

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

This Interlocal Cooperation Agreement (“Agreement”) is made and entered into on this the 27th day of July 2017 (the “Effective Date”) by and between the City of McKinney, Texas (“McKinney”), a home-rule municipality operating under the laws of the State of Texas, and the North Texas Municipal Water District (“NTMWD”), a Texas conservation and reclamation district, which parties are sometimes referred to singly as “Party” and collectively as “Parties.”

RECITALS

WHEREAS, McKinney is in the process of designing and preparing bid documents with which to select a general contractor to construct a new pump station facility along Redbud Blvd. at 3601 Redbud Boulevard, McKinney, Texas 75071 to be known as the Redbud Pump Station (“Redbud Pump Station Project”); and

WHEREAS, NTMWD desires to enter into an Interlocal Agreement with McKinney for the construction and connection of a NTMWD Meter Vault and related site improvements (the “NTMWD Project”) on property owned by NTMWD adjacent to the Redbud Pump Station to be constructed contemporaneously with the construction of the Redbud Pump Station Project by the general contractor selected by McKinney to construct the Redbud Pump Project (“McKinney’s Contractor”); and

WHEREAS, NTMWD has requested that McKinney include the NTMWD Project in the competitive bid documents for the Redbud Pump Station Project as an alternate bid item to afford NTMWD and McKinney an opportunity to coordinate the construction of the two projects thereby avoiding conflicts and confusion and allowing both the Redbud Pump Station Project and the NTMWD Project to be completed and become operational at or about the same time; and

WHEREAS, McKinney desires to cooperate with NTMWD; and

WHEREAS, the Texas Interlocal Cooperation Act, contained in Chapter 791 of the Texas Government Code, authorizes Texas local governments to contract with one or more other local governments to perform governmental functions and services under the terms of said Act; and

WHEREAS, the governing bodies of each Party find that this project or undertaking is necessary for the benefit of the public and that each Party has the legal authority to provide the governmental function or service which is the subject matter of this Agreement; and

WHEREAS, the Parties, in paying for the performance of governmental functions or in performing such governmental functions, shall make payments therefore only from current revenues legally available to such Party;

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. The foregoing recitals are found to be true and correct and are fully incorporated into the body of this Agreement and become a part hereof.
2. NTMWD shall comply with the Code of Ordinances, City of McKinney, Texas (“McKinney Code”) and submit applications to McKinney to obtain approval of a record plat and a site plan for the NTMWD Project. NTMWD shall also obtain McKinney’s approval of all design and construction drawings for the NTMWD Project.
3. After McKinney approval of the component portions of the NTMWD Project is obtained, NTMWD shall prepare and provide to McKinney the plan sheets, detail sheets, specifications, bid form and any and all other documentation required for the NTMWD Project to be included as a Bid Alternate in McKinney’s bid package for the Redbud Pump Station Construction Project.
4. McKinney shall incorporate the documentation provided by NTMWD for the NTMWD Project as a Bid Alternate (the “NTMWD Component”) in the bid package for the Redbud Pump Station Construction Project (“Bid Package”), and afford NTMWD an opportunity to review the Bid Package prior to its release for bids.
5. McKinney shall competitively bid the Redbud Pump Station and NTMWD Component as one overall project (the “Redbud Project”) in strict accordance with the competitive bid laws of the State of Texas. NTMWD shall cooperate with McKinney to respond to any questions regarding the NTMWD Component and prepare any addendum that might be necessary regarding the NTMWD Component in a timely fashion.
6. Upon receipt of bids, McKinney shall identify the qualified low bidder on the Bid Package (“Bidder”). Alternatively, McKinney shall have the right to reject all bids in its sole discretion. If McKinney identifies a Bidder, McKinney shall provide a copy of the Bidder’s Bid Package to NTMWD for NTMWD’s review.
7. NTMWD shall have ten (10) business days to review the Bidder’s Bid Package and inform McKinney that NTMWD desires to accept the Bid Alternate for the NTMWD Component. Contemporaneously with that decision, NTMWD shall escrow with the City a cash deposit in the amount of 125% of the Bid Alternate amount bid for the NTMWD Component by Bidder to cover the construction costs and any Change Orders that might be requested and approved by NTMWD (“Escrow”).

8. If NTMWD does not wish to accept the Bidder or the Bid Alternate amount bid for the NTMWD Component by Bidder, or if NTMWD fails to timely respond, McKinney may award the Redbud Project to the Bidder without including an award of the Bid Alternate for the NTMWD Component.
9. At all times during the construction of the Redbud Project, McKinney shall have primary control and final approval authority regarding the Bidder's work on the Redbud Project. Notwithstanding the foregoing, NTMWD shall provide onsite inspection services for the NTMWD Component in addition to McKinney's inspection services. NTMWD's inspector will coordinate with McKinney's Construction Manager and onsite inspector regarding any construction related items, issues or concerns including, but not limited to, defective work. All communications with the Bidder regarding the NTMWD Component shall be conveyed through McKinney to Contractor.
10. NTMWD agrees to provide a Final Acceptance Letter to McKinney for the NTMWD Component of the Redbud Project, prior to McKinney determining the Redbud Project to be substantially complete and/or finally complete.
11. Following final acceptance of the Redbud Project, McKinney shall refund to NTMWD any amounts remaining in the Escrow fund.
12. Any notice or communication required or permitted hereunder shall be in writing and shall be deemed to be delivered when actually received or, regardless of whether actually received or not, (i) when deposited with Federal Express, DHL, UPS, or other nationally recognized overnight courier service, (ii) when received if delivered by hand, or (iii) when deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the addressee as follows or to such other address as shall hereafter be designated by written notice by the addressee actually received by the other Party at least twenty (20) days prior to the effective date of the change:

If to McKinney: City of McKinney
 Paul G. Grimes
 City Manager
 P.O. Box 517
 McKinney, Texas 75069

If to NTMWD: North Texas Municipal Water District
 501 East Brown St.
 Wylie, Texas 75098
 Attn: Jeffrey Ray
 Engineering Manager

The Parties hereto shall have the right from time to time and at any time to change their respective addresses and each shall have the right to specify as its addresses any other address by at least fifteen (15) days' written notice to the Party hereto.

13. This Agreement may not be rescinded or amended except by an instrument in writing signed by authorized representatives of the Parties. The terms of this Agreement shall be binding upon, and inure to the benefit of all Parties and their permitted successors and assigns.
14. 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. Venue for any dispute under this Agreement shall lie exclusively in the state courts and federal courts of Collin County, Texas.
15. NTMWD hereby agrees, to the extent allowed by Texas law, to fully release, indemnify, and save and hold the City of McKinney together with its elected officials, officers, agents, attorneys and employees (hereafter referred to collectively as the "City") harmless from and against any and all suits, claims, judgments, demands, actions or causes of action, liabilities, losses, costs or expenses, including the reasonable attorney's fees and court costs and disbursements that the City suffers or incurs as a result of any of the foregoing. The indemnification provided for herein shall include costs of defense, which shall be an attorney of the City's choice, court costs, expert witness fees, and any judgment together with pre-judgment and post-judgment interest.
16. This Agreement shall be subject to change or modification only with the mutual written consent of McKinney and NTMWD.
17. The provisions of this Agreement are severable, and if any court shall ever hold any word, phrase, clause, sentence, paragraph, section, or other part of this Agreement or the application of it to any person or circumstance of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such word, phrase, clause, sentence, paragraph, section, or other part of this Agreement to other persons or circumstances will not be affected by that and this Agreement will be construed as if it had never contained such invalid or unconstitutional portion therein.

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

CITY OF MCKINNEY, TEXAS

By: _____
PAUL G. GRIMES
City Manager

[Signatures continued on following page.]


ATTEST:

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

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney

NORTH TEXAS MUNICIPAL WATER DISTRICT

By: 
THOMAS W. KULA
Executive Director

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

BEFORE ME, the undersigned authority, in and for said County, Texas, on this day personally appeared PAUL G. GRIMES, City Manager of the ***CITY OF MCKINNEY***, a Texas Municipal Corporation, known to me to be the person who's name is subscribed to the foregoing instrument, and acknowledged to me that he has executed the same on the City's behalf.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE ____ DAY OF APRIL, 2017.

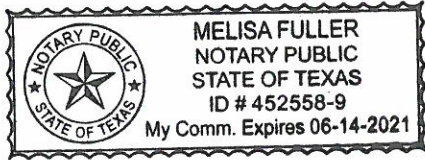
Notary Public _____ County, Texas
My commission expires _____

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on this 1st day of August, 2017, by THOMAS W. KULA, in his capacity as Executive Director 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.

Melissa Fuller

Notary Public, State of Texas



PREPARED IN THE OFFICES OF:
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Richardson, Texas 75081
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