

**UPPER TRINITY REGIONAL WATER DISTRICT
AND
FANNIN COUNTY, TEXAS**

**AGREEMENT CONCERNING DEVELOPMENT OF
PROPOSED LAKE RALPH HALL
IN FANNIN COUNTY**

THE STATE OF TEXAS §

§

COUNTY OF DENTON §

This **AGREEMENT CONCERNING DEVELOPMENT OF LAKE RALPH HALL** (the "Contract") is made and entered into as of the 24 day of March, 2008 ("Contract Date"), by and between **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 **FANNIN COUNTY, TEXAS**, a political subdivision of the State (herein referred to as "Fannin County" or the "County");

WITNESSETH:

WHEREAS, the District is composed of cities, towns and utilities who provide water service to retail customers in Denton, Dallas and Collin Counties in the Trinity River Basin of Texas; and

WHEREAS, both the District and the County are located in Region C of the State Water Plan pursuant to designations made by the Texas Water Development Board to implement the provisions of Senate Bill 1, an act of the Legislature that requires all regions of the State and all water supply agencies within such regions to develop viable water supply plans over a fifty (50) year planning cycle; and

WHEREAS, Fannin County and the District desire to cooperate in the development of a surface water supply lake in Fannin County on the North Sulphur River; 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, an eyesore and on-going environmental degradation of the channel and river environment; and

WHEREAS, the City of Ladonia (“Ladonia”) heretofore investigated the feasibility of a water supply lake in southeast Fannin County on the North Sulphur River; and

WHEREAS, following such investigation Ladonia requested 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, pursuant to the District’s evaluation and upon its recommendation, the Region C Water Plan and the State Water Plan include a lake on the North Sulphur River in Fannin County as a recommended water management strategy for the District, and this proposed lake is referred to as Lake Ralph Hall (the “Lake”); 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 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, 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 associated lands reasonably required for safe and reliable operation of such a water supply source, and any lands the District may designate to be part of the project for development, mitigation and operation of the Lake; and

WHEREAS, the District has evaluated the feasibility of the proposed Lake and has filed a water rights application with the Texas Commission on Environmental Quality (“TCEQ”), which application is for authorization to appropriate, store and divert state waters; and

WHEREAS, to enable the Lake's primary use as a dependable water supply, the level of water in the Lake will fluctuate due to variable rainfall and runoff into the Lake, and due to withdrawal of water from the Lake for its intended beneficial use as a water supply, especially during a severe drought; and therefore the Lake can not be maintained at a constant level; 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 and its members and customers, including customers located in that portion of Fannin County in the North Sulphur River Basin; and

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

WHEREAS, the District intends to develop the Lake giving due regard to environmental considerations and to the protection of water quality in the Lake, and enabling economic development in the vicinity of the Lake, all in a mutually beneficial manner and in the spirit of partnership with Fannin County and Ladonia; and

WHEREAS, Fannin County and the District believe that the Lake will provide major benefits for the citizens of Fannin County, for the local economy, and for the environment; and

WHEREAS, the Parties desire to cooperate in development of the Lake to assure realization of the potential for a vital water supply, for the environmental benefits, and to enable economic development of high quality in the vicinity of the Lake; and

WHEREAS, the major cities of Fannin County have adopted resolutions in support of the proposed Lake; and

WHEREAS, during the Texas Legislature's 80th Legislative Session in 2007, Senate Bill 3 was passed, which designates the site for the proposed Lake as a "unique site for the

construction of a reservoir,” thus providing safeguards and protections against certain incompatible encroachments on the site of the Lake; and

WHEREAS, the District has offered to make water available for local needs and has entered into a contract with Ladonia dated December 2, 2004, under which contract Ladonia has agreed “...to exercise stewardship of such water made available by the District in a fair and equitable manner on behalf of nearby communities and utilities”; and

WHEREAS, subsequent to the referenced contract with Ladonia, the County helped organize the Fannin County Water Supply Agency (“Agency”) to plan and develop a regional program to provide for future water supply needs in the Fannin County area; and

WHEREAS, the District acknowledges that the contract with Ladonia concerning future water supplies for local needs is not exclusive; and, accordingly, the District is willing to make water available by contract directly to the Agency if so requested by the Agency to augment other water supply sources available to the Agency; and

WHEREAS, the North Sulphur River Basin in which the Lake is to be located covers about 17% of the County; and

WHEREAS, the North Texas Municipal Water District (“NTMWD”) has filed an application with the TCEQ for development of a much larger lake (the Lower Bois d’Arc Creek Reservoir), which lake is proposed to be located in the Red River Basin, which basin covers about 72% of the County; and

WHEREAS, the NTMWD has expressed its intention to expand it’s service area to include Fannin County and to provide water supply services for the Agency, which service would enable a long-term dependable local water supply for the Fannin County area; and

WHEREAS, under the spirit of partnership embodied in this Contract, Fannin County desires to withdraw it’s “Request for Contested Case Hearing”, dated March 30, 2006 and filed with the TCEQ; and

WHEREAS, the County desires to take a leadership role in attracting quality economic development in the vicinity of the Lake; and accordingly, has taken legislative steps to provide for the County to have a role in zoning for unincorporated areas in the vicinity of the Lake; and

WHEREAS, Lake Ralph Hall is expected to be a magnet for economic development, recognizing the attributes of the proposed Lake and it's proximity to the metropolitan area around Dallas; and

WHEREAS, the County and the District desire to support an orderly process for acquisition of property needed for the Lake, and both Parties desire that all property owners be fully and fairly compensated for any property to be acquired for development of the Lake; and

WHEREAS, except for the limited activities set forth in this Contract or as provided by law or other agreement, Fannin County will have no financial responsibility for development of the Lake; rather, the District will be responsible for development of the Lake pursuant to the applicable State and Federal permits; and, the Lake will be owned and operated by the District; and

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

NOW, THEREFORE, for good and valuable consideration, the adequacy and sufficiency of which is evidenced by the Parties' respective execution of this Contract, the District and Fannin County 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 of the Lake. After a thorough review of the District's proposal to develop the Lake, the need for water, and the

local benefits to be realized, the District and Fannin County do hereby express their mutual desire to work in a spirit of partnership to develop Lake Ralph Hall as a strategic water resource and as an important asset for Fannin County. The Parties agree that the Lake will provide major benefits for the citizens of Fannin County and the members and customers of the District, for the local economy, and for the environment in the area of the North Sulphur River. The Parties also recognize that the over-riding purpose of the Lake is to provide a reliable water supply, protected from pollution, and to provide for future needs of the District and a portion of Fannin County. Both parties recognize that an even larger lake (the proposed Lower Bois d'Arc Creek Reservoir) is being planned for the Red River Basin, with capacity to provide a water supply for the future needs of a major portion of Fannin County.

Section 3. Other Contracts. The District reserves to itself the sole discretion to enter into contracts with others for participation in the Lake or for water supply therefrom. Whether or not others participate in the Lake, the District will be responsible for developing (planning, regulatory permits, design, construction, operation, etc.) the Lake. However, in the sole discretion of the District, the District may enter into contracts with others to participate in the development of the Lake, and may enter into agreements with other parties concerning water supply or any element of project development, construction or operation. Specifically, the District reserves the right to enter into a water supply contract with the Agency on mutually agreed terms.

Section 4. Actions in Support of County Roads / Transportation Infrastructure. The District will coordinate with both Fannin County and Texas Department of Transportation (TX DOT) concerning reasonable and necessary adjustments in the existing road system to accommodate development of the Lake. The Parties are in mutual agreement to work together to assure that all such adjustments to the transportation infrastructure are compatible with the Lake, and with the remaining road system. The District agrees that any County roads or bridges to be constructed or modified as part of the Lake development will be built to standards that are equal to or better than the existing road facilities being adjusted, replaced or relocated.

Section 5. Actions in Support of Tax Revenues. Fannin County hereby expresses its desire to avoid any significant loss of revenues, including ad valorem tax receipts, to the

County that may be associated with development of the Lake. Likewise, the District, as consideration for the agreements herein, desires to help the County sustain its revenues by making certain payments as set forth below.

a. Taxes / Tax Exemptions. Both parties are governmental agencies who are exempt from the payment of State and local taxes. Further, it is recognized that Fannin County depends upon the collection of taxes to support its budgets and to maintain service to its citizens. In contrast, the District is not a taxing entity; rather, the District is a governmental enterprise that depends upon the sale of services and the associated fees and charges to support its budgets and to provide services to its members and customers. Both Parties recognize that when the District acquires real property for development of the Lake, such property will be taken off the tax rolls and such action may have a transitory effect on tax receipts to the County and to certain other entities. Further, it is acknowledged that most of the land to be acquired for the Lake carries an agricultural exemption for tax appraisal purposes; therefore, any such loss of tax receipts will be considerably less than if the property were not so exempted.

b. Development and Land Values. Based on development patterns and the trend of land-values around other water supply lakes in Texas which support economic development, the Parties agree that any reduction in tax receipts to Fannin County and other local taxing entities is expected to be transitory or temporary.

c. Payment and Consideration. As consideration for this Contract and the agreements herein, the District agrees to make the following schedule of annual payments to the County.

<u>Payment No.</u>	<u>Amount</u>
1	\$ 58,000
2	\$ 58,000
3	\$ 58,000
4	\$ 50,500

5	\$ 43,500
6	\$ 36,000
7	\$ 29,000
8	\$ 21,500
9	\$ 14,500
10	\$ 7,000

Payment No. 1 shall be due within sixty (60) days after the amount of acreage acquired by the District for development of the Lake reaches a total of five thousand (5,000) acres. Each successive payment thereafter shall be due on the anniversary date of Payment No. 1. Fannin County agrees to share said payments with the respective school districts and municipalities whose boundaries are partially within the footprint of the Lake. Accordingly, for the monies so paid by the District, the County will make distribution to the following entities in the proportions noted.

Fannin County	34%
Fannindel Independent School District	56%
Bonham Independent School District	2%
Honey Grove Independent School District	6%
City of Ladonia	2%

Section 6. Actions in Support of Economic Development. Lake Ralph Hall is expected to enhance economic development in Fannin County, recognizing the quality of the Lake and its proximity to the Metroplex and to Ladonia. To that end, the County desires to take a leadership role in economic development, including the implementation of zoning for unincorporated areas in the vicinity of the Lake. The pace and the quality of development will be subject to many factors, including the general economy, governmental policies, zoning, availability of public services, etc. If the City of Ladonia or Fannin County wish to take specific steps to promote economic development, Upper Trinity will be willing to play an appropriate supportive role, subject to the bottom-line purpose of the Lake which is to maintain a reliable water supply source, with protection of water quality in the Lake and in the tributary streams. Further, it is agreed that the promotion of economic development

must take into account the public duty to provide an assurance of safety for people and property on, and at, the Lake.

Section 7. Actions to Support Development of the Lake. The District has applied to the TCEQ for a permit to store state water in and divert state water from the Lake, and, has filed the necessary regulatory application for a permit from the Federal government (U.S. Corps of Engineers), both of which permits are required for development of the Lake. Both applications are in process, now under technical review by the respective agencies. Upper Trinity is continuing various planning and engineering activities for orderly development of the Lake within the next few years.

a. Orderly Planning. As a convenient forum for local input to the planning process, Upper Trinity has established a Lake Advisory Panel (LAP). Fannin County agrees to appoint a person to the Lake Advisory Panel; which Panel will assist the District in coordinating and planning for various elements of the proposed Lake, including adjustments to transportation facilities, public access, etc. A goal of the LAP is to assure that the Lake will generate desired benefits in the public interest. It is the intent of Fannin County and of the Commissioners Court to support development of the Lake and to help promote economic development opportunities. If requested by the District, Fannin County will take additional actions as appropriate to support the project, including assistance with acquisition of property for the Lake.

b. Land Acquisition. Both parties agree that it is important to assure that all property owners are fully and fairly compensated for the property to be acquired for development of the Lake. The District will endeavor to acquire properties needed for development of the Lake through negotiation, arriving at a fair price that is mutually agreeable. Further, in many cases, as part of an agreed sale of such property, a landowner may desire to continue to enjoy use of the property under reasonable terms, pending development of the Lake. The District agrees that it is in the best interest of all parties for property to be acquired through negotiation, if possible. However, if in spite of the best good-faith efforts, negotiation is unsuccessful for certain parcels of real estate, the public interest will be served by eminent domain proceedings before independent special commissioners to determine the fair market

value of the subject parcel. The County hereby consents to the District using its power of eminent domain to acquire property to be used for the Lake. Only if good-faith efforts to negotiate a mutually acceptable price are unsuccessful, will the District use its power of eminent domain to acquire property for the Lake.

Section 8. Actions in Support of Water Supply Planning. The primary reason for developing Lake Ralph Hall is to provide a dependable water supply for Upper Trinity Regional Water District and its members and customers. To assist with meeting local needs for water supply in the Sulphur River portion of Fannin County, the District agrees to make water available from the Lake to the Agency and to others on reasonable terms. Pursuant to surface water regulations administered by TCEQ, water to be made available from the Lake for local use shall be reserved to the Sulphur River Basin in Fannin County, except as authorized in writing by the District.

a. Water for Local Needs. To help assure an adequate water supply for nearby communities, the District has contracted with Ladonia to act in a stewardship role to make water from the Lake available for local use. Ladonia may provide for treatment of the water to drinking water standards and make treated water available to other contracting parties. Local entities may purchase water directly from Ladonia or from the District pursuant to Paragraphs b. and c. of this Section.

b. Additional Water. Subject to future needs and availability, the Agency or other water utility entities may desire to purchase water from the District for sale or distribution within their respective service areas, especially in the North Sulphur River Basin in Fannin County. Such future sales of water from the Lake shall be subject to applicable terms, rates and policies established by the District for sales to wholesale customers. The distribution or sale of such water from the Lake outside the North Sulphur River Basin shall require written approval in advance by the District.

c. Potential Water From Other Sources. Because of the strategic location of the Lake, the District may determine to use 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, additional water for local water supply needs may be available by contract.

d. Ownership / Responsibilities. Costs of water treatment, and the costs of operation and maintenance for local water distribution systems will be a local responsibility. Ownership of all water from the Lake shall remain with the District until such water is withdrawn from the Lake according to the applicable contract.

Section 9. Other Actions in Support of the Lake. Fannin County agrees to provide it's full support for the proposed Lake and the associated improvements. In addition to providing a vital source of water, the District and the County agree that the Lake will help improve certain environmental conditions and will facilitate economic development in Fannin County, especially for nearby communities. Accordingly, on its own motion, and as may be requested from time to time by the District, the County agrees to 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. Withdrawal of Protest. Fannin County agrees to promptly (within 30 days) notify TCEQ of its withdrawal of its written comments and its request for contested case hearing regarding the District's water rights application for the Lake.

b. Zoning Responsibilities. Fannin County agrees to assist Ladonia and the District in the implementation of zoning regulations around the Lake. Ladonia is expected to be responsible for zoning inside its City Limits; and, the County will take a lead role in zoning regulations for the unincorporated area. Pursuant to State statutes and applicable agreements, the area subject to such zoning regulations by the County is expected to be located within 5000 feet of where the shoreline of the Lake would be if the Lake were filled to its storage capacity.

c. Water Quality Protection. An important purpose for establishing zoning regulations around a water supply source such as the Lake is to protect water quality in the watershed, thereby preventing runoff of pollutants into the Lake. Accordingly,

the County agrees to cooperate with the District in the implementation of rules and programs to protect water quality in the Lake.

d. Police Powers. Fannin County will exercise its police powers as needed and appropriate to protect public health and safety in connection with development and operation of the Lake.

Section 10. Actions to Support Wastewater Control. To protect the Lake and to encourage quality real estate development around the Lake, it is the intent of the Parties to support policies that will protect water quality in the Lake and in its tributaries. Accordingly, it is mutually agreed to promote policies and implement programs that encourage future subdivision projects near the Lake to be served by community wastewater collection systems, rather than by on-site wastewater treatment facilities operated by individual owners. However, it is recognized that a community wastewater collection system may not be feasible in all circumstances. Therefore, exceptions may be made for individually owned facilities by homeowners who are not a part of a conventional residential subdivision, or who do not have access to a wastewater collection system, and if the proposed on-site facility will comply with applicable construction and operational standards to prevent pollution of water and the environment.

Section 11. Actions in Support of Infrastructure Requirements. District agrees at its cost, to plan, finance and construct an intake structure to withdraw water from the Lake for the District and for any other party who, prior to construction of said intake, has entered into a contract with the District to purchase water out of the Lake. District agrees to use its best efforts to assure that the intake structure will have sufficient capacity to enable the withdrawal of up to ten percent (10.0%) of the firm yield of the Lake under applicable contracts for local use pursuant to Section 8 herein. Further, District agrees to provide suitable space in the intake structure for pumps and related appurtenances for withdrawal of water for local use per water supply contracts. For any contracts otherwise entered into after construction of said intake, District will cooperate with and assist the contracting entities in making provision to withdraw water from the Lake pursuant to a specific water supply contract. Each such contracting entity will be responsible for all costs, plans, financing, installation, construction and operation of such pumps and appurtenances, as

well as pipelines, treatment works and other appurtenances that may be necessary. Before any such pumps, pipes or appurtenances may be installed in or on facilities or property owned by the District, it will be necessary for the contracting entity and District to enter into a written agreement concerning such joint-use. It is further agreed that:

- a. Provision for Future Pipeline. The District will use its best efforts in its relationship with the Texas Department of Transportation ("TXDOT") to include provision on the future SH 34 bridge across the Lake to enable a future water pipeline to be installed for local use. Installation and use of such pipeline will be subject to the terms of an applicable contract between the District and the Agency (or Ladonia).
- b. Coordination of Road Adjustments. The District will coordinate with both Fannin County and TXDOT concerning reasonable and necessary adjustments in the State and County road system to be compatible with the Lake.

Section 12. Indemnification. The District and Fannin County 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 planning, design, construction, maintenance, and operation of the Lake, and the transportation and delivery of water. Both the County and the District agree to be responsible for their own respective negligent acts.

Section 13. Term and Expiration. The term of this Contract shall be for an initial period of twenty-five (25) years from the Contract Date (the date first above written) and may be renewed by mutual agreement as to terms and conditions for an additional period of twenty-five (25) years. The Contract may be terminated by the District without recourse by the County or other parties if, in the sole opinion of the District, the requisite State and Federal permits to enable construction of the Lake are not timely received by the District. After said permits have been received, a Party's sole remedy shall be to seek enforcement of the terms of the Contract. The terms of the Contract may be enforced by specific performance and injunctive relief.

Section 14. 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 Fannin County, to: County Judge
 Fannin County Courthouse
 Bonham, Texas 75418

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

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 15. 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 16. 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: _____

Kevin Mercer, President, Board of Directors

ATTEST:

Timothy S Fisher
Timothy Fisher, Secretary, Board of Directors

(DISTRICT SEAL)

APPROVED AS TO FORM AND LEGALITY:

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

FANNIN COUNTY

By: _____

George E. ("Butch") Henderson, County Judge

ATTEST:

Sammy Rich County Clerk