

MEMORANDUM OF UNDERSTANDING

BETWEEN

**THE NORTH TEXAS MUNICIPAL WATER DISTRICT
AND THE CITY OF PLANO**

FOR

**PROVIDING ELECTRICITY TO THE 121 RDF LANDFILL ODOR MANAGEMENT
SYSTEM**

This Memorandum of Understanding (“MOU”) is made by and between the North Texas Municipal Water District (“NTMWD” or the “District”) and the City of Plano (“Plano” or the “City”), pursuant to the Interlocal Cooperation Act, Chapter 791, Texas Government Code, to be effective on the date of the last signatory of this MOU (“Effective Date”). NTMWD and Plano are each referred to as a “Party” or together as the “Parties” herein.

1. Background and Objectives

- A. The District owns and operates the 121 Regional Disposal Facility, a Municipal Solid Waste Landfill, located at 3820 Sam Rayburn Highway, Melissa, Texas (the “Landfill”).
- B. The District proposes to design and operate an Odor Control System around the permitter of the Landfill, which includes five stationary odor control units.
- C. Plano operates a composting facility at 3820 Sam Rayburn Highway, Melissa, Texas (the “Composting Facility”), which is within the permit boundary of the Landfill.
- D. Plano has a power line on District property in the Composting Facility located at Sector 11 in the Landfill (“Plano Power Line”).
- E. One of the five stationary odor control units (the “Common Odor Unit”) is proposed to be located near the Composting Facility, in turn benefiting both the Landfill and the Composting Facility.
- F. The purpose of this MOU is to outline the agreement for financial contributions of the District and Plano in installing and operating the Common Odor Unit.

2. Agreement Regarding Power to the Stationary Odor Control Unit

- A. District will install a meter, and all necessary appurtenances, to calculate costs of electricity services to the Common Odor Unit. The District will fully fund the installation and connection of all necessary appurtenances to provide electricity to the Common Odor Unit. The funding of such activities is to be made from current revenues available to the District.
- B. Plano will allow the District to access the Plano Power Line for the provision of electricity to the Common Odor Unit.

- C. Plano will be solely responsible for providing electricity to the Common Odor Unit and will cover all costs associated with providing electricity to the Common Odor Unit, including full payment of the electricity services. Plano's funding for costs for providing electricity to the Common Odor Unit is to be made from current revenues available to the City.

3. **Miscellaneous**

- A. Term. The term of this MOU shall begin on the Effective Date and shall continue, unless terminated by either party in accordance with Section 3.M, for the duration of the compost operation program with Plano's participation onsite, and, notwithstanding the foregoing, for as long as the District operates the Common Odor Unit (allowing for repair and maintenance) and while Plano is on the premises.
- B. Severability. If any provision of this MOU is held to be invalid for any reason by a court or agency of competent jurisdiction, the remainder of this MOU shall not be affected thereby, and this MOU shall be construed as if such invalid provision had never been contained herein, and the remaining enforceable provisions of this MOU are expressly deemed severable for this purpose.
- C. Cooperation. The Parties agree to cooperate at all times in good faith to effectuate the purposes and intent of this MOU.
- D. Entire Agreement. This MOU contains the entire agreement of the Parties and supersedes all prior or contemporaneous understandings or representations, whether oral or written, respecting the subject matter hereof.
- E. Amendments. Any amendment to this MOU must be in writing and shall be effective only if signed by the authorized representatives of each Party to this MOU.
- F. Effect of Force Majeure. If any Party is unable to perform, in whole or in part, its obligations under this MOU by reason of "force majeure," then performance of such obligations shall be suspended to the extent and during the period directly affected by the force majeure; provided, however, all due diligence must be exercised to eliminate the force majeure and to resume full performance at the earliest practicable time. As soon as reasonably possible after the occurrence of the force majeure relied upon to suspend performance, the Party whose performance is suspended shall give notice and full particulars of the force majeure to the other Party. The term "force majeure" includes: (i) acts of God; strikes; lockouts or other industrial disturbances; criminal conduct or sabotage; acts of the public enemy; orders of the government of the United States or the State of Texas or any civil or military authority; insurrections or riots; landslides; lightning; earthquakes; fires; hurricanes; storms; floods; washouts; droughts; epidemics; pandemics; arrests; restraints of government; civil disturbances; explosions; or any other events,

whether similar to those enumerated or otherwise, (ii) that are not within the reasonable control of the Party claiming the right to suspend performance, and (iii) that could not have been avoided by the exercise of due diligence.

- G. Effect of Legislative Changes. If any Party to this MOU is unable to perform, in whole or in part, its obligations under this MOU by reason of legislative or regulatory changes beyond its control, then performance shall be suspended only to the extent and during the period affected by the change.
- H. No Third-Party Beneficiaries. This MOU shall inure only to the benefit of the Parties and their successors and assigns as permitted by this MOU. No person or entity that is not a Party to this MOU shall be considered a third-party beneficiary of this MOU.
- I. Applicable Law. This MOU shall be construed in accordance with Texas law.
- J. Venue. Venue for any action arising hereunder shall be in Collin County, Texas.
- K. Notices. Any notice required or contemplated by this MOU shall be deemed given (i) if mailed via Certified Mail Return Receipt Requested, on the earlier of the date actually received or five business days after mailed, and (ii) if deposited with a private delivery service (such as U.P.S. or FedEx), when delivered, as evidenced by a receipt signed by a person at the delivery address, when received at the delivery address. All notices shall be addressed as follows:

If to NTMWD: Executive Director
 PO Box 2408
 North Texas Municipal Water District
 Wylie, Texas 75098

If to Plano: City of Plano
 Director of Public Works
 4120 W. Plano Parkway
 Plano, TX 75093

- L. Counterparts. This MOU may be executed in multiple counterparts, each of which will be deemed an original, and all of which will constitute one and the same instrument. Each Party represents and warrants that they have the full right, power and authority to execute this MOU.
- M. Termination. Any Party may terminate its participation in this MOU by providing the other Parties with (30) thirty days written notice that it will no longer be a party under the MOU.

NORTH TEXAS MUNICIPAL WATER DISTRICT:

Jennafer P. Covington, Executive Director

Date

CITY OF PLANO:

Mark D. Israelson, City Manager

Date

APPROVED AS TO FORM:

Paige Mims, City Attorney
City of Plano, Texas