

**INTERLOCAL COOPERATION AGREEMENT
BETWEEN NORTH TEXAS MUNICIPAL WATER DISTRICT
AND THE CITY OF MCKINNEY, TEXAS**

This Interlocal Cooperation Agreement (“Agreement”) is made and entered into on this the ____ day of _____ 2015 by and among the North Texas Municipal Water District (“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, and the City of McKinney (“McKinney”), a home-rule municipality operating under the laws of the State of Texas.

WHEREAS, NTMWD is rehabilitating the Wilson Creek Interceptor sanitary sewer line; and

WHEREAS, NTMWD’s contractor(s) have to install temporary sanitary sewer lines to divert flows around the sections of the Wilson Creek Interceptor sanitary sewer line that are being rehabilitated to allow NTMWD to continue providing sanitary sewer service to its clients (“Temporary Sewer Lines”); and

WHEREAS, the NTMWD has requested that McKinney allow certain of the Temporary Sewer Lines be installed within easements belonging to McKinney situated in the vicinity of the Wilson Creek Interceptor sanitary sewer line (“McKinney Easement Areas”).

WHEREAS, McKinney desires to cooperate with NTMWD and allow NTMWD, its employees, agents, contractors and sub-contractors, to utilize McKinney Easement Areas for said Temporary Sewer Lines; and

THEREFORE, NTMWD and McKinney do hereby agree to the recitals herein, and further agree as follows:

1. This Agreement is an Interlocal Agreement under Texas Government Code Chapter 791.

2. NTMWD acknowledges that McKinney may only have the right in certain McKinney Easement Areas to construct one (1) sanitary sewer pipeline and that McKinney may not have the right to grant, assign, or transfer the right to construct any additional pipelines or facilities in such McKinney Easement Areas without NTMWD first obtaining the right to install its Temporary Sewer Lines from each owner of property upon, over and across which property NTMWD desires to install said Temporary Sewer Lines. The McKinney Easement Areas that are the subject of this Agreement are shown on Exhibit "A" attached hereto. NTMWD agrees to obtain such rights from each property owner upon, over and across whose property its Temporary Sewer Lines shall be placed before beginning construction on or across the McKinney Easement Areas on that property, and to provide McKinney with a copy of the documents evidencing NTMWD's right to cross each such property.

3. At such time as NTMWD has obtained the right from the respective property owners to place its Temporary Sewer Lines in the McKinney Easement Areas, NTMWD is hereby granted the right to use the McKinney Easement Areas (to the extent such grant does not conflict with the terms of the McKinney easement on those respective properties) for all activities incident to the installation or placement of the Temporary Sewer Lines. NTMWD's right to utilize McKinney Easement Areas shall include, but not be limited to, the right of ingress and egress within the McKinney Easement Areas, the right to transport equipment and material within, upon, over and across said McKinney Easement Areas, the right to store materials, including pipe, and all other materials incident to the placement of said Temporary Sewer Lines and use of the McKinney Easement Areas as workspace for all activities reasonably incidental to the installation or placement of said Temporary Sewer Lines, provided however, that NTMWD shall not have the right to trench or otherwise excavate any portion of the McKinney Easement Areas, within 10 feet of the McKinney pipeline.

4. Prior to beginning construction, repair, or maintenance activities within the McKinney Easement Areas, NTMWD shall provide McKinney with three (3) days' notice of its intent to use the McKinney Easement Areas for said activities, except in case of an emergency, when NTMWD shall give McKinney reasonable notice as may be practical under the circumstances. Upon receipt of such Notice, McKinney shall locate and flag its pipeline and facilities within the McKinney Easement Areas requiring protection so as to avoid injury to said facilities.

5. Upon completion of any construction, repair, or maintenance activities within, upon, over and across any and all McKinney Easement Areas, NTMWD shall restore the surface of the McKinney Easement Areas to a condition as good as or better than before construction, to the extent reasonably possible, including damage to any property owner's improvements located within the McKinney Easement Areas such as fences, driveways, drainage channels, utilities, or other such improvements.

6. In the event that NTMWD, its employees, agents, contractors, and sub-contractors damages McKinney's pipeline or other facilities located within the McKinney Easement Areas, during construction, repair or maintenance activities, NTMWD shall be solely responsible for making all necessary repairs to McKinney's facilities, and shall do so as promptly as practicable.

7. The parties hereto are entering into this Agreement solely for the benefit of themselves and agree that nothing herein shall be construed to confer any right, privilege or benefit on any person or entity other than the parties hereto.

8. This Agreement may not be rescinded or amended except by an instrument in writing signed by authorized representatives of the parties.

9. The terms of this Agreement shall be binding upon, and inure to the benefit of all parties and their permitted successors and assigns.

10. This Agreement may be executed by the parties in any number of separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts shall together constitute one and the same Agreement. All signatures need not be on the same counterpart.

11. This Agreement and the rights and duties of the parties arising out of this Agreement shall be governed by, and construed in accordance with the laws of the State of Texas, without reference to the conflict of laws rules thereof.

12. No presumptions will apply in favor of any party in the interpretation of this Agreement or in the resolution of any ambiguity of any provision thereof.

13. NTMWD DOES HERBY COVENANT AND AGREE, TO THE EXTENT ALLOWED BY LAW, TO INDEMNIFY AND HOLD HARMLESS MCKINNEY, ITS AGENTS, SERVANTS, EMPLOYEES, OFFICERS, DIRECTORS AND ATTORNEYS FOR ANY BREACH OF THIS AGREEMENT BY NTMWD FROM DAMAGES TO ANY MCKINNEY PIPELINE OR OTHER FACILITIES. AND FROM ANY AND ALL CLAIMS ARISING BY, THROUGH, OR UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, CLAIMS OR CAUSES OF ACTION FOR DAMAGES ARISING OUT OF ANY ACT, OMISSION, ACTIVITY, OR OCCURRENCE RESULTING FROM ANY ACTION BY, OR AT THE DIRECTION OF NTMWD, AS WELL AS ANY CLAIMS ASSERTED BY ANY PROPERTY OWNER OR THIRD PARTY FOR DAMAGES OR INJURIES ASSOCIATED WITH ANY ACT, OMISSION,

OR ACTIVITY CONDUCTED BY NTMWD, ITS CONTRACTORS, EMPLOYEES, AGENTS, SUB-CONTRACTORS OR OTHER PERSONS ACTING UNDER ITS DIRECTION OR SUPERVISION ON THE ABOVE REFERENCED PROPERTY; SAID INDEMNIFICATION TO INCLUDE ALL ATTORNEY'S FEES, COSTS, AND EXPENSES ASSOCIATED WITH ANY CLAIMS MADE, OR ACTIONS BROUGHT AGAINST McKINNEY. NTMWD FURTHER AGREES THAT IT WILL INCLUDE PROVISIONS IN ALL OF ITS CONTRACTS WITH CONTRACTORS AND/OR SUPPLIERS FOR THE PERFORMANCE OF ANY WORK UPON, ACROSS, ABOUT OR UNDER McKINNEY'S EASEMENTS REQUIRING SUCH CONTRACTORS AND/OR SUPPLIERS TO INDEMNIFY AND HOLD HARMLESS McKINNEY UNDER THIS PARAGRAPH NUMBER 13.

14. 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 CONSIDERATION SET FORTH.

IN WITNESS WHEREOF, NTMWD and McKinney have caused this Agreement to be executed on their behalf by their duly authorized representative, as of the date first set above.

NORTH TEXAS MUNICIPAL WATER DISTRICT

By: _____
Name: _____
Title: _____

CITY OF MCKINNEY, TEXAS

By: _____
TOM MUEHLENBECK
Interim City Manager

ATTEST:

SANDY HART, TRMC, MMC
City Secretary
DENISE VICE, TRMC
Assistant City Secretary

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on this _____ day of _____, 2015, by _____, in his capacity as _____ of the **NORTH TEXAS MUNICIPAL WATER DISTRICT**, 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, on behalf of said District.

Notary Public, State of Texas

STATE OF TEXAS
COUNTY OF COLLIN

This instrument was acknowledged before me on the _____ day of _____, 2015 by **TOM MUEHLENBECK**, Interim City Manager of the **CITY OF MCKINNEY**, a Texas municipal corporation, on behalf of said municipal corporation.

Notary Public, State of Texas

PREPARED IN THE OFFICES OF:

BROWN & HOFMEISTER, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081
214/747-6100
214/747-6111 Fax

EXHIBIT "A"