

**COOPERATIVE SERVICE AGREEMENT
NORTH TEXAS MUNICIPAL WATER DISTRICT
NORTH COLLIN SPECIAL UTILITY DISTRICT
CITY OF MCKINNEY**

THE STATE OF TEXAS §
 §
THE COUNTY OF COLLIN §

THIS CONTRACT (the “Contract”) made and entered into as of this the _____ day of _____, 2016 (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, the North Collin Special Utility District (“North Collin SUD”), a special utility district created under Article 16, Section 59, of the Texas Constitution and Chapter 65 of the Texas Water Code, and the City of McKinney (“McKinney”), a home-rule municipality and political subdivision of the State of Texas, also all each referred to as a “Party,” or collectively, the “Parties.”

W I T N E S S E T H :

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

WHEREAS, North Collin Water Supply Corporation (“North Collin WSC”) was converted to the North Collin SUD by an Order of the Texas Commission on Environmental Quality, dated August 18, 2015,

WHEREAS, North Collin SUD and NTMWD entered into an Amended and Restated Potable Water Service Contract on July __, 2016 (“Customer Contract”) which replaced the North Collin WSC Potable Water Supply Contract dated June 22, 1995, and amended on August 27, 1998 (“Original Contract”), and the Original Contract is of no further effect;

WHEREAS, pursuant to the Customer Contract, North Collin SUD purchases treated water from NTMWD;

WHEREAS, McKinney is a Member City of NTMWD and purchases treated water from NTMWD pursuant to the NTMWD Regional Water Supply Facilities Amendatory Contract dated August 1, 1988 (“Regional Contract”);

WHEREAS, North Collin SUD needs to make repairs and improvements to existing water supply infrastructure in the vicinity of U.S. Highway 75 and F.M. 543 (the “Infrastructure”) and during such repairs will be unable to supply water to a portion of its service area west of U.S. Highway 75 (“Designated Area”), as identified in Exhibit A;

WHEREAS, North Collin SUD has requested that McKinney provide retail water service on a temporary basis to the Designated Area during the time North Collin SUD is making repairs to the Infrastructure;

WHEREAS, McKinney has agreed to provide retail water service on a temporary basis to the Designated Area during the time North Collin SUD is making repairs to the Infrastructure as long as providing water on a temporary basis to the Designated area does not increase McKinney's Annual Requirement, as defined under the Regional Contract;

WHEREAS, McKinney and North Collin WSC previously entered into that February 2, 2014 Cooperative Service Agreement the "Initial Cooperative Agreement" to allow for the provision of retail water service to the Trinity Falls development;

WHEREAS, the Initial Cooperative Agreement terminates upon commencement of retail water service to the Trinity Falls development by McKinney;

WHEREAS, because Trinity Falls development is intended to be provided retail water service pursuant to this Contract, the Parties agree that upon the effective date of this Contract the Initial Cooperative Agreement is immediately terminated and of no further effect, and all appropriate notices under the Initial Cooperative Agreement to effectuate such termination have been satisfied;

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, McKinney, and North Collin SUD mutually undertake, promise, and agree as follows:

AGREEMENT

Section 1. TEMPORARY SERVICE FOR DESIGNATED AREA. During the term of this Contract, McKinney agrees to provide retail water service to the Designated Area until North Collin SUD completes required improvements to North Collin SUD's Infrastructure. Once required repairs and improvements to North Collin SUD's Infrastructure are completed, McKinney will cease providing retail water service to the Designated Area and North Collin SUD shall become the provider of retail water service to the Designated Area.

Section 2. DESIGNATED AREA DELIVERY POINT AND METER. McKinney will deliver water to the Designated Area via a pipeline to a delivery point and metering station owned and operated by McKinney (the "Designated Area Delivery Point"). Exhibit A attached hereto and incorporated herein by reference for all purposes allowed by law identifies the location of the Designated Area Delivery Point. McKinney agrees to read the meter at the Designated Area Delivery Point on a monthly basis and promptly provide NTMWD with the monthly readings of the quantity of water provided to the Designated Area ("Designated Area Quantity").

Section 3. DESIGNATED AREA QUANTITY. Beginning on the Effective Date, NTMWD will deduct the Designated Area Quantity from McKinney's monthly quantity of water supplied by NTMWD to McKinney pursuant to the Regional Contract and then add the Designated Area Quantity to North Collin SUD's monthly quantity of water supplied by NTMWD to North Collin SUD pursuant to the Customer Contract. The parties agree that McKinney's Annual Requirement as discussed in Section 9 of the Regional Contract shall not be increased as a result of the Designated Area Quantity and that such quantity shall only increase North Collin SUD's Annual Minimum, as provided for and defined in Section 8 of the Customer Contract.

Section 4. TERM OF CONTRACT. This Contract shall commence on the Effective Date and shall terminate upon the earlier of the following: (i) five (5) years following the Effective Date; or (ii) North Collin SUD's written notice to McKinney and NTMWD that the Infrastructure repairs have been

completed and identifying the date on which North Collin SUD will recommence delivery of retail water service to the Designated Area. Upon the mutual agreement of the Parties, this Contract may be renewed for one (1) additional term of five (5) years.

Section 5. MODIFICATION. This Contract 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 6. 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 Contract, other than the obligations of McKinney and North Collin SUD to make the payments required under the Regional Contract and Customer Contract, 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 7. REGULATORY BODIES AND LAWS. This Contract 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 8. 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 electronic mail, addressed to the Party to be notified at the email address provided below. 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 and contact information 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
Email: tkula@ntmwd.com

If to McKinney, to:

City of McKinney, Texas
Attn: City Manager
P.O. Box 517
McKinney, Texas 75069
Email: bshelton@mckinneytexas.org

Copy to: Attn: City Attorney
Mark Houser
Brown & Hofmeister
740 East Campbell Road, Suite 800
Richardson, Texas 75081
E-mail: mhouser@bhlaw.net
Fax: (214) 747-6111

If to North Collin SUD, to:

North Collin Special Utility District
Attn: Allen Knight, System Administrator
P.O. Box 343
2333 Sam Rayburn Hwy.
Melissa, Texas 75454-0343
Email: aknight@northcollinsud.com

Copy to: John Rapier, Attorney
Gay, McCall, Isaacks & Roberts, P.C.
777 East 15th Street
Plano, Texas 75074
E-mail: jrapier@gmigr.com
Fax: (972) 424-8501

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

Section 9. SEVERABILITY. The Parties hereto specifically agree that in case any one or more of the sections, subsections, provisions, clauses, or words of this Contract 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 Contract or the application of such sections, subsections, provisions, clauses, or words to any other situation or circumstance, and it is intended that this Contract 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 10. VENUE. All amounts due under this Contract including, but not limited to, payments due under this Contract or damages for the breach of this Contract, shall be paid and be due in Collin County, Texas, which is the County in which the principal administrative offices of NTMWD are located. It is specifically agreed among the Parties to this Contract that Collin County, Texas, is a principal place of performance of this Contract.

Section 11. SOLE AGREEMENT. This Contract constitutes the sole and only agreement of NTMWD, McKinney, and North Collin SUD and supersedes any prior understanding or oral or written agreements between NTMWD, McKinney, and North Collin SUD with respect to the specific subject matter of this Contract.

Section 12. NO THIRD-PARTY BENEFICIARIES. This Contract 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 Contract. Each Party hereto shall be solely responsible for the fulfillment of its customer contracts or commitments, and NTMWD shall not be construed to be responsible for McKinney's or North Collin SUD's customer contracts or commitments by virtue of this Contract or any provision contained herein.

Section 13. SUCCESSION AND ASSIGNMENT. This Contract is binding upon and shall inure to the benefit of the Parties, their heirs, successors and assigns. This Contract 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 14. 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 Contract for all purposes.

Section 15. AUTHORITY TO EXECUTE. Each person signing on behalf of the Parties hereby confirms that they have the authority to execute this Contract on behalf of the Party indicated by their signature.

IN WITNESS WHEREOF, the Parties hereto acting under authority of their respective governing bodies have caused this Contract 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 Contract.

(Signatures on following pages)

NORTH COLLIN SPECIAL UTILITY DISTRICT

By: _____
Duke Monson, President Date

ATTEST:

Ellen Hartley, Secretary

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on this _____ day of _____, 2016, by Duke Monson, President of North Collin Special Utility District, a special utility district and political subdivision of the State of Texas, on behalf of said special utility district.

Notary Public, State of Texas
Printed Name of Notary:

My Commission Expires: _____

CITY OF MCKINNEY

By: _____
Paul G. Grimes, City Manager Date

ATTEST:

Sandy Hart, City Secretary

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on this _____ day of _____, 2016, by Paul G. Grimes, City Manager of the City of McKinney, a home-rule municipality and political subdivision of the State of Texas, on behalf of said municipality.

Notary Public, State of Texas
Printed Name of Notary:

My Commission Expires: _____

NORTH TEXAS MUNICIPAL WATER DISTRICT

By: _____
Terry Anderson, President Date

ATTEST:

John Sweeden, Secretary

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on this _____ day of _____, 2016, by Terry Anderson, President of North Texas Municipal Water District, a conservation and reclamation district and political subdivision of the State of Texas, on behalf of said conservation and reclamation district.

Notary Public, State of Texas
Printed Name of Notary:

My Commission Expires: _____

EXHIBIT A

Location of Designated Area and Delivery Point