

**MEMORANDUM OF AGREEMENT
NORTH TEXAS MUNICIPAL WATER DISTRICT
CITY OF MCKINNEY**

THE STATE OF TEXAS §
 §
THE COUNTY OF COLLIN §

THIS MEMORANDUM OF AGREEMENT (the “Agreement”) made and entered into as of this the _____ day of _____, 2020 (the “Effective Date”), by and between the North Texas Municipal Water District, hereinafter called “NTMWD,” a conservation and reclamation district created under Article 16, Section 59, of the Texas Constitution and the City of McKinney (“McKinney”), a home-rule municipality and political subdivision of the State of Texas, also each referred to as a “Party,” or collectively, the “Parties.”

W I T N E S S E T H :

WHEREAS, NTMWD and McKinney are authorized to enter into this Agreement pursuant to Chapter 62, Acts of the 52nd Legislature, 1951 (Article 8280-141, Vernon's Texas Civil Statutes) and other applicable laws;

WHEREAS, Lavon Lake is the source of drinking water for McKinney and other North Texas communities comprising approximately 1.7 million people; and,

WHEREAS, NTMWD and McKinney recognize the importance of urban stormwater management to protect Lavon Lake; and,

WHEREAS, NTMWD and McKinney recognize the benefits of educating the public regarding stormwater and low impact development (“LID”) practices; and,

WHEREAS, NTMWD and McKinney desire to work cooperatively to demonstrate LID best management practices (“BMPs”) that help address urban runoff; and,

WHEREAS, NTMWD has secured grant funding in the amount of \$284,429 from the Texas Commission on Environmental Quality (“TCEQ”) to design and construct rain gardens that reduce stormwater runoff and demonstrate effective LID BMPs (the “Projects”); and,

WHEREAS, NTMWD and McKinney have identified three public sites that would benefit from stormwater treatment and maximize public access to those facilities: Bonnie Wenk Park, McKinney Development Services and McKinney Senior Center.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the sufficiency of which are hereby conclusively acknowledged, and subject to the

terms and conditions hereinafter set forth, NTMWD and McKinney mutually undertake, promise, and agree as follows:

AGREEMENT

Section 1. McKinney agrees to the following:

- a. Identify space suitable in size and location for the installation of stormwater raingardens at Bonnie Wenk Park (1,600 square feet), McKinney Development Services office (1,000 square feet) and the McKinney Senior Center (1,000 square feet).
- b. Provide expertise and assistance in the design and construction of the Projects at each site.
- c. Provide input for contractor selection.
- d. Review and approve both the draft and the final BMPs design for the Projects.
- e. Allow the use of signage that explains the subject Project located at a particular location and gives credit to TCEQ and the Environmental Protection Agency for funding the Project.
- f. Once Projects are complete, assume responsibility for maintenance of the BMPs consistent with maintenance activities at other park lands in McKinney, subject to the availability of funding therefor, for a period of at least ten years.
- g. Once Projects are complete, provide quarterly inspection and maintenance documents to NTMWD through August 30, 2021, the conclusion of the TCEQ grant agreement.

Section 2. NTMWD agrees to the following:

- a. Manage TCEQ grant and provide quarterly project updates to TCEQ.
- b. Work with Texas A&M AgriLife Extension to design the Projects.
- c. Secure bids and select contractor.
- d. Supervise construction and ensure BMPs are constructed according to the design plan.
- e. Pay contractor using TCEQ grant funds.
- f. Facilitate meetings as necessary.

Section 3. **TERM OF AGREEMENT.** This Agreement shall commence on the Effective Date and shall terminate on or about the ___ day of _____, 2030, subject to the availability of funding as set out in Section 1.f, above.

Section 4. **MODIFICATION.** This Agreement may be changed or modified only by written agreement of the Parties and only after having obtained approval from the governing bodies of all the Parties.

Section 5. FORCE MAJEURE. If by reason of force majeure any Party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement, then if such Party shall give notice and full particulars of such force majeure in writing to the other Party within a reasonable time after occurrence of the event or cause relied on, the obligation of the Party giving such notice, so far as it is affected by such force majeure, shall be suspended during the continuance of the inability then claimed, but for no longer period, and any such Party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "force majeure" as employed herein shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemy, orders of any kind of the Government of the United States or the State of Texas, or any civil or military authority, insurrection, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, partial or entire failure of water supply, or on account of any other causes not reasonably within the control of the Party claiming such inability.

Section 6. REGULATORY BODIES AND LAWS. This Agreement is subject to all applicable Federal and State Laws and any applicable permits, ordinances, rules, orders, and regulations of any local, state or federal governmental authority having or asserting jurisdiction, but nothing contained herein shall be construed as a waiver of any right to question or contest any such law, ordinance, order, rule, or regulation in any forum, having jurisdiction.

Section 7. NOTICES. Unless otherwise provided herein, any notice, communication, request, reply, or advice (herein severally and collectively, for convenience, called "Notice") herein provided or permitted to be given, made, or accepted by any Party to any other Party must be in writing and may be given or be served by depositing the same in the United States mail postpaid and registered or certified and addressed to the Party to be notified, with return receipt requested, or by delivering the same to an officer of such Party, or by prepaid telegram when appropriate, addressed to the Party to be notified. Notice deposited in the mail in the manner hereinabove described shall be conclusively deemed to be effective, unless otherwise stated herein, from and after the expiration of three (3) days after it is so deposited. Notice given in any other manner shall be effective only if and when received by the Party to be notified. For the purposes of Notice, the addresses of the Parties shall, until changed as hereinafter provided, be as follows:

If to NTMWD, to:

North Texas Municipal Water District
Attn: Executive Director/General Manager
P.O. Box 2408
Wylie, Texas 75098

If to McKinney, to:

City of McKinney, Texas
Attn: City Manager
P.O. Box 512
McKinney, Texas 75069

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 address any other address by at least fifteen (15) days written notice to the other Parties hereto.

Section 8. SEVERABILITY. The Parties hereto specifically agree that in case any one or more of the sections, subsections, provisions, clauses, or words of this Agreement or the application of such sections, subsections, provisions, clauses, or words to any situation or circumstance should be, or should be held to be, for any reason, invalid or unconstitutional, under the laws or constitutions of the State of Texas or the United States of America, or in contravention of any such laws or constitutions, such invalidity, unconstitutionality, or contravention shall not affect any other sections, subsections, provisions, clauses, or words of this Agreement or the application of such sections, subsections, provisions, clauses, or words to any other situation or circumstance, and it is intended that this Agreement shall be severable and shall be construed and applied as if any such invalid or unconstitutional section, subsection, provision, clause, or word had not been included herein, and the rights and obligations of the Parties hereto shall be construed and remain in force accordingly.

Section 9. GOVERNING LAW; VENUE. All Parties agree that this Agreement shall be construed under the laws of the State of Texas, and obligations under the Agreement shall be performed in Collin County, Texas. In the event that any legal proceeding is brought to enforce this Agreement or any provision hereof, the same shall be brought in the State District Court of Collin County, Texas. The Parties agree to submit to the jurisdiction of said court.

Section 10. SOLE AGREEMENT. This Agreement constitutes the sole and only agreement of NTMWD and McKinney and supersedes any prior understanding or oral or written agreements between NTMWD and McKinney with respect to the subject matter of this Agreement.

Section 11. NO THIRD-PARTY BENEFICIARIES. This Agreement shall inure only to the benefit of the Parties hereto and third persons not privy hereto shall not, in any form or manner, be considered a third-party beneficiary of this Agreement.

Section 12. SUCCESSION AND ASSIGNMENT. This Agreement is binding upon and shall inure to the benefit of the Parties, their heirs, successors and assigns. This Agreement may not be assigned by any Party hereto without the prior written notice to, and prior written approval by, the other Parties, which consent may be withheld without cause.

Section 13. RECITALS AND EXHIBITS INCORPORATED. The recitals contained in the preamble hereof and the exhibits hereto are hereby found to be true, and such recitals and exhibits are hereby made a part of this Agreement for all purposes.

Section 14. AUTHORITY TO EXECUTE. Each person signing on behalf of the Parties hereby confirms that they have the authority to execute this Agreement on behalf of the Party indicated by their signature.

Section 15. NO CONVEYANCE OF ANY INTEREST IN LAND. It is specifically understood and agreed by and between NTMWD and McKinney that nothing contained in this Agreement is intended to convey, nor shall it be interpreted as conveying, any interest or right of any kind whether by easement, license or otherwise in any part or portion of the land or spaces identified by McKinney in response to Section 1, above, as being suitable in size and location for the installation of stormwater raingardens at Bonnie Wenk Park, McKinney Development Services office and/or the McKinney Senior Center from McKinney to NTMWD or any other persons or parties. NTMWD hereby specifically disclaims any right, ownership or interest of any kind or matter in the spaces so identified by McKinney.

IN WITNESS WHEREOF, the Parties hereto acting under authority of their respective governing bodies have caused this Agreement to be duly executed in several counterparts, each of which shall constitute an original, all as of the day and year first above written, which is the Effective Date of this Agreement.

CITY OF MCKINNEY

By: _____
Paul Grimes, City Manager

_____ Date

NORTH TEXAS MUNICIPAL WATER DISTRICT

By: _____
Thomas W. Kula, Executive Director

_____ Date