

SECOND AMENDMENT TO LEASE AND EASEMENT

This Amendment (the "**Amendment**") is made to that certain Lease and Easement Agreement which was made and entered into on September 28th, 1993 (the "**Lease and Easement Agreement**") between the City of McKinney, Texas (the "**City**") and the North Texas Municipal Water District ("**NTMWD**") (each individually a "**Party**" and collectively the "**Parties**"). This Amendment is effective on the date executed by the last of the Parties to execute this Amendment ("**Effective Date**").

R E C I T A L S

WHEREAS, the Parties entered into the Lease and Easement Agreement, whereby the City, as the owner of a certain ± 168.92 acre tract situated in Collin County ("**Landfill Tract**") leased the Landfill Tract to NTMWD for the operation of a municipal solid waste landfill (the "**McKinney Landfill**") and granted an easement across the Landfill Tract, effective upon termination of the lease; and

WHEREAS, the Lease was amended by that certain First Amendment to Lease and Easement Agreement dated May 2, 2007 (the "**First Amendment**") (the Lease and Easement Agreement and First Amendment are, together, the "**Base Agreement**"); and

WHEREAS, NTMWD operated the McKinney Landfill on the Landfill Tract under Solid Waste Permit No. MSW 568A (the "**Permit**") issued by a predecessor agency to the Texas Commission on Environmental Quality ("**TCEQ**"); and

WHEREAS, NTMWD has obtained "closure" status from the TCEQ for the McKinney Landfill, but has continuing post-closure monitoring and other obligations pursuant to the Permit and TCEQ regulations (its "**Obligations**"); and

WHEREAS, under the Base Agreement, NTMWD retains a non-exclusive easement to and on the Landfill Tract ("**Landfill Easement**") to fulfill its Obligations; and

WHEREAS, the Base Agreement purported to describe the boundary of Landfill Tract, and thus the boundary of the Landfill Easement (the "**Easement Boundary**") in an Exhibit A attached to the Base Agreement, but neither Party is able to locate Exhibit A; and

WHEREAS, the Parties agree that, whatever the intent of the Parties at the time that the Base Agreement was executed, the Easement Boundary should correspond to the boundary designated in the Permit (the "**Permit Boundary**"), as that boundary may be changed from time-to-time; and

WHEREAS, the State of Texas, acting through the Texas Department of Transportation ("**TxDOT**") acquired a ± 4.812 acre tract of land out of the Landfill Tract (the

“**Highway Tract**”), for use as a right-of-way and related infrastructure for an expansion and construction of Farm-to-Market Road 546; and

WHEREAS, the Parties entered into that certain Interlocal Agreement for Reimbursement of Permit Modification Expenses, which was effective on September 4, 2015, which address certain matters associated with transferring the Highway Tract to TxDOT, including allocating costs, requesting a modification to the Permit, and other matters; and

WHEREAS, while preparing a request to the TCEQ for a permit modification to remove the Highway Tract from the Permit Boundary, NTMWD discovered an inconsistency in the description of the Permit Boundary contained in the Permit; and

WHEREAS, NTMWD obtained approval from the TCEQ of a modification to the Permit to remove the Highway Tract from the Permit Boundary and to correct the inconsistency in the Permit Boundary in the Permit on November 18, 2016; and

WHEREAS, NTMWD obtained approval from the TCEQ of a modification to the Permit to replace a groundwater monitoring well located within the Highway Tract on December 19, 2016; and

WHEREAS, the City and TxDOT entered into that certain Possession and Use Agreement for Transportation Purposes, which, among other things, granted NTMWD the right of ingress and egress on and across the Highway Tract for the purposes of accessing NTMWD’s wells and fence located on the Highway Tract, until the wells and fence are removed; and

WHEREAS, the Parties recognize that the Permit Boundary may need to be revised in the future;

NOW, THEREFORE, in consideration of the above recitals, the mutual promises that follow and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged by the Parties, the Parties agree as follows:

1. **Premises Defined.**

1.1. Notwithstanding anything that may have been shown in Exhibit A to the Lease and Easement Agreement, beginning on the Effective Date hereof, “the premises” as that term is used in the Base Agreement will correspond to the Permit Boundary, as that boundary may be revised from time to time pursuant to approval by the TCEQ or a successor agency.

1.2. NTMWD shall not submit an application to the TCEQ or any successor agency to revise the Permit Boundary without providing prior notice to the City. In addition to the foregoing, NTMWD shall not submit an application to revise and extend the confines of the boundary designated in the Permit, as such designation exists on the Effective Date and irrespective of the Permit Boundary described in the Recitals, without the prior written consent

of the City. Any application to TCEQ seeking to reconfigure, by way of reducing or reconfiguring the confines of the Permit Boundary designated in the Permit, as such designation exists on the Effective Date and irrespective of the Permit Boundary described in the Recitals, shall not require the City's prior written consent.

2. **Miscellaneous.**

2.1. **Notices.** Any notice provided for or permitted to be given hereunder must be in writing and may be given by (i) depositing same in the United States Mail, postage prepaid, registered or certified, with return receipt requested, addressed as set forth in this Section, (ii) delivering the same to the Party to be notified via hand delivery or local courier service, or (iii) delivering the same via a nationally recognized overnight courier service. Notice given in accordance herewith will be effective upon receipt or refusal at the address of the addressee, as evidenced by the executed postal receipt or other receipt or refusal for delivery. For purposes of notice relating to all matters, the addresses of the Parties, until changed, are as follows:

City:	City of McKinney 222 N. Tennessee Street McKinney, Texas 75069 Attn: City Manager
With a copy to:	Mark S. Houser Brown & Hofmeister, L.L.P. 740 E. Campbell, Suite 800 Richardson, TX 75081
NTMWD:	North Texas Municipal Water District 501 East Brown St. (Overnight Delivery Service) PO Box 2408 (U.S. Postal Service) Wylie, Texas 75098 Attn: Tom Kula

The Parties have the right from time to time to change their respective addresses for purposes of notice hereunder to any other location within the United States by giving notice to such effect to the other Party in accordance with the provisions of this Section.

2.2. **Dispute Resolution.** Prior to filing any actions in any court of law with respect to a dispute concerning this Amendment, the Parties shall endeavor to resolve the dispute through mediation. Should the Parties be unable to resolve the dispute via mediation within thirty (30) days after a Party first notifies the other of its desire to mediate, then the Parties will be free to file any actions in any court of competent jurisdiction.

2.3. **Modification and Non-Waiver.** No variations, modifications or changes to this Amendment will be binding upon any Party unless set forth in writing executed by both Parties. No waiver by either Party of any breach or default of any term, condition or provision of this Amendment will be deemed a waiver of any other or subsequent breaches or defaults of any kind, character or description under any circumstance. No waiver of any breach or default of any

term, condition or provision of this Amendment will be implied from any action of either Party, and any such waiver, to be effective, will be set out in a written instrument signed by the waiving Party.

2.4. Governing Law. This Amendment, the entire relationship of the Parties, and any litigation between the Parties (whether grounded in contract, tort, statute, law or equity) will be governed by, construed in accordance with, and interpreted pursuant to the laws of the State of Texas and venue will be in Collin County, Texas.

2.5. Number and Gender; Caption; References. Pronouns, wherever used in this Amendment, and of whatever gender, include natural persons and corporations and associations of every kind and character, and the singular includes the plural wherever and as often as may be appropriate. Article and section headings in this Amendment are for convenience of reference and do not affect the construction or interpretation of this Amendment. Whenever the terms “hereof,” “hereby,” “herein” or words of similar import are used in this Amendment, they will be construed as referring to this Amendment in its entirety rather than to a particular section or provision, unless the context specifically indicates to the contrary. Any reference to a particular “Article” or “Section” will be construed as referring to the indicated article or section of this Amendment. Whenever placed before one or more items, the words “include,” “includes,” and “including” mean considered as part of a larger group, and not limited to the item(s) recited.

2.6. Severability. If any provision of this Amendment or the application thereof to any person or circumstance is, at any time or to any extent, determined to be invalid or unenforceable by a court of competent jurisdiction, and the basis of the bargain between the Parties is not destroyed or rendered ineffective by such determination, the remainder of this Amendment, or the application of such provisions to persons or circumstances other than those as to which it is held invalid or unenforceable, will not be affected thereby.

2.7. Relation of Parties. Nothing in this Amendment will be construed to make the City and NTMWD partners or joint venturers.

2.8. Entire Agreement. This Amendment constitutes the entire agreement of the Parties with respect to the modification of the term “the premises” under the Base Agreement. In entering into this Amendment, each Party agrees it is relying solely on its own judgment and not any statement by the other Party. The recitals at the beginning of this Amendment, including any terms defined in those recitals, are incorporated into this Amendment for all purposes.

2.9. Successors and Assigns. This Amendment will be binding upon and inure to the benefit of the Parties and their respective successors and assigns. Whenever a reference is made in this Amendment to either Party, such reference includes the Party’s successors and assigns.

2.10. No Third Parties Benefitted. The terms and provisions of this Amendment are for the sole benefit of City and NTMWD, and no third party is intended to benefit therefrom.

2.11. Survival. Any terms and provisions of this Amendment pertaining to rights, duties or liabilities extending beyond the expiration or termination of this Amendment will survive termination of the Amendment.

2.12. Authority. Each of the Parties represents to the other that (i) it has full right and authority to enter into this Amendment, (iii) the person signing on behalf of the Party is authorized to do so, and (iv) the execution and delivery of this Amendment by the Party will not result in any breach of, or constitute a default under any agreement or other contract or instrument to which the Party is a party or by which either such Party may be bound.

2.13. Base Agreement. The terms of the Base Agreement still in effect as of the Effective Date will continue in full force and effect, as modified by this Amendment.

*[the remainder of this page is intentionally left blank;
signature pages to follow]*

EXECUTED as of the dates set forth below.

NTMWD:

***NORTH TEXAS MUNICIPAL
WATER DISTRICT***
501 East Brown St.
Wylie, Texas 75098

CITY:

CITY OF MCKINNEY, TEXAS
222 N. Tennessee Street
McKinney, Texas 75069

BY: _____
Thomas W. Kula,
Executive Director

BY: _____
Paul G. Grimes,
City Manager

DATE: _____

DATE: _____

ATTEST:

ATTEST:

NAME: _____

NAME: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____