

**INTERLOCAL COOPERATION AGREEMENT
BETWEEN NORTH TEXAS MUNICIPAL WATER DISTRICT
AND CITY OF PLANO**

STATE OF TEXAS

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COUNTY OF COLLIN

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This Interlocal Cooperation Agreement (Agreement) is made and entered into on this ____ day of _____ 2022 by and among the North Texas Municipal Water District (referred to as “NTMWD”), a governmental agency and body politic and corporate, organized and existing by virtue of Article XVI, Section 59 of the Texas Constitution, and Article 8280-141 of the Revised Civil Statutes of the State of Texas, whose address is 501 E. Brown Street, P.O. Box 2408, Wylie, Texas 75098, and City of Plano (referred to as “City”), whose address is 1520 K Avenue, Plano, Texas 75074.

WHEREAS, NTMWD owns and operates its Plano Spring Creek Lift Station No. 2 (referred to as "PSCLS") located at 485 Accent Drive, Plano Texas; and

WHEREAS, the City has proposed certain improvements to its wastewater infrastructure which convey flows into NTMWD’s PSCLS (referred to as the "Project"); and

WHEREAS, the City’s Project will require close coordination with NTMWD’s operation of the PSCLS to maintain wastewater flows into the PSCLS during construction of the Project; and

WHEREAS, the City has proposed to install and operate, through its selected contractor, temporary facilities to maintain conveyance of wastewater flows (referred to as “Bypass Facilities”) into NTMWD’s PSCLS during construction of the Project which are attached hereto as Exhibit A and incorporated herein by reference; and

WHEREAS, the City's Project requires NTMWD to employ a certified pipeline inspector to oversee construction activities and coordinate construction of the Project with NTMWD’s wastewater operations department; and

WHEREAS, the City will reimburse the NTMWD for all inspection fees and legal fees associated with the Project; and

WHEREAS, NTMWD will not be responsible for any property or environmental damages caused by the City’s operation of the Bypass Facilities.

NOW THEREFORE, in consideration of the mutual covenants contained herein, City of Plano and NTMWD agree as follows:

ARTICLE ONE

Coordination of the Project

1.01 NTMWD hereby agrees to make reasonable efforts to coordinate the operation of the PSCLS with the City for the City to complete construction of its proposed Project. City shall provide a complete set of construction plans to NTMWD for review prior to constructing the Project. Preliminary construction plans are attached hereto as Exhibit A and incorporated herein by reference.

1.01.1 NTMWD agrees to perform the following tasks in support of the City of Plano's Project:

1.01.1.1 Task No. 1: Coordinate with City staff, City consulting engineer and City contractor to jointly develop an acceptable shutdown schedule and bypass pumping plan.

1.01.1.2 Task No. 2: Provide construction inspector to coordinate work on-site during City bypass pumping.

1.01.1.3 Task No. 3: Pump the PSCLS wet well down below the 36-inch invert elevation and hold for up to one hour during dry weather while the City Contractor installs/removes plugs or performs other construction activities approved by NTMWD.

1.01.2 The City of Plano agrees to perform the following tasks during the construction of its Project:

1.01.2.1 Task No. 1: City of Plano, City consulting engineer, and City contractor to prepare and submit NTMWD's Shutdown Form for NTMWD's review and approval a minimum of 3 weeks before bypassing work. The Shutdown Form must be approved before City-bypassing work will be allowed to commence.

1.01.2.2 Task No. 2: City must ensure that NTMWD (Operations) is notified no less than 1 week in advance of field work and that NTMWD be onsite before start of City-bypassing operations.

1.01.2.3 Task No. 3: The Plano Spring Creek Lift Station No. 2 is currently under expansion. NTMWD's contractor is onsite. Access to the site is limited and must be coordinated with NTMWD before the City-contractor can access the lift station site and perform the bypass work to the wet well.

1.01.2.4 Task No. 4: City must completely install and leak test all improvements prior to final connection into NTMWD's

wastewater system to mitigate inflow and infiltration of stormwater entering NTMWD's system.

1.02 City agrees that any future changes not included in the approved construction plans, including but not limited to additions, expansions, replacement, and/or reconstruction, except in the case of an emergency, shall not be done without NTMWD's prior written consent. NTMWD reserves the right to deny any future changes or modification to this Agreement and the approved construction plans if NTMWD determines in good faith that the proposed additions, expansions, replacements and/or reconstruction of the Project would materially and adversely interfere with NTMWD's wastewater operations.

1.03 The limited purpose of this Agreement is to provide consent to the Project provided that the Project is completed and maintained in accordance with the terms of this Agreement. City shall secure any other rights of way, easements, and/or permits from any parties holding interests necessary for the Project. Except as provided for herein, nothing contained herein shall be construed as impairing any rights or privileges of NTMWD.

ARTICLE TWO

Reimbursement for Fees

2.01 Reimbursement of NTMWD Fees. City agrees to reimburse NTMWD for the performance of the tasks necessary and related to NTMWD's coordination of City's Project ("Reimbursement Payments"). NTMWD will use the Reimbursement Payments by City for costs NTMWD incurs in providing the following services:

A. Legal Fees: City shall reimburse the NTMWD for all reasonable legal and filing fees associated with the Project.

B. Inspection Fees: City shall reimburse NTMWD for inspection staff that will make periodic visits to the construction site to inspect the work and meet with City staff and/or contractor to discuss the Project.

1. Coordination of Inspections: City and/or its contractor shall notify, in writing, NTMWD's inspection staff 48 hours in advance of any site inspection. NTMWD's inspection staff shall be notified of the scope of inspection(s) and date work will be ready to inspect.

2.02 Reimbursement Payment: NTMWD shall provide City with an itemized invoice of legal, design review and inspection fees pertaining to the Project on a monthly basis. City shall have 30 calendar days after the mailing of the invoice to submit payment to NTMWD. **The total estimated amount for the services is \$10,000.00 as itemized below:**

1. Legal Fees: Total estimated amount \$3,000
2. Inspection Fees: Total estimated amount \$7,000.

These estimated amounts for legal fees and inspection fees are subject to change based on costs actually and reasonably incurred by NTMWD. However, NTMWD shall provide written notice to the City in the event the Reimbursement Payment is expected to exceed or exceeds \$10,000.

ARTICLE THREE

Term

3.01 This Agreement shall be effective upon approval by the City of Plano and NTMWD Board of Directors and subsequent execution by City's Mayor and NTMWD's Executive Director. The effective date will be the latter of the dates this Agreement is executed by the Parties authorized representatives.

ARTICLE FOUR

Indemnity

4.01 To the extent permitted by law, City shall indemnify, defend and hold harmless NTMWD, its officers, directors, employees, contractors, successors, and assigns (collectively "NTMWD Indemnified Parties") from and against all loss, liability, damages, claims, suits, demands, costs, and expenses, including, reasonable and necessary attorney fees, expert fees, and court costs, and consequential damages incurred by NTMWD or the NTMWD Indemnified Parties or any third parties ("Claims") for (a) injury (including death) to the contractors, subcontractors, employees, invitees, and/or guests of City arising out of or resulting from the construction, installation, maintenance, repair, operation, replacement, or removal of the Bypass Facilities or Project, except in the case of the gross negligence or willful misconduct of NTMWD or any NTMWD Indemnified Parties, or (b) loss of or damage to Plano Spring Creek Lift Station No. 2 arising out of or resulting from the maintenance, repair, replacement, operation, or removal of Bypass Facilities or Project or anything associated therewith, except in the case of the negligence or willful misconduct of NTMWD or any NTMWD Indemnified Parties.

This indemnification clause is valid only to the extent permitted by the laws and the constitution of the State of Texas, particularly Section 5 of Article XI of the Texas Constitution, and with the mutual understanding that the City of Plano is a political subdivision of the State of Texas and that this executory indemnity obligation cannot be paid from current revenues and that no tax nor interest and sinking fund has been set, adopted or established for the payment of this executory indemnity obligation. The City of Plano is not waiving or limiting its rights, defenses, remedies, or immunities that would exist by law in the absence of this provision.

ARTICLE FIVE

Immunity

5.01 It is expressly understood and agreed that, in the execution of this agreement, neither Party waives, nor shall be deemed hereby to have waived any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the Parties do not create any obligations, expressed or implied, other than those set forth herein, and this Agreement shall not create any rights in parties not signatories hereto.

ARTICLE SIX

Notices

6.01 All notices required under the provisions of this Agreement must be in writing, hand-delivered or sent by registered or certified mail to the addresses below:

City of Plano: Mark D. Israelson
City Manager
1520 K Avenue
Plano, Texas 75074

NTMWD: Jennafer P. Covington
Executive Director
P.O. Box 2408
Wylie, TX 75098

The name and address for notification may be changed by notice to the other parties.

ARTICLE SEVEN

Severability

7.01 The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause or phrase of this Agreement is for any reason held by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation having the force and effect of the law, the remaining portions of the Agreement shall be enforced as if the invalid provision had never been included.

ARTICLE EIGHT

Successors and Assigns

8.01 This Agreement shall be binding upon the Parties hereto, their successors and assigns. Neither Party will assign or transfer an interest in this Agreement without the written consent of the other Party.

ARTICLE NINE

Venue

9.01 The laws of the State of Texas shall govern the interpretation, validity, performance and enforcement of this Agreement. The Parties agree that this Agreement is performable in Collin County, Texas, and that exclusive venue shall lie in a state court in Collin County, Texas.

ARTICLE TEN

Interpretation and Recitals

10.01 This is a negotiated document and should any part of this Agreement be in dispute, the Parties agree that the Agreement shall not be construed more favorably for either Party. All of the recitals to this Agreement are incorporated into and shall constitute part of this Agreement.

ARTICLE ELEVEN

Remedies, Non-Waiver

11.01 No right or remedy granted herein or reserved to the parties is exclusive of any right or remedy granted by law or equity, but each shall be cumulative of every right or remedy given hereunder. No covenant or condition of this Agreement may be waived without the express written consent of the Parties. It is further agreed that one or more instances of forbearance by either Party in the exercise of its respective rights under this Agreement shall in no way constitute a waiver thereof.

ARTICLE TWELVE

Entire Agreement

12.01 This Agreement embodies the entire agreement between the Parties and may only be modified in writing executed by both Parties.

EACH PARTY HERETO ACKNOWLEDGES THAT THEY HAVE READ AND UNDERSTAND THE EFFECT OF THIS AGREEMENT, HAVE BEEN ADVISED BY COUNSEL AS TO THE EFFECT OF THIS AGREEMENT, AND EXECUTES THE AGREEMENT OF THEIR OWN FREE WILL AND ACCORD FOR THE PURPOSES AND CONSIDERATIONS SET FORTH.

IN WITNESS WHEREOF, North Texas Municipal Water District and the City of Plano have caused this Agreement to be executed either on their behalf by their duly authorized representatives or personally, as of the date first set above.

(signature page will follow)

EXECUTED this _____ day of _____, 2022.

City of Plano, Texas

By: _____
Name: _____
Title: City Manager

STATE OF TEXAS

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COUNTY OF COLLIN

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This instrument was acknowledged before me on _____, 2022, by Mark D. Israelson, City Manager, City of Plano.

Notary Public, in and for the
State of Texas.

EXECUTED this _____ day of _____, 2022.

North Texas Municipal Water District

By: _____
Name: _____
Title: _____

STATE OF TEXAS

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COUNTY OF COLLIN

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This instrument was acknowledged before me on _____, 2022,
by _____, _____ of the NORTH
TEXAS MUNICIPAL WATER DISTRICT, a governmental agency and body politic and
corporate, on behalf of said agency and body politic and corporate.

Notary Public, in and for the
State of Texas