesting the City’s consent to the creation of the District and to the Road Projects.

“Consent Resolution” means the Resolution No. ___ adopted _____, 2015, by the City Council that approves this Agreement and contains the City’s consent to the creation of the District in accordance with the District Legislation, including, but not limited to, consent for holding a confirmation election and undertaking the Road Projects.

“Contractor” means a person or entity that constructs, alters or repairs Infrastructure required to serve the Development.

“Development” means that certain 741.99-acre tract located in Tarrant, Denton and Wise Counties, Texas as shown on **Exhibit A** and described in **Exhibit B**. Upon annexation of the Far North MUD Road Tract by the District in accordance with **Article IX**, the Development shall mean the 741.99-acre tract shown on **Exhibit A** and described in **Exhibits B**.

“Development Agreement” means the Development Agreement Between the City of Fort Worth, Texas and Lackland Holdings, LLC, which the City and Owners agree to reasonably negotiate and enter into within 30 days of the District Confirmation Date.

“Planning and Development Director” means the Director of the City’s Planning and Development Department.

“District” means Far North Fort Worth Municipal Utility District No. 1, to be renamed in accordance with **Article X** of this Agreement, created in the Development.

“District Confirmation Date” means the date on which the Board canvasses the results of the election held within the District confirming the creation of the District.

“Effective Date” means the date this Agreement is executed.

“ETJ” means the extraterritorial jurisdiction of a city as defined by the Local Government Code, as amended, with the City’s ETJ being an unincorporated area presently extending five miles from the City’s corporate limits, excluding other incorporated municipalities and their respective ETJs.

“Finance Director” means the Director of the City’s Finance Department.

“Governing Regulations” means the Subdivision Regulations and all City ordinances, regulations, policies, manuals and other requirements relating to Infrastructure, including without limitation the design, location, construction, operation and maintenance thereof, that are applicable within the City’s corporate limits on the Effective Date. Further, “Governing Regulations” includes all amendments to the foregoing requirements and all new requirements relating to Infrastructure that are adopted or approved after the Effective Date, except any amendments from which the Development is exempt pursuant to Chapter 245 of the Local Government Code.

“Far North MUD” means the proposed master-planned community containing approximately 741.99 acres that may include residential, commercial and recreational uses as generally depicted for informational purposes only on **Exhibit A**.

“Infrastructure” means all water, wastewater, drainage, roadway and other infrastructure improvements installed or constructed to serve the Development, whether located within or outside the Development.

“Infrastructure Inspection Fees” means the fees applicable to the inspection and testing of Infrastructure according to the fee schedule adopted by the City Council and in effect on the date of the inspection.

“Local Government Code” means the Texas Local Government Code, as amended.

“Notice” means notice as defined in **Section 14.01** of this Agreement.

“Owner” means Lackland Holdings, LLC, and its successors and Assignees as permitted by this Agreement.

“Party” means, individually, the City, Owner, or the District, their successors and their Assignees as permitted by this Agreement.

“PUC” means the Public Utility Commission.

“Road Projects” means the construction, acquisition, improvement, maintenance, and operation of all paved roads and turnpikes and improvements in aid of such roads and turnpikes located within the District and shown on any final plat approved by the City’s Plan Commission for the Development.

“Strategic Partnership Agreement” means the Strategic Partnership Agreement Between the City of Fort Worth, Texas and the Far North Fort Worth Municipal Utility District No. 1.

“Subdivision Regulations” means the City’s Subdivision Ordinance No. 7234, the Plan Commission Rules and Regulations in effect on the Effective Date and the CFA Policy, and all amendments thereto and future versions of such regulations.

“TCEQ” means the Texas Commission on Environmental Quality or its successor state agency.

“Utility Agreement” means the Utility Agreement of Far North Fort Worth Municipal Utility District No. 1, relating to the provision of water and wastewater service to the Development and the construction, ownership, operation and maintenance of water and wastewater Infrastructure both inside and outside the Development, which the City and the District agree to reasonably negotiate and enter into per the terms of Section 4.01 of this Agreement.

“Water Code” means the Texas Water Code.

“Water Director” means the Director of the City’s Water Department.

ARTICLE III
CITY CONSENTS

In accordance with the terms of this Agreement, the City consents to (a) the creation of the District over the Development; (b) the District undertaking the Road Projects; and, (c) the calling and holding of an election within the District to confirm the creation of the District.

ARTICLE IV
EXECUTION OF AGREEMENTS

4.01 Documents To Be Executed. Owner covenants and agrees to cause the District to approve, execute and deliver this Agreement and the Utility Agreement to the City within thirty (30) days after the District Confirmation Date and to approve, execute and deliver the Strategic Partnership Agreement to the City within ninety (90) days after the District Confirmation Date

4.02 Issuance of Bonds. If the District fails to approve, execute and deliver to the City any one or more of the agreements identified in **Section 4.01** of this Agreement within the time frames required by **Section 4.01** and such failure is not cured within fifteen (15) days after Notice from the City to Owner and the District, such failure shall constitute a material breach of this Agreement by Owner and shall entitle the City to prevent the issuance of Bonds until the failure has been cured.

4.03 Reimbursement. If Owner fails to cause the District to approve, execute and deliver to the City any one or more of the agreements identified in **Section 4.01** of this Agreement within the time frames required by **Section 4.01** and such failure is not cured within fifteen (15) days after Notice from the City to Owner and the District, then Owner shall not, from and after the date of such failure, enter into any agreements with the District or seek reimbursement from the District for any expenses incurred in connection with the District or development of the Development until the failure has been cured.

4.04 Strategic Partnership Agreement. By this Agreement and the Consent Resolution, the City has approved the form of the Strategic Partnership Agreement; however, pursuant to Section 43.0751(e) of the Local Government Code, the City Council is authorized to adopt the Strategic Partnership Agreement only after such agreement has been adopted by the Board.

ARTICLE V **ISSUANCE OF BONDS AND CONSENT TO ROAD PROJECTS**

5.01 Issuance of Bonds. The District may issue Bonds only as permitted by law and this Agreement.

5.02 Purposes. The purposes for which the District may issue Bonds shall be restricted to the following:

- (a) Purchase, construction, acquisition, repair, extension, and improvement of land, easements, works, improvements, facilities, plants, equipment, and appliances necessary to:
 - (i) provide a water supply for the District for municipal uses, domestic uses and commercial purposes;
 - (ii) collect, transport, process, dispose of and control all domestic, industrial, or communal wastes whether in fluid, solid, or composite state;
 - (iii) gather, conduct, divert and control local storm water or other local harmful excesses of water in the District; and

- (iv) undertake the Road Projects as set forth in **Section 5.04**.
- (b) Payment of organization expenses, initial operation expenses, cost of issuance, interest during construction and capitalized interest and any other expenses authorized by Section 49.155, Texas Water Code; and
- (c) Refunding of any outstanding Bonds of the District for debt service savings; provided, however, any such refunding Bonds otherwise satisfy the requirements of this Agreement.

5.03 Limitations on Bonds. Owner and the District acknowledge that but for this Agreement, pursuant to Section 54.016 of the Water Code, the City's consent to inclusion of the Development within the District could include restrictions on the purposes for which the District may issue Bonds and that those restrictions could entirely prohibit issuance of Bonds for roads.

5.04 Road Projects. Notwithstanding the restrictions otherwise permitted by Section 54.016 of the Water Code (as referenced in **Section 5.03** of this Agreement), the City acknowledges that the District has the power to undertake the Road Projects in accordance with the powers granted to the District by TCEQ at the time of creation and Chapters 49 and 54, Texas Water Code, provided the City consents by ordinance or resolution, and that such City consent was granted by the Consent Resolution, subject to the terms of this Agreement. The City requires that the Road Projects must include: providing access for the Development to US 287, construction of two lanes of the roadway from US 287 to Sendera Ranch Blvd. at the time Owners can obtain 600 building permits, and two additional lanes to the roadway from US 287 to Sendera Ranch Blvd. at the time Owners can obtain 1,000 building permits (as depicted on **Exhibit C**). This Agreement hereby authorizes and further consents to the District undertaking the Road Projects serving the District and to the issuance by the District of Bonds for the Road Projects; however, the District may issue Bonds only after the District becomes a Party to this Agreement. In consideration for the City's consent to the Road Projects, the District agrees that the total amount of Bonds issued by the District for all purposes (excluding refunding Bonds) shall not exceed an amount approved by the TCEQ and the Office of the Attorney General and which can be supported by a debt service tax rate not to exceed \$1.00 per \$100 valuation (the "Bond Limit Amount") unless specifically approved by the City Council. Owner and the District acknowledge that the Bond Limit Amount is sufficient to accomplish the purposes of the District and that Owner and the District have voluntarily agreed to the Bond Limit Amount in consideration for the City's consent to the Road Projects. District facilities, if any, the cost of which exceeds the Bond Limit Amount will be dedicated to the District without reimbursement unless otherwise approved by the City Council.

5.05 Bond Requirements. The District shall obtain all necessary authorizations for Bonds issued to finance the acquisition or construction of facilities and infrastructure for the benefit of the District in accordance with this Agreement and laws applicable to

the District. All Bonds issued by the District shall comply with the following requirements:

- (a) Maximum maturity of 25 years for any one series of Bonds;
- (b) Interest rate that does not exceed 2% above the highest average interest rate reported by the Daily Bond Buyer in its weekly “20 Bond Index” during the one month period immediately preceding the date that the notice of the sale of such Bonds is given;
- (c) The Bonds shall expressly provide that the District shall reserve the right to redeem Bonds at any time beginning not later than the tenth (10th) anniversary of the date of issuance, without premium. No variable rate Bonds shall be issued by the District without City Council approval;
- (d) Any refunding Bonds of the District must provide for a minimum of three percent (3%) present value savings and, further, must provide that the latest maturity of the refunding Bonds may not extend beyond the latest maturity of the refunded Bonds unless approved by the City Council;
- (e) No Bonds shall be issued having an issuance date more than fifteen (15) years after the District Confirmation Date without the City’s written approval; and
- (f) No Bonds shall be issued unless the principal amount of outstanding Bonds, together with the amount of the proposed Bonds, would be equal to or less than fifteen percent (15%) of either the certified taxable assessed valuation or most current certified estimates of taxable assessed valuation within the District according to the appraisal districts of Tarrant, Denton and Wise Counties.

5.06 Certifications. With respect to any matter required by this **Article V** to be certified in writing, this Agreement also requires, and the District hereby warrants, that every statement in any certification shall be true and correct in all material respects and that the person signing the certification has been given the requisite authority to do so on behalf of the District.

5.07 Economic Feasibility. Before submission of an application for approval of issuance of Bonds to the TCEQ, PUC or the Attorney General, the District’s financial advisor shall certify in writing to the City Secretary, City Manager, and Finance Director that the Bonds are being issued within the then-current economic feasibility guidelines established by the TCEQ or PUC for districts issuing bonds for water, sewer, drainage or road facilities in Tarrant, Denton and Wise Counties.

5.08 Notice of Bond Issues. At least thirty (30) days before submission of an application for approval of issuance of Bonds to the TCEQ, PUC or the Attorney General, whichever occurs first, the District shall deliver to the City Secretary, City

Manager, and Finance Director the certification required by **Section 5.07** and Notice containing: (a) the amount of Bonds being proposed for issuance; (b) a description of the projects to be funded and/or the Bonds to be refunded by such Bonds; and (c) the proposed debt service and District tax rate after issuance of the Bonds. If the District is not required to obtain TCEQ or PUC approval of the issuance of the Bonds, the District shall deliver such certification and Notice to the City Secretary, City Manager, and Finance Director at least sixty (60) days prior to issuance of Bonds, except refunding Bonds, by the District.

5.09 Compliance with Agreements. At least thirty (30) days before submission of an application for approval of issuance of Bonds to the TCEQ, PUC or the Attorney General, whichever occurs first, the District shall certify in writing to the City Secretary, City Manager, and Finance Director that the District is not in breach of any material provision of the Consent Resolution, this Agreement, the Utility Agreement or the Strategic Partnership Agreement. Material provisions include, but are not limited to, **Sections 4.01, 5.01, 5.02, 5.04, 5.05, 5.06, and 6.01** and **Articles VII and IX** of this Agreement.

5.10 Bond Objections. The City shall have a period of thirty (30) days after receiving the last of the certifications and Notices required by **Sections 5.08 and 5.09** of this Agreement within which to object to the Bonds. If the City fails to object to a proposed Bond issue within such 30-day period, the City shall be deemed to have waived all objections. The only basis for an objection by the City to a proposed Bond issue shall be that the District is in default of a material provision of the Consent Resolution, this Agreement, the Utility Agreement, or the Strategic Partnership Agreement. If the City objects to a proposed Bond issue (a "City Objection"), such objection (a) shall be in writing; (b) shall be given to the District; (c) shall be signed by the City Manager or the City Manager's designee; and (d) shall specifically identify the material provision(s) of the Consent Resolution, this Agreement, the Utility Agreement or the Strategic Partnership Agreement for which the District is in default. It shall not be a basis for a City Objection that the City disagrees with the District's financial advisor as to the financial feasibility of the Bonds so long as the proposed Bonds have received all necessary approvals from the TCEQ, PUC or Attorney General. In the event a City Objection is timely given to the District (as required by this section) with respect to a specific Bond application, the City and the District shall cooperate to resolve the City Objection within a reasonable time, and the Bond application to which the City Objection applies shall be delayed until the City Objection has been cured or waived. Unless otherwise cured by written agreement of the Parties, a City Objection shall be deemed cured if (x) the District files a petition seeking declaratory judgment in state district court; (y) thirty (30) days before filing the petition the District gives the City Attorney and City Manager Notice of, and waives any objections to the City's right to intervene in, such a declaratory judgment action; and (z) the district court determines that the District is not in default with respect to any material provision of the Consent Resolution, this Agreement, or the Strategic Partnership Agreement or, alternatively, finds that if such a default had previously occurred, the default has been cured. A City Objection may be waived by the City at any time.

5.11 Official Statements. Within thirty (30) days after the District closes the sale of each series of Bonds, the District shall deliver to the City Secretary, City Manager, and Finance Director a copy of the final official statement for such series of Bonds. If the City requests additional information regarding such issuance of the Bonds, the District shall promptly provide such information at no cost to the City.

5.12 Reimbursement Agreements.

- (a) The District shall not enter into agreements with landowners or developers for reimbursement of costs incurred in connection with the District with a total reimbursement amount exceeding the Bond Limit Amount.
- (b) All agreements entered into by the District with landowners or developers for reimbursement of costs incurred in connection with the District shall provide that: (i) the District will not reimburse the landowner or developer for costs not evidenced by the issuance of Bonds within fifteen (15) years after the District Confirmation Date; and (ii) the landowner or developer waives all claims against the City for reimbursement of obligations not evidenced by the issuance of Bonds within fifteen (15) years after the District Confirmation Date.

5.13 Use of Cost Reimbursements for Bond Debt Payments. If the District or Owner receives payment from any party connecting to any Infrastructure constructed by Owner or the District, pursuant to a “per acre” or “per MGD” ordinance or similar regulation, the District or Owner, as applicable, shall use such payments in the following order of priority:

- (a) Reimbursement for the construction or installation of Infrastructure;
- (b) Funding the construction or installation of Infrastructure; and
- (c) Purchasing and retiring any Bond after the tenth anniversary of its issuance.

ARTICLE VI

**DESIGN, CONSTRUCTION, INSPECTION, DEDICATION, OPERATION
AND MAINTENANCE OF DISTRICT FACILITIES**

6.01 Infrastructure Standards. All Infrastructure shall be designed and constructed in compliance with: (a) the Governing Regulations; (b) the rules and regulations, if any, of the District; and (c) the rules and regulations, if any, of the TCEQ and PUC. In the event of any conflict between the Governing Regulations and the rules

and regulations of the District, the Governing Regulations shall control unless otherwise agreed in writing by the Planning and Development Director.

6.02 Plan Review; Payment of Fees; and Pre-Construction Conference. Construction of Infrastructure shall not commence until the plans and specifications have been reviewed and approved by the City for compliance with the Governing Regulations; a pre-construction conference has been held by the Contractor, the District's engineer and representatives of the City's Department of Engineering; and the applicable City Review Fees have been paid.

6.03 Community Facilities Agreements. Construction of Infrastructure shall not commence until Owner has executed a Communities Facilities Agreement in accordance with the CFA Policy.

6.04 Reports; Inspections. The District, or Owner on behalf of the District, shall employ a consulting engineer who will, during the construction of Infrastructure, submit to the Board, PUC and TCEQ's executive director detailed written reports showing whether the Infrastructure is being constructed in accordance with plans and specifications and the contractor is complying with all contract documents. City inspectors or third party inspectors pursuant to the City's third party inspection process shall inspect and test the Infrastructure. The District, or Owner on behalf of the District, shall pay all Infrastructure Inspection Fees. The City shall use its best efforts to cooperate with the District's consulting engineer to prepare inspection reports in a form acceptable to TCEQ and PUC. City, however, in no way guarantees that the Infrastructure will be constructed in a manner acceptable to TCEQ/PUC or that TCEQ/PUC will approve the issuance of Bonds.

6.05 Contracts with Contractors. If a Contractor is not an Owner, then the Owner shall incorporate the requirements of this **Article VI** into a written construction contract with the Contractor. All contracts with such non-Owner Contractors shall provide that the City is a third-party beneficiary of, and may enforce the contracts against, the Contractor.

6.06 Access by City Employees. Upon prior Notice by the City, any duly authorized employee of the City bearing proper credentials and identification shall be granted access to any property of the District within the Development as the City may determine necessary for the purpose of inspection and testing of Infrastructure.

6.07 Dedication of Water and Wastewater Infrastructure and Easements to City. The District will dedicate all water and wastewater Infrastructure constructed by or on behalf of the District both inside and outside the District, together with all easements for such Infrastructure, to the City upon final inspection and acceptance of such Infrastructure by the City in accordance with the Utility Agreement.

6.08 Operation and Maintenance of Infrastructure. The District shall cause all Infrastructure to be operated and maintained in accordance with the Governing

Regulations, except for water and wastewater infrastructure dedicated to the City pursuant to **Section 6.07** and the Utility Agreement, which shall be operated and maintained by the City. Upon acceptance of Infrastructure dedicated to the City, the City will operate and maintain the Infrastructure. If repairs to District road facilities are needed as a result of repair or maintenance of water or wastewater Infrastructure by the City, the District shall perform or shall cause to be performed such repairs at no cost to the City.

6.09 As-Built Drawings. The District shall deliver mylar as-built drawings for all Infrastructure to the City's Transportation and Public Works Department within thirty (30) days after final inspection.

ARTICLE VII **REPORTING REQUIREMENTS**

The District shall: (a) send a copy of each order or other action setting an ad valorem tax rate to the City Secretary, City Manager, and Finance Director within thirty (30) days after the District adopts the rate; (b) send a copy of each annual audit to the City Secretary, City Manager, and Finance Director within thirty (30) days after approval by the Board; and (c) provide copies of any material event notices filed under applicable federal securities laws or regulations to the City Secretary, City Manager, and Finance Director within thirty (30) days after filing such notices with the applicable federal agency.

ARTICLE VIII **AREA OF, AND LIMITATIONS ON, SERVICE**

The District shall not sell or deliver services to areas outside the District without prior City Council approval; provided, however, the District may serve a maximum of ten (10) retail residential water connections outside the District with the Water Director's written approval.

ARTICLE IX **CONVERSION, CONSOLIDATION, OR DIVISION BY DISTRICT**

The District shall not (a) convert into another type of district; (b) consolidate with another district; (c) divide into two or more new districts; or (d) seek additional governmental powers beyond those granted to the District by the TCEQ in the creation process without prior City Council approval.

ARTICLE X
NAME CHANGE

If the District initiates proceedings to change the name of the District, it shall do so in accordance with Section 49.071 of the Water Code or other applicable law.

ARTICLE XI
ANNEXATION OF DISTRICT BY CITY

11.01 General Terms. The Parties acknowledge and agree that the Development lies wholly within the City's ETJ; is not bordered by another city, town, or village; and is not currently included in the City's annexation plan. The Parties further acknowledge that the creation of the District, and the City's consent thereto, are for purposes that include promoting the orderly development and extension of City services to the Development upon annexation.

11.02 Incorporation. In furtherance of the purposes of this Agreement, the District and Owner, on behalf of themselves and their respective successors and Assignees, covenant and agree to the extent allowed by law that, except upon written consent of the City Council, neither the District nor Owner will: (a) seek or support any effort to incorporate the Development or any part thereof; or (b) sign, join in, associate with, or direct to be signed any petition seeking to incorporate any of the Development or seeking to include any of the Development within the boundaries of any other incorporated entity.

11.03 Notice. Within thirty (30) days after the District Confirmation Date, the District shall file in the real property records of Tarrant County: (a) a notice in the form required by Section 49.452 of the Water Code; and (b) a notice in the form of **Exhibit D** attached to this Agreement stating that the City has the authority to annex the District subject to the limitations set forth in **Section 11.05**.

11.04 Annexation of Portion of Development. Owner and the District agree to cooperate with and assist the City in annexing one or more areas in the manner prescribed by law which does not result in the dissolution of the District, each of which may not exceed 525 feet in width at its widest point or such other width limitation subsequently imposed by law, as reasonably necessary for the City to connect areas to the City that are outside the District and that the City intends to annex. Notwithstanding the zoning designation approved for the annexed area, such area can be developed and used in accordance with the Development Agreement.

11.05 Full Purpose Annexation. The City will not annex the Development for full purposes any earlier than the first to occur of (a) twenty (20) years after the Effective Date; (b) the dissolution of the District (other than as a result of annexation by the City); or (c) termination of the Development Agreement.

11.06 Limited Purpose Annexation. The Parties agree that the City shall have the right to annex those portions of the Development that are intended for retail development for the sole and limited purpose for the City to impose its sales and use tax within the boundaries of such retail areas, pursuant to Section 43.0751 of the Local Government Code. The terms and conditions upon which such limited purpose annexations may occur shall be set forth in the Strategic Partnership Agreement.

ARTICLE XII **TERM OF AGREEMENT**

This Agreement shall be effective from the Effective Date and shall continue in effect until the District is annexed for full purposes and dissolved by the City or until terminated in writing by mutual agreement of the City and the District; provided, however, if the creation of the District has not been confirmed at an election conducted on or before November 15, 2017, this Agreement may be terminated by the City by providing Notice to Owner.

ARTICLE XIII **BREACH, NOTICE AND REMEDIES**

13.01 Notification of Breach. If either Party commits a breach of this Agreement, the non-breaching Party shall give Notice to the breaching Party that describes the breach in reasonable detail.

13.02 Cure of Breach. The breaching Party shall commence curing such breach within fourteen (14) calendar days after the time the breaching Party receives such Notice and complete the cure within fourteen (14) calendar days from the date of commencement of the cure; however, if the breach is not reasonably susceptible to cure by the breaching Party within such 14-day period, the non-breaching Party shall not bring any action so long as the breaching Party has commenced to cure the default within such 14-day period and diligently completes the cure within a reasonable time without unreasonable cessation of the work.

13.03 Remedies for Breach. If the breaching Party does not substantially cure such breach within the stated period of time, the non-breaching Party may, in its sole discretion, and without prejudice to any other right under this Agreement, law, or equity, seek an action under the Uniform Declaratory Judgment Act, specific performance, mandamus, injunctive relief, and other remedies described in this Agreement; provided, however, that the non-breaching Party shall not be entitled to terminate this Agreement and each Party specifically waives any right such Party has or in the future may have to terminate this Agreement (except for the right of the City to terminate as provided in **Article XII** of this Agreement). It is understood and agreed that no Party will seek or recover actual, consequential or any other type of monetary damages or awards, including but not limited to attorney's fees in the event that any Party brings suit under or related to this Agreement.

13.04 Governmental Powers; Waiver of Immunity. By execution of this Agreement, neither the City nor the District waives or surrenders any of their respective governmental powers, immunities or rights, except as specifically waived pursuant to this section. The City and the District mutually waive their governmental immunity from suit and liability only as to any action brought by a Party to pursue the remedies available under this Agreement and only to the extent necessary to pursue such remedies. Nothing in this section shall waive any claims, defenses or immunities that the City or the District has with respect to suits against the City or the District by persons or entities not a party to this Agreement.

ARTICLE XIV
ADDITIONAL PROVISIONS

14.01 Notice. Any notices, certifications, approvals, or other communications (a “Notice”) required to be given by one Party to another under this Agreement shall be given in writing addressed to the Party to be notified at the address set forth below and shall be deemed given: (a) when the Notice is delivered in person to the person to whose attention the Notice is addressed; (b) when received if the Notice is deposited in the United States Mail, certified or registered mail, return receipt requested, postage prepaid; (c) when the Notice is delivered by Federal Express, UPS, or another nationally recognized courier service with evidence of delivery signed by any person at the delivery address; or (d) five business days after the Notice is sent by FAX (with electronic confirmation by the sending FAX machine) with a confirming copy sent by United States mail within 48 hours after the FAX is sent. If any date or period provided in this Agreement ends on a Saturday, Sunday, or legal holiday, the applicable period for calculating the Notice shall be extended to the first business day following the Saturday, Sunday, or legal holiday. For the purpose of giving any Notice, the addresses of the Parties are set forth below. The Parties may change the information set forth below by sending Notice of such changes to the other Parties as provided in this section.

To the City:

City of Fort Worth, Texas
1000 Throckmorton Street
Fort Worth, Texas 76102
Attn: City Secretary
FAX: 817-392-6196

City of Fort Worth, Texas
1000 Throckmorton Street
Fort Worth, Texas 76102
Attn: City Manager
FAX: 817-392-6134

City of Fort Worth, Texas
1000 Throckmorton Street
Fort Worth, Texas 76102
Attn: Planning and Development Director
FAX: 817-392-8359

City of Fort Worth, Texas
1000 Throckmorton Street
Fort Worth, Texas 76102
Attn: City Attorney
FAX: 817-392-8359

City of Fort Worth, Texas
1000 Throckmorton Street
Fort Worth, Texas 76102
Attn: Finance Director
FAX: 817-392-8966

City of Fort Worth, Texas
1000 Throckmorton Street
Fort Worth, Texas 76102
Attn: Water Director
FAX: 817-392-8195

City of Fort Worth, Texas
1000 Throckmorton Street
Fort Worth, Texas 76102
Attn: Transportation/ Public Works Director
FAX: 817-871-7895

To the District:

Far North Fort Worth Municipal Utility District No. 1
c/o: Don Allen
3045 Lackland Road
Fort Worth, Texas 76116
FAX: 817-732-2291

To Owner:

Lackland Holdings
3045 Lackland Road
Fort Worth, Texas 76116

14.02 No Waiver. Any failure by a Party to insist upon strict performance by the other Party of any material provision of this Agreement shall not be deemed a waiver thereof, and the Party shall have the right at any time thereafter to insist upon strict performance of any and all provisions of this Agreement. No provision of this Agreement may be waived except by writing signed by the Party waiving such provision. Any waiver shall be limited to the specific purposes for which it is given. No waiver by any Party hereto of any term or condition of this Agreement shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.

14.03 City Consent and Approval. In any provision of this Agreement that provides for the consent or approval of the City staff or City Council, such consent or approval may be withheld or conditioned by the staff or City Council at its sole discretion, except as provided in **Section 5.10**.

14.04 Governing Law and Venue. **THIS AGREEMENT MUST BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AS THEY APPLY TO CONTRACTS PERFORMED WITHIN THE STATE OF TEXAS AND WITHOUT REGARD TO ANY CHOICE OF LAW RULES OR PRINCIPLES TO THE CONTRARY. THE PARTIES ACKNOWLEDGE THAT THIS AGREEMENT IS PERFORMABLE IN TARRANT, DENTON AND WISE COUNTIES, TEXAS AND HEREBY SUBMIT TO THE JURISDICTION OF THE COURTS OF TARRANT, DENTON AND WISE COUNTIES, TEXAS, AND HEREBY AGREE THAT ANY SUCH COURTS SHALL BE A PROPER FORUM FOR THE DETERMINATION OF ANY DISPUTE ARISING HEREUNDER.**

14.05 Authority to Execute. The City warrants that this Agreement has been approved by the City Council in accordance with all applicable public meeting and public notice requirements (including, but not limited to, notices required by the Texas Open Meetings Act) and that the individual executing this Agreement on behalf of the City has been authorized to do so. Each Owner warrants that the execution of this Agreement is duly authorized in conformity with the articles of incorporation, bylaws, partnership agreement, or other applicable organizational documents of each Owner and that the individual executing this Agreement on behalf of each Owner has been authorized to do so. The District warrants that this Agreement has been approved by the Board in accordance with all applicable public meeting and public notice requirements (including, but not limited to, notices required by the Texas Open Meetings Act) and that the individual executing this Agreement on behalf of the Board has been authorized to do so.

14.06 Severability. The provisions of this Agreement are severable. If any word, phrase, clause, sentence, paragraph, section, or other provision of this Agreement, or the application thereof to any person or circumstance, shall ever be held or determined to be invalid, illegal, or unenforceable for any reason, and the extent of such invalidity or unenforceability does not cause substantial deviation from the underlying intent of the Parties as expressed in this Agreement, then such provision shall be deemed severed from this Agreement with respect to such person, entity or circumstance, without invalidating

the remainder of this Agreement or the application of such provision to other persons, entities or circumstances, and a new provision shall be deemed substituted in lieu of the severed provision which new provision shall, to the extent possible, accomplish the intent of the Parties as evidenced by the severed provision.

14.07 Changes in State or Federal Laws. If any state or federal law changes so as to make it impossible for the City or the District to perform its obligations under this Agreement, the Parties will cooperate to amend the Agreement in such a manner that is most consistent with the original intent of the Agreement as legally possible.

14.08 Additional Documents and Acts. The Parties agree that at any time after execution of this Agreement, they will, upon the request of any other Party, execute and/or exchange any other documents necessary to effectuate the terms of this Agreement and perform any further acts or things as the other Party may reasonably request to effectuate the terms of this Agreement.

14.09 Captions. Captions and headings used in this Agreement are for reference purposes only and shall not be deemed a part of the Agreement.

14.10 Assignment.

(a) Neither the District nor the City may assign this Agreement without the written consent of the other Parties.

(b) Owner has the right, from time to time, to assign this Agreement, in whole or in part, and including any obligation, right, title, or interest of Owner under this Agreement, to the District (after the District Confirmation Date) and to any person or entity (an “Assignee”) without the consent of the City, provided that the following conditions are satisfied: (1) if not the District, Assignee is a successor owner of all or any part of the Development or is a lender to a successor owner of all or any part of the Development; (2) if not the District, Assignee has a contractual right to be reimbursed for water, sewer, or drainage improvements and/or the Road Projects from District Bonds (or has a lien or other security interest in such reimbursements); (3) the assignment is in writing executed by Owner and Assignee in the form of assignment attached as **Exhibit E**; (4) Assignee expressly assumes in the assignment any assigned obligations and expressly agrees in the assignment to observe, perform, and be bound by this Agreement to the extent this Agreement relates to the obligations, rights, titles, or interests assigned; and (5) a copy of the executed assignment is provided to all Parties within fifteen (15) days after execution. Provided the foregoing conditions are satisfied, from and after the date the assignment is executed by Owner and Assignee, the City agrees to look solely to Assignee for the performance of all obligations assigned to Assignee and agrees that Owner shall be released from performing the assigned obligations and from any liability that results from the Assignee’s failure to perform the assigned obligations. No assignment by Owner shall release Owner from any liability that resulted from an act or omission by Owner that occurred prior to the effective date of the assignment. Owner shall maintain written records of all assignments made by Owner (including, for each

Assignee, the Notice information required by this Agreement, and including a copy of each executed assignment) and, upon written request from any Party or Assignee, shall provide a copy of such records to the requesting person or entity. It is specifically intended that this Agreement, and all terms, conditions and covenants herein, shall survive a transfer, conveyance, or assignment occasioned by the exercise of foreclosure of lien rights by a creditor or a Party, whether judicial or non-judicial. This Agreement shall be binding upon and insure to the benefit of the Parties and their respective successors and Assignees. Notwithstanding the foregoing, however, Owner shall not have the right to assign this Agreement, or any right, title, or interest of Owner under this Agreement, until the District has become a Party.

14.11 Amendment. This Agreement may be amended only with the written consent of all Parties and with approval of the governing bodies of the City and the District.

14.12 Interpretation. The Parties acknowledge that each party and, if it so chooses, its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto. As used in this Agreement, the term “including” means “including without limitation” and the term “days” means calendar days, not business days. Wherever required by context, the singular shall include the plural, and the plural shall include the singular. Each defined term herein may be used in its singular or plural form whether or not so defined.

14.13 No Third Party Beneficiary. This Agreement is solely for the benefit of the Parties, and neither the City, the District nor Owner intends by any provision of this Agreement to create any rights in any third-party beneficiaries or to confer any benefit upon or enforceable rights under this Agreement or otherwise upon anyone other than the City, the District and Owner.

14.14 Reimbursement for City’s Professional Fees. Owner will reimburse the City for reasonable attorneys fees incurred by the City in connection with negotiation and preparation of this Agreement, the Development Agreement, the Strategic Partnership Agreement, agreements concerning the provision of water and wastewater service to the Development, and any other documents executed by Owner, the District, and the City in connection with the Development up to a maximum amount of \$50,000. Owner’s obligation is limited to the actual, out-of-pocket costs and expenses paid to or owed to third-parties for services rendered prior to the approval of this Agreement by the City Council. Owner shall reimburse the City for such fees within thirty (30) days after this Agreement has been executed by the City and Owner and the City has delivered to Owner an invoice for such fees setting forth in reasonable detail a description of the work performed, including identification of the attorney who performed the work, the date on which the work was performed, and the time spent on each date.

14.15 Incorporation of Exhibits by Reference. All exhibits attached to this Agreement are incorporated into this Agreement by reference for the purposes set forth herein, as follows:

- Exhibit A Map of Far North Fort Worth MUD No. 1
- Exhibit B Legal Description of the Development
- Exhibit C Map of Road Projects
- Exhibit D Annexation Notice
- Exhibit E Assignment and Assumption Agreement

14.16 Conspicuous Provisions. The City, the District, and Owner acknowledge that the provisions of this Agreement set out in **bold, CAPITALS** (or any combination thereof) satisfy the requirements for the express negligence rule and/or are conspicuous.

14.17 Counterpart Originals. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original.

IN WITNESS WHEREOF, each Party has caused this Agreement to be executed by its undersigned duly authorized representative in multiple copies on the date or dates indicated below.

ATTEST:

CITY OF FORT WORTH

Mary Kayser, City Secretary

By: _____
Fernando Costa, Assistant City Manager

Date: _____

APPROVED AS TO FORM AND LEGALITY:

Assistant City Attorney

LACKLAND HOLDINGS, LLC

By: _____
Name: _____
Its: _____

Date: _____

Pursuant to Article IV hereof and following the District Confirmation Date, the District has executed the Agreement.

**FAR NORTH FORT WORTH MUNICIPAL
UTILITY DISTRICT NO. 1**

By: _____
President, Board of Directors

Date: _____

STATE OF TEXAS §
 §
COUNTY OF TARRANT §

This instrument was acknowledged before me, on the ___ day of _____, 2015, by _____ of the City of Fort Worth, Texas on behalf of said city.

[SEAL]

Notary Public, State of Texas
Printed Name: _____
My Commission Expires: _____

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me, on the ___ day of _____, 2015, by Lackland Holdings, LLC, by _____.

[SEAL]

Notary Public, State of Texas
Printed Name: _____
My Commission Expires: _____

STATE OF TEXAS §
 §
COUNTY OF TARRANT §

This instrument was acknowledged before me, on the ___ day of _____, 2015, by _____, President, Board of Directors of City of Fort Worth Far North Municipal Utility District of Tarrant and Wise Counties, on behalf of said district.

[SEAL]

Notary Public, State of Texas
Printed Name: _____
My Commission Expires: _____

Exhibit A

Map of Far North Fort Worth Municipal Utility District No. 1

Exhibit B
Legal Description of the Development

BEING...

Exhibit C
Map depicting Road Projects

Exhibit D

STATE OF TEXAS

COUNTY OF TARRANT

NOTICE CONCERNING ANNEXATION AND SERVICES

The real property described in **Exhibit A** attached hereto and incorporated herein is located in Far North Fort Worth Municipal Utility District No. 1 (the "District"). The District is located wholly within the extraterritorial jurisdiction of the City of Fort Worth. The City does not impose property taxes within the District and is not required by state law to provide police protection, fire protection, road maintenance or any other municipal services to the District.

The City of Fort Worth may annex the District for full purposes upon the earliest to occur of:

- (1) Dissolution of the District; or
- (2) _____, 2030

For additional information concerning potential annexation of the District, contact the City of Fort Worth Planning and Development Director.

FAR NORTH FORT WORTH MUNICIPAL
UTILITY DISTRICT NO. 1

By: _____

Name printed: _____

Title: _____

Exhibit A
(Notice)

Exhibit E

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT ("Assignment") is made and entered into as of the ____ day of _____, _____, between _____, a _____ ("Assignor"), and _____, a _____ ("Assignee") (Assignor and Assignee are hereinafter sometimes collectively referred to as the "Parties" and singularly as a "Party").

RECITALS:

A. Assignor is the owner of the rights of the Owner under that certain "Agreement Concerning Creation and Operation of Far North Fort Worth Municipal Utility District No. 1" (City Secretary Contract No. _____, M & C - _____) (the "Agreement") effective as of _____, among _____, a _____, as "Owner", the City of Fort Worth, Texas, as the City, and the Far North Fort Worth Municipal Utility District No. 1, as the District, relating to the creation and operation of the District, to the extent that the Agreement covers, affects, and relates to the lands described on **Exhibit A** attached to and made a part hereof of this Assignment for all purposes (the "Transferred Premises").

B. Assignor desires to assign certain of its rights under the Agreement as it relates to the Transferred Premises to Assignee, and Assignee desires to acquire such rights, on and subject to the terms and conditions of this Assignment.

NOW, THEREFORE, in consideration of the premises, the mutual covenants and obligations set forth herein, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Parties hereby agree and act as follows:

1. Certain Defined Terms. Unless indicated otherwise herein, capitalized terms in this Assignment shall have the same respective meanings as are ascribed to them in the Agreement.

2. Assignment. Subject to all of the terms and conditions of this Assignment, Assignor hereby assigns all [**or describe specifically assigned rights if partial**] of its rights under the Agreement, insofar as the Agreement covers, affects, and relates to the Transferred Premises.

3. Assumption. Assignee hereby assumes all obligations of Assignor and any liability that may result from acts or omissions by Assignee under the Agreement as it relates to the Transferred Premises that may arise or accrue from and after the effective date of this Assignment. This Assignment does not release Assignor from any liability

that resulted from an act or omission by Assignor that occurred prior to the effective date of this Assignment unless the City approves the release in writing.

4. **Governing Law.** THIS ASSIGNMENT MUST BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AS THEY APPLY TO CONTRACTS PERFORMED WITHIN THE STATE OF TEXAS AND WITHOUT REGARD TO ANY CHOICE OF LAW RULES OR PRINCIPLES TO THE CONTRARY.

5. Counterpart/Facsimile Execution. This Assignment has been prepared in multiple counterparts, each of which shall constitute an original hereof, and the execution of any one of such counterparts by any signatory shall have the same force and effect and shall be binding upon such signatory to the same extent as if the same counterpart were executed by all of the signatories. Facsimile copies of signatures may be appended hereto with the same force and effect as legally delivered original signatures.

6. Notice to City. A copy of this Assignment shall be provided to the City within fifteen (15) days after execution.

7. Binding Effect. This Assignment shall be binding upon and shall inure to the benefit of Assignor and Assignees and their respective heirs, personal representatives, successors, and assigns.

EXECUTED as of the day and year first above written.

ASSIGNOR:

[_____]

By:_____

Printed name:_____

Title:_____

ASSIGNEE:

[_____]

By:_____

Printed name:_____

Title:_____

STATE OF TEXAS §
 §
COUNTY OF _____ §

SWORN TO AND SUBSCRIBED before me on the _____ day of _____, 20__, by _____.

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF _____ §

SWORN TO AND SUBSCRIBED before me on the _____ day of _____, 20__, by _____.

Notary Public, State of Texas

[Add Acknowledgments]

Exhibit A
(Transferred Premises)