

**INTERLOCAL WHOLESALE WATER SALES CONTRACT**

This Contract is made by and between the CITY OF LUBBOCK (herein called "PROVIDER" a home rule municipal corporation located in Lubbock County, acting by and through its Mayor as authorized by specific action of this Council; and the Texas Department of Criminal Justice, an agency of the State of Texas (herein called "CONSUMER").

**WITNESSETH**

WHEREAS, the CONSUMER is an agency of the State of Texas operating a correctional facility located at 8602 Peach Avenue, Lubbock, Texas outside of the jurisdiction of the PROVIDER, commonly called the Montford Unit;

WHEREAS, Section 22.03.090(f) of the Code of Ordinances of the PROVIDER permits the sale of wholesale water outside its municipal boundaries to federal, state or local governments pursuant to appropriate intergovernmental contracts;

WHEREAS, the PROVIDER is amenable to providing said wholesale, subject to the conditions precedent and upon the terms and conditions of this Contract, to CONSUMER; and

WHEREAS, the Government Code authorizes certain intergovernmental cooperation contracts;

WHEREAS, the PROVIDER is responsible for protecting its drinking water supply from contamination or pollution which could result from improper construction or water usage on the CONSUMER's side of the meter.

NOW THEREFORE, for and in consideration of the mutual agreements, covenants, obligations, and benefits herein expressed, PROVIDER and CONSUMER agree as follows:

**ARTICLE I  
PROVISIONS OF WATER**

**1.1 TERMS, PROVISIONS AND CONSIDERATIONS**

PROVIDER agrees to sell and convey wholesale water to the CONSUMER, subject to the conditions precedent and under and pursuant to the terms, provisions and conditions of this Contract.

## 1.2 DEFINITIONS

The following shall be the definitions of the terms used within this agreement:

**Wholesale-** The term “wholesale” shall have that meaning as used in Article 22.03 of the City of Lubbock Code of Ordinances.

**CONSUMER-** The term “CONSUMER” shall mean the Texas Department of Criminal Justice.

**PROVIDER-** The term “PROVIDER” shall mean the City of Lubbock, Texas.

**Point of Delivery-** The term “Point of Delivery” shall be that specified area as described in Exhibit “A”, which is attached hereto and incorporated as if fully set forth herein.

## ARTICLE II CONDITIONS OF SALE OF WHOLESALE WATER

### 2.1 QUALITY AND TREATMENT

PROVIDER shall supply potable water of similar quality that PROVIDER distributes to the residents of Lubbock, Texas treated by disinfectants and such other treatment as may in the future be directed by appropriate regulatory agencies and meeting the applicable primary drinking water standards of the Texas Commission on Environmental Quality and other local, State and Federal governmental agencies at the Point of Delivery, as hereinafter defined, during the term of this Contract.

PROVIDER MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESSED, STATUTORY, OR IMPLIED, INCLUDING WITHOUT LIMITATION, AS TO THE DESCRIPTION, VALUE, QUALITY, PHYSICAL CONDITION, MERCHANTABILITY, OR FITNESS FOR PURPOSE OF THE WATER SUBJECT TO THIS CONTRACT EXCEPT AS EXPRESSLY SET FORTH ABOVE.

### 2.2 QUANTITY

PROVIDER shall supply and deliver a total maximum amount of 79.8 million gallons of water during any three hundred sixty-five (365) day period of time beginning October 1 of each year to the CONSUMER’s point of delivery as shown in Exhibit “A.” The peak maximum usage during any 24 hour period of time shall be 525,000 gallons. All water quantities shall be measured at the point of delivery. In the event CONSUMER shall use more than the allotted maximum amount of water in the above-described (365) day period given period as set forth above, CONSUMER shall pay an amount equal to two (2x) times the wholesale rate for that amount of wholesale water that exceeds the allotted maximum quantity. The wholesale rate is set forth in Section 22.03.085 of the Code of Ordinances of the City of Lubbock.

All water quantities delivered shall be measured by the metering device at the Point of Delivery at the sole cost of CONSUMER. The meter shall be located in an area reasonably accessible by PROVIDER at all times. PROVIDER shall install the metering device (herein sometimes called the "meter", "metering device, or "metering equipment"), at the expense of CONSUMER (i.e., both the costs of the meter and the installation costs), at the Point of Delivery, and at its option may include equipment in such metering station devices to: (1) control the rate of flow; (2) measure the instantaneous flow of gallons per day; (3) measure peak hourly flow during the day of maximum flow in gallons per day; (4) measure the cumulative volume of water taken; and (5) control changes in the rate of flow, said devices being operable by PROVIDER at the respective meter and, at the option of PROVIDER, remotely from within PROVIDER. Deliveries shall be contingent upon facilities necessary or convenient for PROVIDER to deliver water to CONSUMER from PROVIDER'S existing water conveyance system to the Point of Delivery.

PROVIDER shall give at least 48 hour notice of the possibility of a planned curtailment of or intent to curtail delivery of water or reducing the rate of flow to CONSUMER prior to curtailing the delivery or reducing the rate of flow. Such notice shall be in person to the unit warden or designee, by telephone to the unit warden or designee, or by email to the unit warden or designee. PROVIDER shall not be responsible for notice of any unplanned curtailments due to power outages, line breaks, force majeure, or other unforeseen events.

#### **2.4. POINT OF DELIVERY AND TITLE**

WATER provided to CONSUMER shall be delivered to the point of delivery described in Exhibit A. Title to water passing through the Point of Delivery shall pass to the CONSUMER, for all purposes, at the outlet side of the meter. CONSUMER shall be responsible for the water, for all purposes and intents, from and after title passage to CONSUMER. CONSUMER hereby agrees, to the fullest extent permitted by law, to indemnify, save and hold PROVIDER harmless from any and all claims, demands, losses, and causes of action, which may be asserted by anyone related to the transportation and delivery of said water while title remains with CONSUMER.

#### **2.5. METERING EQUIPMENT**

PROVIDER shall provide the maintenance of the necessary metering equipment for properly measuring the quantity of water delivered to CONSUMER. Calibration of such metering equipment shall be done on a reasonable time schedule, but not less frequently than once every twelve (12) months, or more frequently than once every three (3) months. A meter registering not more than three percent (3%) accuracy above or below the test result shall be deemed to be accurate or non material.

The previous readings of any meter disclosed by test to be inaccurate beyond the acceptable range of plus or minus three percent (3%) shall be corrected in accordance with the percentage of inaccuracy found by such tests for a period extending back one-half (1/2) of the time elapsed since the last calibration date but, in no event, further back than a period of six (6) months. If the meter is out of service or out of repair so that the amount of water delivered cannot be ascertained or computed from the reading thereof, the water delivered during the period such meter is out of service or out of repair shall be estimated upon the basis of the best data available. The metering equipment register shall be

read by PROVIDER at least once a month. All metering equipment, valves, and other appurtenances associated with the metering installation shall be and remain the property of PROVIDER.

## **2.6. BILLING PROCEDURE**

The CONSUMER shall pay for services received pursuant to this Contract based upon the invoice submitted by the PROVIDER each month. Each invoice shall state the Contract Number. It is recommended that the PROVIDER receive payments via electronic funds transfer (EFT), also known as direct deposit.

If the PROVIDER elects to be set up for direct deposit payment, the vendor direct deposit authorization form for setting up direct deposit may be obtained from the Contract Administrator referenced in Section 5.10. PROVIDER shall submit a completed authorization form to the following address:

Texas Department of Criminal Justice  
Accounting and Business Services  
Attn: Belinda Walker  
PO Box 4018  
Huntsville, TX 77342-4018

The PROVIDER shall issue a bill to the CONSUMER participating accounts itemized to show gallons of water delivered to CONSUMER through the meter at the Point of Delivery during the preceding month.

Properly completed invoices shall be mailed to the following address:

Texas Department of Criminal Justice  
Utilities and Energy Department  
P.O. Box 4012  
Huntsville, Texas 77342-4012

If payment is not received by PROVIDER, the PROVIDER shall notify CONSUMER in writing when any such payment shall become delinquent, and if such delinquency is not removed within forty-two (42) days after the date of issuance of the written notice, PROVIDER may, at its discretion, cease deliveries of water to CONSUMER under the terms of this Contract.

PROVIDER shall give at least 48 hour notice of a planned intent to cease delivery of water to CONSUMER prior to ceasing delivery of water. Such notice shall be in person to the unit warden or designee, by telephone to the unit warden or designee, or by email to the unit warden or designee. PROVIDER shall not be responsible for notice of any unplanned cessation of water delivery due to power outages, line breaks, force majeure, or other unforeseen events.

After water has ceased to be provided, PROVIDER may, at its discretion, notify CONSUMER of its intention to declare this Contract forfeited and null and void. Upon such notice, CONSUMER shall have thirty (30) days to pay all delinquent charges, late fees, and reconnect charges, in order to reinstate wholesale water services prior to final action by PROVIDER declaring this Contract forfeited and null

and void. Upon PROVIDER declaring this Contract forfeited and null and void, PROVIDER shall sever and/or remove all connections to PROVIDER'S water system for delivery of water under this Contract.

## **2.7. AREA OF SERVICE**

CONSUMER shall provide water purchased under this Contract solely to the facilities associated with the Montford Unit at 8602 Peach Avenue. No other customer, geographic area or premises, of any kind or nature, shall be served by CONSUMER, directly or indirectly, with water purchased hereunder.

## **2.8. TERM OF CONTRACT**

The term of this Contract shall be a period of five years (5) commencing on Date of Award and ending August 31, 2019. In the event of continued and mutual interest of the terms or similar terms of this agreement, a new contract shall be negotiated, developed, approved and executed for the period after August 31, 2019. In the event that a new contract is not or cannot be agreed upon, there shall be no further discharge or responsibilities of the PROVIDER and CONSUMER.

# **ARTICLE III CONDITIONS OF RECEIVING SERVICE**

## **3.1. CONSUMER'S FACILITIES**

CONSUMER agrees and understands that it will install and maintain, at its sole expense, all facilities necessary for CONSUMER to operate its water system from and after the Point of Delivery and that PROVIDER shall be under no obligation whatsoever to bear any of said expenses aforementioned. CONSUMER shall not alter, modify, or change the meter facilities under any circumstances.

## **3.2. RESTRICTIONS**

The following practices are prohibited by State regulations (30 TAC Subchapter D Rule 290.47(b) Retail Service Agreement):

- A. No direct connection between the public drinking water supply and a potential source of contamination is permitted. Potential sources of contamination shall be isolated from the public water system by an air-gap or an appropriate backflow prevention device.
- B. No cross-connection between the public drinking water supply and a private water system is permitted. These potential threats to the public drinking water supply shall be eliminated at the service connection by the installation of an air-gap or a reduced pressure-zone backflow prevention device.

- C. No connection which allows water to be returned to the public drinking water supply is permitted.
- D. No pipe or pipe fitting which contains more than 8.0% lead may be used for the installation or repair of plumbing at any connection which provides water for human use.
- E. No solder or flux which contains more than 0.2 percent lead can be used for the installation or repair of plumbing at any connection which provides water for human use.

### **3.3. RATES AND PAYMENT DATE**

CONSUMER shall pay to PROVIDER, in a timely manner as provided in this Contract, those charges for water provided to CONSUMER pursuant to the terms of this Contract. The base monthly rate for the meter installed at the Point of Delivery shall be equal to the rate established by the City Council of the PROVIDER for meter of equal size as set forth in Section 22.03.084 of Code of Ordinances of the City of Lubbock, as may be amended from time to time. The volume rate charged for water provided shall be equal to the rate established by the City Council of the City of Lubbock charged to Wholesale customers as set forth in Section 22.03.085 of the Code of Ordinances of the City of Lubbock, as may be amended from time to time. The rates charged do not imply or include service by PROVIDER beyond the Point of Delivery; it being the expressed intent of PROVIDER and CONSUMER that all expenses on CONSUMER'S side of the Point of Delivery shall be the sole expense of CONSUMER.

The setting of water rates is a legislative function of the PROVIDER. To the extent the CONSUMER has any protest to the rates charged pursuant to this Contract, CONSUMER understands and agrees that it has the right to ask to address the City Council of the City of Lubbock as to said rates, but that the City Council of the City of Lubbock ultimately has the legislative authority to determine such rates.

In the event any user fee is imposed on the delivery, taking, sale, use, or consumption of the water received by CONSUMER from PROVIDER, the amount of the user fee allocable to CONSUMER shall be borne by CONSUMER. When and if PROVIDER shall be required to pay, collect or remit any user fee on water received by CONSUMER, then the user fee that is not included in the rates under this Contract will be added to the charges otherwise payable to PROVIDER and shall be the responsibility of CONSUMER.

### **3.4. SANITARY CONTROL**

CONSUMER shall maintain at all times a Reduced Pressure Zone (RPZ) backflow prevention device or an air gap at the Point of Delivery (i.e., between the system of PROVIDER and CONSUMER'S

water distribution system). At no time shall a by-pass be installed on or around the backflow prevention device.

CONSUMER may allow service by direct pressure, if available, from the PROVIDER'S line to the Point of Delivery. However, PROVIDER is under no obligation to provide water at any pressure above and over pressures necessary to deliver the quantities of water described in Section 2.2, above.

CONSUMER shall, at their expense properly test and maintain any backflow prevention device required by the PROVIDER. Copies of all required testing and maintenance records shall be provided to the PROVIDER.

CONSUMER shall permit personnel of PROVIDER to enter upon the property of CONSUMER for the purpose of inspecting any and all facilities of CONSUMER regarding required sanitary controls. Should PROVIDER have reasonable grounds to believe that any condition exists which might result in contamination of PROVIDER'S water supply or jeopardize PROVIDER'S certification with the Texas Commission on Environmental Quality and/or other federal, state or local regulatory authorities, then PROVIDER shall notify CONSUMER. The CONSUMER shall immediately correct such condition.

In the event CONSUMER fails to correct such condition then PROVIDER may, at its sole discretion, either correct the condition at CONSUMER'S expense and include the cost of materials and labor in subsequent billing statements from PROVIDER to CONSUMER or cease delivering water under this Contract until such condition is corrected to the satisfaction of the PROVIDER.

In the event PROVIDER determines that contamination of PROVIDER'S water supply by CONSUMER actually exists, PROVIDER shall have the absolute right to discontinue service to CONSUMER until such time as said contamination has been eliminated by CONSUMER. Nothing herein shall be construed to impose upon PROVIDER the duty and obligation to make any inspection or to regulate the quality of water beyond the Point of Delivery to CONSUMER and CONSUMER shall be solely responsible for the operation, maintenance, regulation and employment of all facilities beyond the Point of Delivery, and the regulation of the use of all water received by it at the Point of Delivery.

The CONSUMER is hereby notified that any water received from the PROVIDER will contain chloramines disinfectant. As such, the CONSUMER should adjust their disinfection system operations and monitoring for chloramines accordingly.

### **3.5. WATER CONSERVATION**

In the event PROVIDER is required to implement its Water Conservation and/or Drought Contingency Plan for its system then in such event CONSUMER shall receive the same water allotment under such plan as any other customers of similar size and water needs served by PROVIDER.

CONSUMER shall adopt, develop, implement and maintain water conservation and drought contingency plans, programs, and rules incorporating loss-reduction measures and management

practices, techniques, and technologies at least as promotional of conservation as such plans, programs and rules as developed and adopted by PROVIDER. Such plans shall be designed to reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water, and increase the recycling and reuse of water.

CONSUMER agrees that if water supplies or services are curtailed within PROVIDER, PROVIDER may impose a like curtailment on deliveries to CONSUMER, and CONSUMER will cooperate by implementing the appropriate stages of their water conservation plan and/or drought contingency plan imposing such conservation measures. Additionally, in case of a shortage of water resulting from drought, the water to be distributed shall be divided among customers in accordance with Texas Water Code, § 11.039. PROVIDER'S obligations under this Contract shall be subject to water conservation plans and drought contingency plans adopted by PROVIDER or required or approved by the Texas Commission on Environmental Quality, or any other or additional federal, state, or local regulatory CONSUMER or entity with power to require or approve water conservation and drought contingency plans.

CONSUMER shall develop and implement a water conservation plan or water conservation measures using the applicable elements of Title 30, Chapter 288, of the Texas Administration Code, and any successor regulations thereto.

#### **ARTICLE IV DEFAULTS AND REMEDIES**

##### **4.1. NOTICE OF DEFAULT**

In the event that either PROVIDER or CONSUMER should breach, fail to comply with or violate any term or provision of this Contract (a "Default") the other party shall promptly notify, with specificity as to the alleged Default, the other respective party of the Default. Except as otherwise provided by this Contract, upon receiving such notice the defaulting party shall have thirty (30) days to cure the Default. Unless this Contract provides otherwise, in the event said Default is not cured within the time period described above, with respect to CONSUMER as the defaulting party, then PROVIDER may pursue any and all remedies provided by law, equity, contract or otherwise, including without limitation, declaring this Contract terminated and null and void. Unless this Contract provides otherwise, in the event said Default is not cured within the time period described above, with respect to PROVIDER as the defaulting party, then CONSUMER may, as its sole and exclusive remedy, either seek specific performance of the terms of this Contract or declare this Contract terminated and null and void.

## **ARTICLE V MUTUAL CONDITIONS**

### **5.1. FAILURE TO DELIVER**

PROVIDER does not warrant that the services and deliveries provided for in this Contract will be free from, and PROVIDER is excused from performing hereunder in the event and for the period of, an interruption or stoppage caused by maintenance, repair, substitution, renewal, replacement or improvement of any of the equipment involved in the furnishing of any such services or deliveries of water or caused by floods, drought, alterations, strikes, lockouts, shortages of equipment or material, labor controversies, accidents, or acts of God, the elements, or any other event of *force majeure* or cause beyond the reasonable control of PROVIDER. In the event of a shortage of water, or if distribution of water by PROVIDER to CONSUMER is deemed inappropriate by any regulatory agency or law, the supply of water to CONSUMER under this Contract shall be reduced or ceased as deemed necessary by PROVIDER to protect the interests of its citizens and/or to comply with all rules and regulations of any regulatory agency having jurisdiction over the operation of PROVIDER'S facilities.

### **5.2. REGULATORY AGENCIES**

This Contract is subject to all applicable federal, state, and local laws and any applicable ordinances, rules, orders, and regulations of any local, state or federal governmental authority, having or asserting jurisdiction. However, nothing contained in this Contract shall be construed as a waiver by any party to the Contract of any right to question or contest any law, order, rule or regulation which may affect the terms and conditions of this Contract in any forum having jurisdiction, and CONSUMER and PROVIDER each agree to make a good faith effort to support proposed laws and regulations which would be consistent with the performance of this Contract in accordance with its terms. CONSUMER represents and warrants to PROVIDER that it has obtained all necessary permits and consents necessary to provide water service to the Montford Unit.

### **5.3. NO ASSIGNMENT**

All the promises, undertakings, agreements, covenants and contracts herein contained by or on behalf of either PROVIDER or CONSUMER shall bind the successors and permitted assigns of either party, whether so expressed or not; but neither PROVIDER nor CONSUMER shall have the right to assign this Contract, or any part thereof, without the written consent of the other party.

### **5.4. ENTIRETY AND AMENDMENTS**

It is expressly stipulated that PROVIDER and PROVIDER'S agents have made no representations, warranties or promises with respect to the delivery of water and all other matters contained in this Contract, except as herein expressly set forth, and this Contract supersedes all prior agreements and understandings, if any, relating to the subject matter hereof. This Contract may only be amended by an instrument in writing executed by the duly authorized representative of the party against whom the

amendment is sought to be enforced. No rights, easements, entitlements, or licenses are acquired by CONSUMER by implication or otherwise except as expressly set forth in this Contract.

#### **5.5. WAIVER**

No failure on the part of PROVIDER at any time to require the performance by CONSUMER of any portion of this Contract shall in any way affect PROVIDER'S right to enforce such provision or any other provision. Nor shall any waiver by PROVIDER of any provision hereof be taken or held to be a waiver of any other provision hereof or any other breach hereof. No rights under this Contract may be waived except by written amendment executed and authorized by the governing bodies of the parties. No officer or agent of CONSUMER or PROVIDER is authorized to waive or modify any provision of the Contract.

#### **5.6. HEADINGS**

All headings in this Contract have been inserted for convenient reference only and shall not in any manner be construed as modifying, amending, or affecting in any way the express terms and provision hereof.

#### **5.7. APPLICABLE LAW AND VENUE**

THIS CONTRACT SHALL BE CONSTRUED UNDER THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES HEREUNDER ARE PERFORMABLE IN LUBBOCK COUNTY, TEXAS. VENUE RELATED TO ANY MATTER BROUGHT HEREUNDER SHALL LIE SOLELY IN LUBBOCK COUNTY, TEXAS.

#### **5.8. RESPONSIBILITY**

Each party to this agreement will be responsible for its own actions in providing services under this agreement and shall not be liable for any civil liability that may arise from the furnishing of the services by the other party.

#### **5.9. NOTICE**

Except for notification of the possibility of curtailment or intent to curtail or cease the delivery of water, which shall be communicated in person to the unit warden or designee, by telephone to the unit warden or designee, or by email to the unit warden or designee. All communication required or allowed by this Contract shall be in writing and be given either (i) in person or by telephonic facsimile; or (ii) by depositing the notice in the United States mail, postpaid and certified, with return receipt requested, and addressed to the party to be notified. Notice, as herein provided, shall be conclusively deemed to have been provided (i) in the event of delivery in person or by telephonic facsimile, when it is actually received; or (ii) in the event of certified mail, as described above, three (3) days after the notice is deposited in the mail, certified mail, return receipt requested. For the purposes of the notice, the addresses for receipt of notice to the parties is set forth immediately below.

CONSUMER

Texas Department of Criminal Justice  
Contracts and Procurement Department  
Attn: Shari Moore, Contract Administrator  
Two Financial Plaza, Suite 525  
Huntsville, Texas 77340  
Facsimile: 325-223-0310

PROVIDER

City of Lubbock  
ATTN: Director of Water Utilities  
P.O. Box 2000  
Lubbock, Texas 79457  
Facsimile: (806) 775-3027

Either party may change its address by giving written notice of the change to the other party at least fifteen (15) days before the change becomes effective.

**5.10 AUTHORITY**

CONSUMER represents and warrants to PROVIDER that it is a correctional facility of the State of Texas and is authorized to enter into this Contract and perform each and every term and provision of this Contract, and will continue to be duly authorized to so perform during the term hereof.

**5.11. PARTIAL INVALIDITY**

In the event one or more of the provisions contained in this Contract shall be invalid, illegal or unenforceable in any respect under any law, rule or regulation, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. Notwithstanding anything to the contrary herein, in the event the illegality, invalidity or lack of enforceability shall affect the CONSUMER'S obligation to construct and/or pay for all or any part of the Extension or related infrastructure or real property interests, or to pay for all or any part of the water delivered or to be delivered hereunder, PROVIDER may, at its option, immediately terminate this Contract.

**5.12. CURRENT REVENUES**

Each party paying for performance under this Contract shall make all payments from current revenues available to the paying party.

Signed this the 25th day of June, 2015.

PROVIDER:  
City of Lubbock

CONSUMER:  
Texas Department of Criminal Justice

BY:

BY:

  
\_\_\_\_\_  
Glen C. Robertson, Mayor

  
\_\_\_\_\_  
Jerry McGinty, Chief Financial Officer

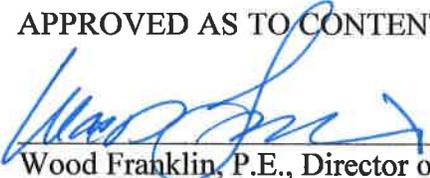
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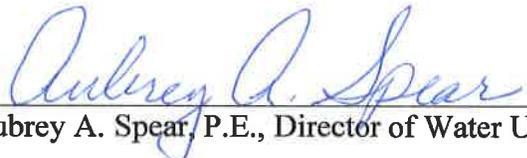
ATTEST:

  
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Rebecca Garza, City Secretary

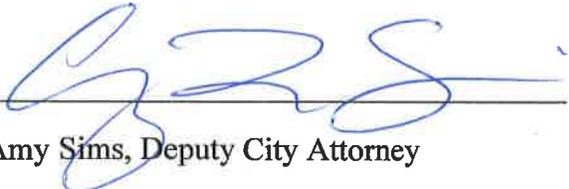
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APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Wood Franklin, P.E., Director of Public Works

  
\_\_\_\_\_  
Aubrey A. Spear, P.E., Director of Water Utilities

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Amy Sims, Deputy City Attorney

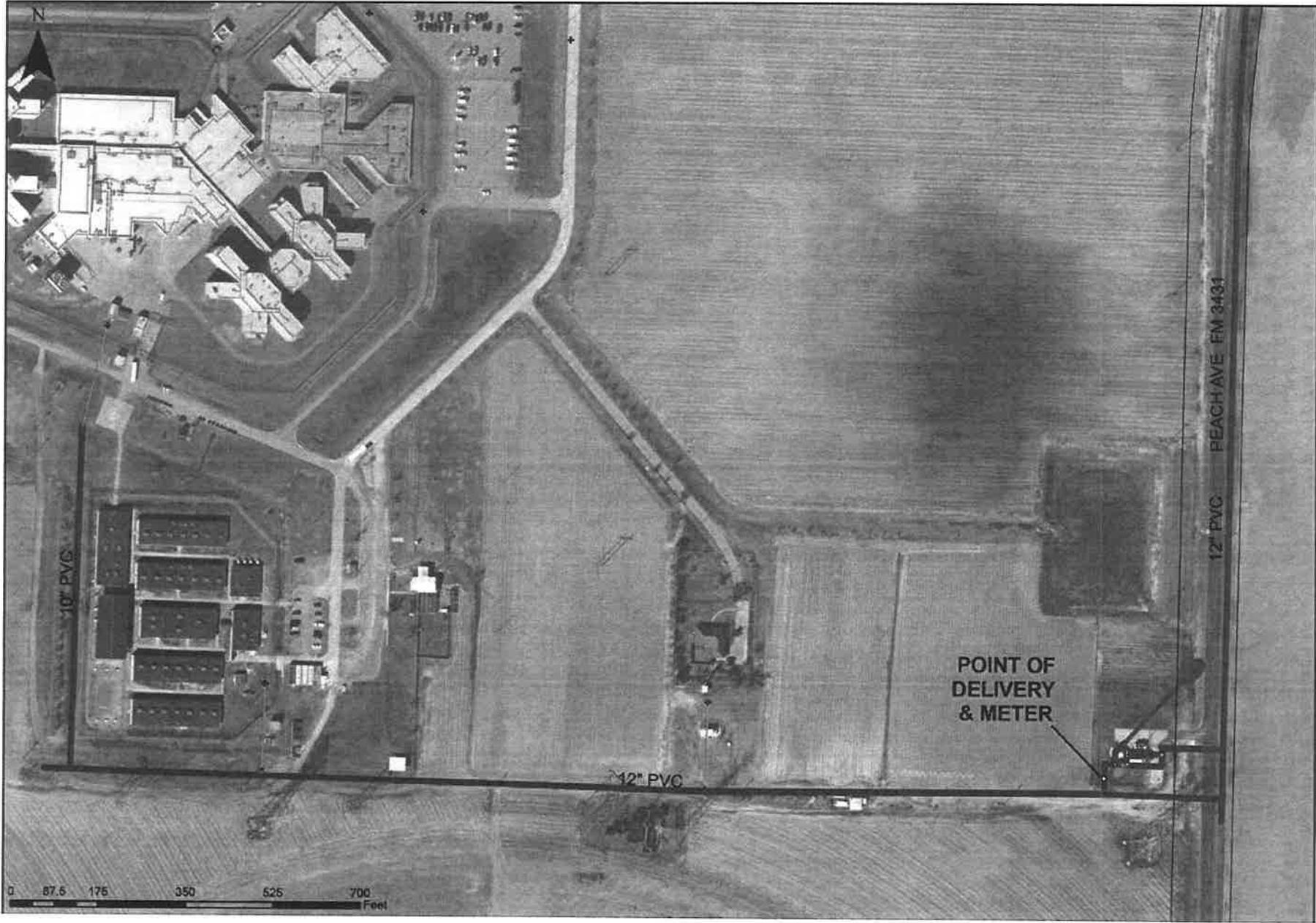


EXHIBIT A: TDCJ MONTFORD UNIT POINT OF DELIVERY  
8602 PEACH AVE

