

**AMENDED INTERLOCAL COOPERATION AGREEMENT BETWEEN
NORTH TEXAS MUNICIPAL WATER DISTRICT AND
THE CITY OF PLANO, TEXAS FOR
PLANO LEGACY WEST WASTEWATER IMPROVEMENTS**

THIS AGREEMENT, is made and entered into by and between the **NORTH TEXAS MUNICIPAL WATER DISTRICT**, a political subdivision of the State of Texas, (hereinafter referred to as “NTMWD” or “District”) and the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation (hereinafter referred to as “Plano”). Individually, NTMWD and Plano may be referred to as a “Party” and collectively, NTMWD and Plano may be referred to as “Parties.”

WHEREAS, the Interlocal Cooperation Act (the “Act”), codified as Chapter 791, Texas Government Code, authorizes any local government to contract with one or more local governments to perform governmental functions and services under the terms of the Act; and

WHEREAS, NTMWD, Plano and the City of Mesquite previously entered into that October 1, 1975 Trinity East Fork Regional Wastewater System Contract to establish and provide for the District’s operation and maintenance of a regional wastewater system serving Plano and other communities (“Regional Wastewater System”); and

WHEREAS, on January 25, 2018, Plano and NTMWD entered into an Interlocal Cooperation Agreement (the “Interlocal Agreement”) between North Texas Municipal Water District and the City of Plano, Texas for Plano Legacy West Wastewater Improvements which, in part, pertained to the construction of a 24-inch force main leading to the NTMWD Preston Road Lift Station, improvements to the Regional Wastewater System, and the construction of a 4.5 MGD lift station (the “Proposed Lift Station”); and

WHEREAS, Exhibit B to the Interlocal Agreement did not contain the full legal description for the “Existing Indian Creek Trunk Sewer;” and

WHEREAS, Plano and NTMWD agree to enter into this Agreement to amend Exhibit B of the Interlocal Agreement to include the full legal description for the “Existing Indian Creek Trunk Sewer;” and

WHEREAS, Plano and NTMWD agree that all other terms and conditions of the Interlocal Agreement remain in full force and effect, as restated herein.

NOW THEREFORE, for mutual consideration hereinafter stated, Plano and the District agree as follows:

**I.
EFFECTIVE DATE**

The Agreement shall be effective on the date of the last signature hereto (the “Effective Date”).

**II.
THE AGREEMENT**

A. Upsize and Transfer of the Force Main from Plano to NTMWD

1. Upsizing of the Force Main

The Parties agree that Plano shall upsize from an 18-inch line to a 30-inch line the portion of the Plano force main to the Preston Road Station as identified on Exhibit A, which is hereby incorporated herein, (referred to as the “Force Main” or the “Project”), to allow NTMWD to accommodate wastewater flows for the Indian Creek basin. The Force Main is the portion of line beginning at the junction box where the proposed NTMWD 24-inch force main and the Plano proposed 18-inch force main converge and ending at the NTMWD Preston Road Lift Station. NTMWD shall fund its pro rata share of the cost to increase the size of the line in the amount of \$554,416.46. Payment of costs to upsize the Force Main will be due upon the completion of the Project and acceptance of the construction by NTMWD.

2. Conveyance of a Portion of the Force Main

The Parties agree that a portion of the Force Main, identified in **Exhibit A**, upon completion of the oversizing construction, shall be transferred from Plano to NTMWD, and that NTMWD shall use such facilities to provide permanent wastewater service to Plano.

Once construction on the Force Main has commenced, and upon request by NTMWD, Plano shall grant a right of access to NTMWD to inspect the Force Main during construction.

Upon substantial completion of the Force Main, Plano shall notify NTMWD of such completion. The Force Main shall be conveyed to NTMWD after NTMWD inspection of the Force Main and upon NTMWD’s provision of a notice of acceptance of the construction. At the time the Force Main is conveyed to NTMWD, Plano shall convey all easements and right of ways necessary for NTMWD to own, operate and maintain the Force Main. All documents or instruments of conveyance, release, transfer or assignment required shall be in a form and content reasonably acceptable to NTMWD.

3. Line Markers

Plano shall provide, according to NTMWD specifications and standards, line markers on the portion of the Force Main to be conveyed to NTMWD and identified in **Exhibit A**.

B. Transfer of Wastewater Line from NTMWD to Plano

Upon substantial completion of the proposed Legacy West Lift Station by Plano, NTMWD shall transfer and Plano shall accept conveyance of the portion of the wastewater line located along State Highway 121 and leading to the Legacy West Lift Station (the “Indian Creek Trunk Sewer Extension”), identified in the attached **Exhibit B**. Acceptance shall be documented by a letter accepting conveyance of the facility from Plano’s Director of Engineering. NTMWD shall convey all easements and right of ways necessary for Plano to own and maintain the portion of the Indian Creek Trunk Sewer Extension conveyed to Plano. All documents or instruments of conveyance, release, transfer or assignment required shall be in a form and content reasonably acceptable to Plano.

**III.
TERM**

This Agreement shall be effective for a period of five (5) years from the Effective Date unless terminated earlier pursuant to Section IV below. Thereafter, upon mutual agreement, in writing, of the Parties, this Agreement may be renewed for subsequent one (1) year terms.

**IV.
TERMINATION**

This Agreement shall automatically terminate and be of no further force or effect if Plano has not commenced construction of the Force Main within two (2) years of the Effective Date. In the event of any default by either Party on any of the covenants or obligations contained in this Agreement, the defaulting Party shall be notified in writing and specify the precise nature of the default. The defaulting Party shall thereafter have thirty (30) days from date the notice is received in which to cure such default (or, if same cannot be reasonably cured within such period, to take significant steps to commence such cure and thereafter diligently complete such cure), failing in which the non-defaulting Party shall be entitled to terminate this Agreement by written notice to the defaulting party.

**V.
NOTICE**

Notice as required by this Agreement shall be in writing delivered to the Parties via e-mail or certified mail at the addresses listed below:

PLANO

Gerald Cosgrove
Director of Public Works
City of Plano
P.O. Box 860358
Plano, TX 75086-0358
972-769-4163 (Telephone)
GeraldC@plano.gov

NTMWD

Thomas W. Kula
Executive Director
North Texas Municipal Water District
P.O. Box 2408
Wylie, TX 75098
972-442-5405 (Telephone)
tkula@ntmwd.com

Each Party shall notify the other in writing within ten (10) days of any change in the information listed in this paragraph.

**VI.
ENTIRE AGREEMENT**

This Agreement represents the entire agreement between NTMWD and Plano, and supersedes all prior negotiations, representations and/or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Parties.

**VII.
VENUE**

This Agreement and any of its terms or provisions, as well as the rights and duties of the parties hereto, shall be governed by the laws of the State of Texas, and this Agreement is performable in Collin County, Texas. Exclusive venue shall be in Collin County, Texas.

**VIII.
SEVERABILITY**

The provisions of this Agreement are severable. In the event that any section, subsection, paragraph, sentence, clause, or phrase of this Agreement shall be found to be contrary to law, or contrary to any rule or regulation having the force and effect of the law, such decisions shall not affect the remaining portions of this Agreement; however, upon the occurrence of such event, either Party may terminate this Agreement by giving the other Party thirty (30) days written notice of its intent to terminate.

**IX.
ASSIGNMENT**

This Agreement shall not be assigned in whole or in part without the written consent of both Parties.

**X.
INTERPRETATION OF AGREEMENT**

This is a negotiated document. Should any part of this Agreement be in dispute, the Parties agree that this Agreement shall not be construed more favorably for either Party based on the presumption that it was drafted by either Party.

**XI.
REMEDIES**

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 (1) 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.

**XII.
AUTHORITY TO SIGN**

The undersigned officers and/or agents of the Parties hereto are the duly authorized officials and have the necessary authority to execute this Agreement on behalf of the Party it represents.

**XIII.
CALENDAR DAYS**

Throughout this Agreement, “Day” shall mean a calendar day, unless otherwise specified. If a deadline falls on a weekend or holiday, the deadline shall be the following working day.

[Remainder of Page Intentionally Blank]

July 11, 2019

EXECUTED in duplicate originals this ____ day of _____, 2019.

CITY OF PLANO, TEXAS

By: _____
Mark D. Israelson
CITY MANAGER

APPROVED AS TO FORM:

Paige Mims, CITY ATTORNEY

**NORTH TEXAS MUNICIPAL WATER
DISTRICT**

By: _____
Thomas W. Kula
Executive Director