

INTERLOCAL AGREEMENT BY AND BETWEEN
THE CITY OF MELISSA, TEXAS, AND THE CITY OF MCKINNEY, TEXAS
(Clemmon's Creek Sewer Line)

THIS INTERLOCAL AGREEMENT (the "Agreement") is entered into by and between the CITY OF MELISSA, TEXAS, a municipal corporation ("Melissa"), and the CITY OF MCKINNEY, TEXAS, a municipal corporation ("McKinney").

WHEREAS, Melissa has previously designed and constructed a sanitary sewer outfall main ("Outfall Main") in the Clemmons Creek Drainage Basin, located in Melissa's and McKinney's extraterritorial jurisdictions ("ETJ"), which Outfall Main currently serves the cities of Melissa and Anna and is capable of providing sanitary sewer service to portions of the City of McKinney's ETJ which do not have such sanitary sewer facilities; and

WHEREAS, the above referenced Clemmons Creek Outfall Main was designed with the intent of serving as a sub-regional facility and was approved by the North Texas Municipal Water Upper Eastfork Wastewater Interceptor System (UEFWWS) for connection to the regional interceptor / transmission system and currently is in operation flowing wastewater to the NTMWD Wilson Creek Regional Wastewater Treatment Facility; and

WHEREAS, said Clemmons Creek Outfall Main project included sufficient easement capacity to expand and parallel the line at such time as needed; and

WHEREAS, Melissa has initiated discussions with the NTMWD to consider making the Clemmons Creek Outfall Main a regional facility open to other members of the UEFWWS, which includes McKinney; and

WHEREAS, said Clemmons Creek Outfall Main has available unused capacity that Melissa and McKinney have jointly determined it would be advantageous and beneficial to McKinney for serving a portion of the McKinney ETJ as development occurs, and

WHEREAS, Melissa and McKinney have discussed and acknowledge that the Clemmons Creek Sanitary Sewer System can be expanded to meet future development flows based on the basis of a proportional flow cost allocation identified hereinafter; and

WHEREAS, Melissa is offering McKinney the opportunity to enter into an interlocal agreement allowing McKinney to use the existing Melissa-owned Clemmons Creek Outfall Main for development within the McKinney ETJ which can be served by said Outfall Main subject to the provisions for future expansion provided for hereinafter.

NOW, THEREFORE, in consideration of the covenants and conditions contained in this Agreement, Melissa and McKinney agree as follows:

1. Description of Sanitary Sewer Service System and Service Area - The System consists of the existing Clemmons Creek Sanitary Sewer System and future expansion or parallel facilities as required by the System to serve the subject drainage basin from the existing metering station generally located at or near the Melissa City Limit in the vicinity of Hwy 121 and near the McKinney Extraterritorial Jurisdiction (ETJ) boundary to the point of entry at the North Texas Municipal Water District's ("NTMWD") Upper East Fork Outfall Main (the "point of entry"). The location of the System and drainage basin are shown on the attached Exhibit "A", attached hereto and incorporated herein for all purposes.

2. Melissa's Obligation. Melissa agrees to allow McKinney access and use of the existing sewer facilities described in Section 1 above under the conditions outlined under System Expansion Criteria. Melissa's obligations shall include the following:

- a. Provide access to McKinney to use the system easement for access to the Clemmons Creek Outfall Main in the McKinney ETJ and City Limits.
- b. Allow McKinney to make taps to the Clemmons Creek Outfall Main under the same provisions and design criteria as required by NTMWD for the UEFWWS.
- c. Allow McKinney to use the existing Clemmons Creek System in the McKinney ETJ and City Limits areas as if it were a McKinney-owned main for development.
- d. Retain responsibility for and payment to NTMWD for all wastewater flows generated in the system north of the above-described Melissa metering station ("Metering Station") attributable to McKinney (it is noted that NTMWD also meters flow from a portion of the City of Anna and by separate system meters tracts and invoices for flow in both Melissa and Anna).
- e. Provide maintenance for the System until such time as the System becomes a regional facility or other contractual agreements are adopted modifying the interlocal agreement.
- f. Fulfill all contractual requirements for wastewater flow, pretreatment, and other standards with the NTMWD.
- g. Allow McKinney or NTMWD to install a meter at the juncture of the Clemons Creek Outfall Main with the Upper East Fork Outfall Main, identify the Clemons Creek flow attributable to McKinney, and determine the proportionate maintenance cost for each entity flowing WW through the Clemons Creek Outfall Main as provided herein-below.

3. McKinney's Obligations. McKinney's obligations shall include the following:

- a. Fulfill all contractual requirements for wastewater flow, pretreatment, and other standards with the NTMWD.
- b. Conform to all design and construction standards (including main tap and / or connection requirements) currently in place or as they may be amended for accessing the UEFWWS.

- c. Assume responsibility for and payment to NTMWD for all wastewater flows attributed to McKinney customers in the portion of the main south of the Metering Station.
- d. Conform to such requirements as may be imposed by NTMWD for metering or accounting for McKinney waste water flows in said System to determine, among other things, McKinney's proportionate use of the Clemmons Creek Sanitary Sewer System (it is recognized that the McKinney master metering station for the UEFWWS may continue to serve for measuring all McKinney flows through the overall system after subtracting those flows generated by upstream entities which have separate metering stations for determining individual entity jurisdictional flows).
- e. It is the intent of this agreement that all flow participants should pay a proportionate share of the cost for the maintenance of the subject outfall main. It is recognized, however, that the McKinney flow will be virtually insignificant for an indefinite use period. Thus, until McKinney connections to the Clemons Creek Main exceed the equivalent of 50 single family equivalent residential units (SFEs), it is impractical for either party to calculate a share of line maintenance therefore no maintenance share will be charged. At such time as the number of connections exceeds 50 SFEs, McKinney shall pay Melissa the proportionate share of cost for maintaining that portion of the System which is situated south of the Metering Station with such maintenance cost being based on McKinney's proportion of the flow through that segment of the System until such time as the System becomes a UEFWWS regional facility or this interlocal agreement is otherwise modified. For calculation of McKinney flow into the Main, it is agreed that McKinney shall have the right to choose whether to use a fixed fee of 225 gallons per day per SFE or to install a meter to calculate flow. At such time as McKinney connection to the main exceeds 500 SFEs, McKinney and Melissa shall jointly determine if the fixed fee per SFE is sufficient as structured, if the flow per SFE should be adjusted to a new volume per day per SFE (such as a new fixed volume per SFE, the average flow per day per Melissa SFEs, or other methodology), or if a meter should be installed in which case the cost for said meter shall be the responsibility of McKinney. (It is noted that this provision becomes a moot issue at such time as NTMWD accepts the Clemons Creek Main as a regional UEFWW system main).
- f. At such time as the System reaches 75% capacity, if said Clemmons Creek Sanitary Sewer System has not been incorporated into the UEFWWS as a regional facility, McKinney agrees to participate with Melissa in the evaluation of that portion of the existing system south of the Metering Station in order to agree on the future improvements, if necessary. The evaluation will include, among other things, recommendations for the design and construction of facility expansions and/or modifications. The costs for improvements to that portion of the System located south of the Metering Station will be shared based on proportional flow projections and adjusted over time to reflect actual flows in the same manner as provided for in UEFWWS regional contracts; if such occurs in the future, Melissa

and McKinney agree to work in a collective partnership together with all other users of the System, if any, for the expansion of that portion of the System situated south of the Metering Station including any necessary amendments to this interlocal agreement.

4. Future Improvements. If, at any time, NTMWD requires an alternative and/or additional improvements to that portion of the System situated south of the Metering Station, including but not limited to, an alternative point of entry to the NTMWD system, the parties hereto together with all other users of the System, if any, agree to share in the design and construction costs (hereinafter defined) of any and all improvements required to meet NTMWD's requirements ("other improvements") subject to the availability of funds for such purpose. Each entity's cost participation in other improvements that portion of the System situated south of the Metering Station will be determined based on each entity's percentage of capacity taking into account the percentage of other third-parties not a party to this Agreement in the other improvements and will be agreed upon in writing at a later date, but prior to incurring any costs or expenses associated with other improvements.

5. Ownership of Easements/Improvements. Any and all easements obtained and improvements constructed pursuant to this Agreement at the sole cost and expense of Melissa shall, at all times, remain the sole property of Melissa until such time as said ownership of Easements and Improvements may be turned over to NTMWD Upper Eastfork System or such other regional entity as may evolve.

6. Damages/Remedies. Should any breach of responsibilities or of provisions of this Agreement occur, the parties shall have any and all rights and remedies available to it, at law or in equity, in the event of a breach provided (i) the non-breaching party is not in default at the time of the breach; and (ii) such breach continues for a period of thirty (30) days after the non-breaching party delivers written notice thereof to the other party.

7. Miscellaneous.

a. Notice. Any notice required to be sent under this Agreement must be in writing and may be served by depositing same in the United States Mail, addressed to the party to be notified, postage pre-paid via registered or certified mail with return receipt requested, or by delivering the same in person to such party via a hand-delivery service, Federal Express or any courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notice, the addresses of the parties shall be as follows:

If to Melissa, to:
City Manager
City of Melissa
City Hall
Melissa, Texas 75454

If to McKinney, to:
City Manager
City of McKinney
P.O. Box 517
222 N. Tennessee Street
McKinney, Texas 75069

- b. Assignment. This Agreement is not assignable.
- c. Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the matters contained herein and may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the parties hereto.
- d. Venue. This Agreement shall be construed in accordance with the laws of the State of Texas and shall be performable in Collin County, Texas.
- e. Consideration. This Agreement is executed by the parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.
- f. Counterparts. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.
- g. Authority to Execute. The individuals executing this Agreement on behalf of the respective parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.
- h. Savings/Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- i. Representations. Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had an opportunity to confer with its counsel.
- j. Miscellaneous Drafting Provisions. This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be

construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document.

k. Sovereign Immunity. The parties agree that Melissa and McKinney have not waived their respective sovereign immunity by entering into and performing their respective obligations under this Agreement.

[Remainder of page left blank intentionally.]

DRAFT

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective on the latest date as reflected by the signatures below.

CITY OF MELISSA, TEXAS

By: _____ Date: _____
Name: _____
Title: _____

STATE OF TEXAS *
*
COUNTY OF COLLIN *

BEFORE ME, the undersigned authority, on this day personally appeared _____, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he/she acknowledged to me he/she is the duly authorized representative for the City of Melissa, Texas, and he/she executed said instrument for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____ 2014.

Notary Public in and for the
State of Texas
My Commission Expires:

CITY OF MCKINNEY, TEXAS

By: _____ Date: _____
TOM MUEHLENBECK
Interim City Manager

STATE OF TEXAS *
*
COUNTY OF COLLIN *

BEFORE ME, the undersigned authority, on this day personally appeared TOM MUEHLENBECK, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he acknowledged to me he is the duly authorized representative for the

City of McKinney, Texas, and he executed said instrument for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____ 2014.

Notary Public in and for the
State of Texas
My Commission Expires:

DRAFT