

STATE OF TEXAS § EASEMENT AGREEMENT BETWEEN LAKE CITIES
 § MUNICIPAL UTILITY AUTHORITY AND DENTON
COUNTY OF DENTON § INDEPENDENT SCHOOL DISTRICT

This EASEMENT AGREEMENT (“Agreement”) is made and executed as of the _____ day of _____, 2013, (the “Effective Date”), by and between LAKE CITIES MUNICIPAL UTILITY AUTHORITY, a governmental entity created under art. XVI, Section 59 of the Texas Constitution, (“LCMUA”), whose mailing address is 501 N. Shady Shores Rd., Lake Dallas, Denton County, Texas 75065, and DENTON INDEPENDENT SCHOOL DISTRICT, an independent school district organized under Texas law, (“DISD”) whose mailing address is 1307 N. Locust St., Denton, Denton County, Texas 76201.

RECITALS

LCMUA and DISD agree that the following recitals are true and correct in all material respects and are incorporated into the Agreement:

WHEREAS, LCMUA owns that certain tract of real property situated in Shady Shores, Denton County, Texas, and more particularly described in the Denton County Land Records under Volume 4529, page 391 (hereinafter referred to as the “Elevated Storage Tank Property”);

WHEREAS, pursuant to the Texas Commission on Environmental Quality requirement, the Elevated Storage Tank Property is access-controlled and secured by a fence around the property;

WHEREAS, DISD plans to develop the property identified as “Denton ISD Middle School No. 7” and, for storm water management purposes, desires to construct and maintain a drainage channel across a portion of the Elevated Storage Tank Property; and

WHEREAS, LCMUA has agreed to grant an easement to DISD in connection with the construction, maintenance, repair, and replacement of the drainage channel on the terms and conditions set forth below.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Grant of Easement.** Subject to the terms and conditions in this Agreement, LCMUA hereby grants DISD a non-exclusive easement over and across that portion of LCMUA’s Elevated Tank Storage Property as shown in Exhibit A, attached hereto and incorporated herein, solely for the purposes of constructing, maintaining, repairing, and replacing a drainage channel, including all pipes, canals, or other improvements or appurtenances necessary to convey and control the quantity of storm water through the property (“Drainage Channel Facilities”). DISD and its employees and agents may have ingress and egress to and from the easement only with the permission of and in presence of personnel authorized by LCMUA. DISD shall provide a

minimum of 24-hours notice to LCMUA prior to accessing the property for inspection or maintenance purposes. LCMUA has on-call personnel available to allow access in the event of an emergency.

2. **Drainage Channel Facilities.**

2.1 *Construction.* DISD, at its sole cost and expense, shall have the Drainage Channel Facilities constructed in accordance with the design specifications attached hereto as Exhibit B, Sheets C1.18 and C1.41, as well as the current North Texas Council of Governments Standards for Construction. No alteration of the design specifications shall be made unless approved in advance in writing by LCMUA.

2.1.1 LCMUA shall have the right but not the obligation to inspect the construction of the drainage channel to ensure compliance with the design specifications.

2.1.2 DISD agrees to construct and maintain a pedestrian-and-equipment crossing over the Drainage Channel Facilities on the Elevated Tank Storage Property to allow LCMUA to mow and otherwise maintain the property.

2.2 *Tree Preservation.* DISD during construction shall provide for the protection of existing trees located on the Elevated Storage Tank Property, and agrees retain an arborist approved by LCMUA to consult with regarding appropriate methods for tree preservation. DISD agrees to comply with the recommendations of the arborist, as well as with the tree preservation requirements set forth in Exhibit B, Sheet T1.01.

2.2.1 DISD during construction shall only remove the trees specifically identified for removal in Exhibit B, Sheet T1.01.

2.2.2 If any of the trees required to be retained in Exhibit B, Sheet T1.01 should die within a period of three years after completion of the construction other than by force majeure, DISD shall replace the tree(s) within six months of written notice by LCMUA at a ratio of one-to-one with an identical size and type tree. LCMUA may elect to have the replacement tree placed on the Elevated Storage Tank Property or, with the permission of the owner, on an adjacent property for which the original tree provided screening.

2.3 *Maintenance.* DISD, at its sole cost and expense, shall maintain the Drainage Channel Facilities in accordance with the Operation and Maintenance Plan attached and incorporated herein as Exhibit C. DISD must at all times keep the Drainage Channel Facilities in such condition that they perform their designed function without effecting the surrounding property.

2.3.1 LCMUA agrees to inspect the Drainage Channel Facilities bi-annually, and submit an inspection report to DISD that identifies any conditions requiring remediation in order for the Drainage Channel Facilities to optimally perform their designed function. DISD agrees to correct within thirty (30) days from written notice by LCMUA the conditions that interfere with the optimal function of the Drainage Channel Facilities.

2.3.2. It is expressly understood and agreed that LCMUA is under no obligation to maintain or repair the Drainage Channel Facilities, and in no event shall this Agreement be construed to impose any such obligation on LCMUA. DISD solely has the

obligation to perform the work necessary to maintain the Drainage Channel Facilities in a condition as to perform their designed function.

3. Restrictive Covenants. DISD is subject to the following restrictive covenants with respect to the easement and Drainage Channel Facilities:

3.1 DISD's use of the easement and Drainage Channel Facilities shall not interfere with the enjoyment and use of the Elevated Storage Tank Property by LCMUA or any tenant or licensee of LCMUA.

3.2 DISD may not sell, transfer, convey, assign or encumber the easement or Drainage Channel Facilities to any third party without LCMUA's express written consent (which consent may be given, withheld, conditioned or delayed in LCMUA's sole discretion).

4. Reservation of LCMUA's Rights. LCMUA reserves the right to use the property subject to DISD's easement for any purpose not inconsistent with the uses for which the grant of the easement is made. Further, LCMUA reserves the right to utilize the entire Elevated Storage Tank Property, including the portions encumbered by DISD's Drainage Channel Facilities, for any means it deems necessary. LCMUA will make every attempt reasonable to coordinate future needs of the property with DISD. However, in the event the Drainage Channel Facilities conflict with future intended uses for the property, DISD agrees at its sole cost and expense to remove, relocate, or otherwise improve the Drainage Channel Facilities to provide for the intended use of the Elevated Storage Tank Property by LCMUA. DISD shall within 180 days of written notice by LCMUA remove, relocate, or otherwise improve the Drainage Channel Facilities without cost to LCMUA.

5. Perpetual Easement. The Easement and all rights and obligations associated therewith, including the restrictions set forth in Section 3, are appurtenant to and run with the land constituting the Elevated Storage Tank Property, and shall be perpetual unless terminated by mutual agreement of the parties (as provided in Section 8, below) or terminated by LCMUA due to a Default (as provided in Section 9, below). Further, this Agreement shall be recorded in the land records of Denton County, Texas.

6. Release. DISD HEREBY RELEASES LCMUA, ITS SUCCESSORS AND ASSIGNS, AND THEIR RESPECTIVE AGENTS, OFFICERS, AND EMPLOYEES, (COLLECTIVELY, THE "PROTECTED PARTIES") FROM DAMAGE TO PROPERTY OR INJURIES, INCLUDING LOSS OF LIFE, SUSTAINED BY ANY PERSON OR PERSONS CAUSED BY OR ARISING OUT OF THE CONSTRUCTION OR MAINTENANCE OF THE DRAINAGE CHANNEL FACILITIES OR THE USE OF THE EASEMENT BY DISD, ITS EMPLOYEES AND AGENTS. LCMUA AND DISD INTEND FOR THE RELEASE AND WAIVER SET FORTH IN THIS SECTION 6 TO APPLY EVEN IF THE LOSS OR DAMAGE DESCRIBED IN SUCH SECTION IS CAUSED BY THE NEGLIGENCE OF THE PROTECTED PARTIES. THE PARTIES, HOWEVER, AGREE THAT THIS RELEASE DOES NOT APPLY TO INTENTIONAL ACTS OR GROSS NEGLIGENCE OF THE PROTECTED PARTIES.

7. Indemnification.

7.1 DISD TO THE EXTENT ALLOWED BY LAW SHALL INDEMNIFY, DEFEND, PROTECT AND HOLD HARMLESS LCMUA AGAINST AND FROM ANY PENALTY, OR ANY DAMAGE, OR CHARGE, IMPOSED FOR ANY VIOLATION OF ANY LAW, ORDINANCE, RULE OR REGULATION ARISING OUT OF THE USE OF THE ELEVATED STORAGE TANK PROPERTY OR CONSTRUCTION OR MAINTENANCE OF THE DRAINAGE CHANNEL FACILITIES BY DISD, WHETHER OCCASIONED BY THE NEGLIGENT ACT OR OMISSION OF DISD, ITS EMPLOYEES, OFFICERS, AGENTS, CONTRACTORS OR ASSIGNS.

7.2 DISD SHALL AT ALL TIMES INDEMNIFY, DEFEND, PROTECT AND HOLD HARMLESS LCMUA AGAINST AND FROM ANY AND ALL CLAIMS, ACTIONS, LOSS, COST, DAMAGE, OR EXPENSE, INCLUDING ATTORNEY'S FEES, FOR PERSONAL INJURY OR DEATH, OR PROPERTY DAMAGE ARISING OUT OF OR FROM THE USE OF THE ELEVATED STORAGE TANK PROPERTY OR THE CONSTRUCTION, MAINTENANCE, OR USE OF THE DRAINAGE CHANNEL FACILITIES BY DISD, ITS OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS, AND INVITEES IN CONNECTION WITH THIS AGREEMENT, EXCEPT WHEN CAUSED BY THE WILLFUL MISCONDUCT OR NEGLIGENCE OF LCMUA, ITS OFFICERS, EMPLOYEES OR AGENTS, AND ONLY THEN TO THE EXTENT OF THE PROPORTION OF ANY FAULT DETERMINED AGAINST LCMUA FOR ITS WILLFUL MISCONDUCT OR NEGLIGENCE.

7.3 DISD SHALL AT ALL TIMES INDEMNIFY, DEFEND, PROTECT, AND HOLD HARMLESS LCMUA AGAINST AND FROM ANY AND ALL CLAIMS, ACTIONS, LOSS, COST, DAMAGE, OR EXPENSE, INCLUDING ATTORNEY'S FEES ARISING OUT OF OR FROM DISD'S FAILURE TO MAINTAIN THE DRAINAGE CHANNEL FACILITIES IN ACCORDANCE WITH THIS AGREEMENT, OR AS A RESULT OF ANY INJURIES OR DEATH, OR PROPERTY DAMAGE RELATED TO (1) FLOODING OF THE DRAINAGE CHANNEL FACILITIES; (2) STRUCTURAL FAILURE OF THE DRAINAGE CHANNEL FACILITIES; OR (3) FAILURE OF THE DRAINAGE CHANNEL FACILITIES TO PERFORM IN ACCORDANCE WITH DESIGNED FUNCTION.

7.4 THE RIGHTS AND PROTECTION AFFORDED TO LCMUA IN THIS SECTION 7 SHALL ALSO EXTEND TO LCMUA'S ELECTED AND APPOINTED OFFICIALS, EMPLOYEES, AGENTS, AND REPRESENTATIVES. THIS SECTION 7 SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

8. Amendment/Termination. This Agreement may be amended or terminated only by written agreement executed by the owners of fee simple title to the Elevated Storage Tank Property and DISD, without the joinder of any tenants, subtenants, invitees, or licensees of such owners; any such amendment shall be effective when filed for record in the Official Public Records of Denton County, Texas.

9. Default.

9.1 In the event DISD fails to perform any of DISD's obligations and/or comply with any of the restrictions set forth in this Agreement (including the restrictive covenants set forth in Section 3, above) (in any event, the "Default"), LCMUA may give written notice to DISD of said Default (the "Default Notice"). If DISD does not cure any such Default within thirty (30) days after receipt of the Default Notice, or such earlier time if the Default may be reasonably cured prior to such 30-day period, then LCMUA shall be entitled to all remedies available at law or in equity, including, without limitation, (i) the right to specific performance and (ii) the right to take such self-help measures as are necessary to cure the Default. In the latter event, LCMUA may, among other things, perform any such maintenance, repair and/or replacement as is necessary to cure the Default. Any costs incurred by LCMUA shall be reimbursed by DISD not later than thirty (30) days of presentation of appropriate statements of actual costs incurred therefor, together with interest at the maximum rate allowable at law (accruing from the date said expenses were incurred).

9.2 If any Default has not been cured after the expiration of the notice and cure period provided in Section 9.1, this Agreement may be terminated at any time by the owners of fee simple title to the Elevated Storage Tank Property, without the joinder of any tenants, subtenants, invitees or licensees of such owners; any such termination shall be effective when filed for record in the Official Public Records of Denton County, Texas. DISD at its sole cost and expense shall remove the Drainage Channel Facilities from the Elevated Storage Tank Property within 180 days of termination.

10. Benefit. This Agreement is intended to benefit DISD. The Easement shall not be sold, transferred, conveyed, assigned or encumbered by DISD. This Agreement is binding upon and shall inure to the benefit of DISD, LCMUA and its successors and assigns.

11. Severability. If any provision of this Agreement is held to be invalid, illegal or otherwise unenforceable for any reason, the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected thereby.

12. Governing Law. The validity of this Agreement and any of its terms and provisions, as well as the rights and duties of the parties, shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in State District Court of Denton County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said court.

13. Entire Agreement. This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written, previous and contemporary agreements between the parties and relating to the matters in this Agreement, and except as otherwise provided herein cannot be modified without written agreement of the parties to be attached to and made a part of this Agreement.

14. **Captions.** Titles, headings or captions of articles or paragraphs contained in this instrument are inserted only as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this instrument or the intent of any provisions hereof.

15. **Multiple Counterparts.** This Agreement may be executed in any number of identical counterparts, each of which for all purposes shall be deemed an original document and all of which together shall constitute but one and the same document; but, in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

16. **Warranty.** The Agreement has been officially authorized by the governing body of each party hereto and each signatory to this Agreement guarantees and warrants that the signatory has full authority to execute this Agreement and to legally bind the respective party to this Agreement.

EXECUTED this _____ day of _____, 2013.

LAKE CITIES MUNICIPAL UTILITY AUTHORITY

By: _____
Mike Fairfield, General Manager

ATTEST:

Becky Vickers, District Secretary

STATE OF TEXAS §
 §
COUNTY OF DENTON §

This instrument was acknowledged before me this ___ day of _____, 2013, by Mike Fairfield, General Manager of the Lake Cities Municipal Utility Authority, a governmental entity created under art. XVI, Section 59 of the Texas Constitution, on behalf of said governmental entity.

Notary Public, State of Texas

Commission Expires: _____

EXECUTED this _____ day of _____, 2013.

DENTON INDEPENDENT SCHOOL DISTRICT

By: _____
Mia Price, President
Denton ISD Board of Trustees

ATTEST:

Dr. Rudy Rodriguez, Board Secretary

STATE OF TEXAS §
 §
COUNTY OF DENTON §

This instrument was acknowledged before me this _____ day of _____, 2013,
by Mia Price, President of the Denton Independent School District Board of Trustees, an
independent school district operating under Texas law, on behalf of said school district.

Notary Public, State of Texas
My Commission expires: _____

EXHIBIT B

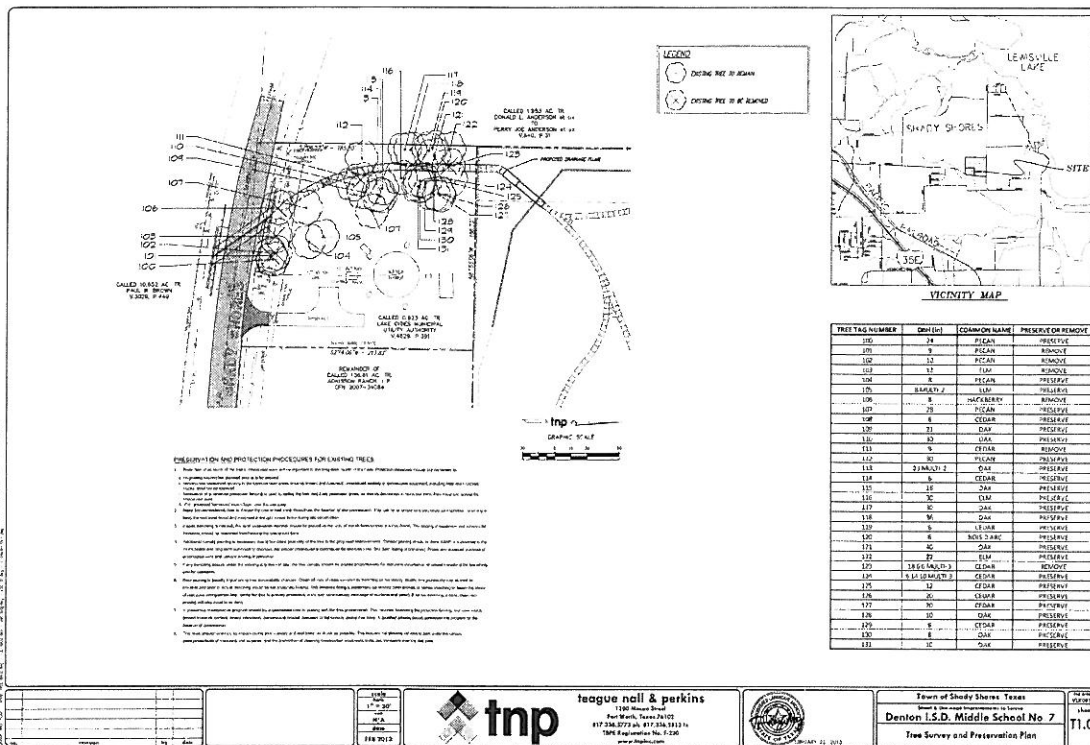


EXHIBIT C
DRAINAGE CHANNEL FACILITY OPERATION AND MAINTENANCE PLAN

GENERAL MAINTENANCE PROCEDURES

The structural and functional integrity of the Facility shall be maintained at all times by removing and preventing drainage interference, obstructions, blockages, or other adverse effects into, through, or out of the system.

Periodic silt removal shall occur as determined necessary by LCMUA and its Engineer. Silt shall be removed and the channel returned to original lines and grades shown on the approved engineering plans.

Accumulated litter, sediment, and debris shall be removed every 6 months or as necessary to maintain proper operation of the channel. Disposal shall be in accordance with federal, state and local regulations.

PREVENTIVE MAINTENANCE/INSPECTION

- Visual inspections of all components will be conducted every 12 months.
- A log shall be kept of maintenance actions, and inspections. The log should document the condition of the channel and silt, litter and debris removal dates.
- **Written maintenance and repair records shall be maintained by DISD, with a copy provided to LCMUA.**
- LCMUA may provide notice to DISD regarding the condition of the Drainage Channel Facilities on the following form, which notice complies with the requirements under Section 2.3.1 of the Agreement:

Drainage Channel Maintenance CHECKLIST

| FREQUENT INSPECTION | <i>DATE</i> | REPAIRS REQUIRED | REPAIRS MADE | NOTES |
|--|-------------|-----------------------------|-------------------------|--------------|
| Remove Trash and debris | | | | |
| Remove grass clippings | | | | |
| Violations Noted | | | | |
| | | | | |
| INSPECTION | | | | |
| Condition of Channel | | | | |
| Amount of silt in channel | | | | |
| Amount of invasive vegetation in channel | | | | |
| Location of Erosion | | | | |
| Condition of channel | | | | |
| Condition of trash guard | | | | |
| | | | | |

Inspected by: _____

Inspected on: _____