

**INTERLOCAL COOPERATION AGREEMENT BETWEEN  
THE CITY OF MESQUITE AND  
NORTH TEXAS MUNICIPAL WATER DISTRICT (NTMWD)  
FOR  
CONSTRUCTION OF THE TALIA OFFSITE SANITARY SEWER AND  
NECESSARY UPSIZING OF NTMWD'S 18-INCH MUSTANG CREEK  
INTERCEPTOR**

**WHEREAS**, Spradley Farms, LTD (the "Developer") is constructing the Talia Offsite Sanitary Sewer Project (the "Project") for the City of Mesquite (the "City"); and

**WHEREAS**, the Project includes replacing the existing NTMWD manhole "WWMH00705" and upsizing the existing 18-inch Mustang Creek Interceptor to 24-inch from "WWMH00705" to "WWMH00700" as depicted on **Exhibit A**, which is incorporated herein by reference; and

**WHEREAS**, NTMWD will assume ownership and maintenance of the new manhole and 24-inch segment described above upon completion and approval by a NTMWD Inspector; and

**WHEREAS**, the new manhole "WWMH00705" will be lined per current NTMWD standards and the lining of "WWMH00700" will be repaired per current NTMWD standards; and

**WHEREAS**, the new 24-inch segment of the Mustang Creek Interceptor will be SDR-26 PVC and installed per NTMWD current standards; and

**WHEREAS**, the existing 18-inch upstream connection to "WWMH705" will be maintained to the replacement manhole; and

**WHEREAS**, NTMWD will not be financially responsible for reimbursement to the City for this Project if NTMWD upgrades or abandons the Mustang Creek Interceptor; and

**WHEREAS**, NTMWD will retain all existing rights associated with its existing easement; and

**WHEREAS**, the Project requires NTMWD to employ a certified pipeline inspector to oversee construction activities within NTMWD's sanitary sewer easement; and

**WHEREAS**, the City will reimburse NTMWD for all legal and filing fees regarding this ILA, not to exceed a total of \$5,000; and

**WHEREAS**, the City will reimburse NTMWD for all inspection fees regarding the Project, not to exceed a total of \$10,000; and

**WHEREAS**, it is necessary to execute an Interlocal Cooperation Agreement with the City to protect NTMWD's infrastructure during construction of the Project and to ensure NTMWD standards of construction are met.

**NOW THEREFORE**, in consideration of the mutual covenants contained herein, City and NTMWD agree as follows:

## **ARTICLE ONE Reimbursement for Fees**

1.01 Reimbursement of NTMWD Fees. City agrees to reimburse NTMWD for the performance of the tasks necessary and related to NTMWD's coordination of the Project ("Reimbursement Payments") as provided herein. NTMWD will use the Reimbursement Payments by City for costs NTMWD incurs in providing the following services:

1. Legal Fees: City shall reimburse the NTMWD for all legal and filing fees associated with the Project, which are not expected to exceed a total of \$5,000.

1. Design Review and Inspection Fees: City shall reimburse NTMWD for any design review and for inspection staff that will make periodic visits to the construction site to inspect the work and meet with City staff and/or contractor to discuss the Project, which are not expected to exceed a total of \$10,000.

1.02 Coordination of Inspections. City and/or its contractor shall notify, in writing, NTMWD's inspection staff at least 48 hours in advance of any site inspection. NTMWD's inspection staff shall be notified of the scope of inspection(s) and date work will be ready to inspect.

1.03 Reimbursement Payment. NTMWD shall provide City with an itemized invoice of legal, design review and inspection fees pertaining to the Project on a monthly basis. City shall have 30 calendar days after the mailing of the invoice to submit payment to NTMWD. **The total estimated amount for the services is \$15,000.00 as itemized below:**

1. Legal Fees: Total estimated amount \$5,000
2. Design Review and Inspection Fees: Total estimated amount \$10,000.

These estimated amounts for legal fees, design review, and inspection fees are subject to change based on costs actually incurred by NTMWD. However, NTMWD shall provide

written notice to the City in the event the Reimbursement Payment is expected to exceed or exceeds \$15,000.

## **ARTICLE TWO**

### **Term**

2.01 This Agreement shall be effective upon approval by the City and the NTMWD Board of Directors and subsequent execution by the City's authorized representative and NTMWD's Executive Director. The effective date will be the latter of the dates this Agreement is executed by the Parties' authorized representatives.

## **ARTICLE THREE**

### **Hold Harmless**

3.01 In the event of joint or concurrent negligence of the Parties, responsibility, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas without, however, waiving any governmental immunity or defense available to any party individually under Texas law. City shall be responsible for its sole negligence. NTMWD shall be responsible for its sole negligence. The provisions of this paragraph are solely for the benefit of the Parties and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

## **ARTICLE FOUR**

### **Immunity**

4.01 It is expressly understood and agreed that, in the execution of this agreement, neither Party waives, nor shall be deemed hereby to have waived any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the Parties do not create any obligations, expressed or implied, other than those set forth herein, and this Agreement shall not create any rights in parties not signatories hereto.

## **ARTICLE FIVE**

### **Notices**

5.01 All notices required under the provisions of this Agreement must be in writing, hand-delivered or sent by registered or certified mail to the addresses below:

The City of Mesquite  
Attention: City Manager  
P O Box 850137  
Mesquite, TX 75185-0137

North Texas Municipal Water District  
Jennafer P. Covington  
Executive Director  
P.O. Box 2408  
Wylie, TX 75098

The name and address for notification may be changed by notice to the other parties.

## **ARTICLE SIX Insurance and Bonds**

1. Insurance Rating Requirements. All insurance required to be provided by the City or the City's contractor shall be obtained from insurance companies that are duly licensed or authorized in Texas to issue policies for the limits and coverages so required herein. Insurance companies providing the City's insurance shall have an A.M. Best Company Rating of A-VIII or better.

2. Certificates of Insurance. The City shall deliver to NTMWD certificates of insurance (and other evidence of insurance requested by NTMWD) which the City is required to purchase and maintain. Failure of NTMWD to demand such certificates or other evidence of the City's full compliance with these insurance requirements or failure of NTMWD to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of the City's obligation to maintain such insurance. NTMWD does not represent that insurance coverage and limits established in this Agreement necessarily will be adequate to protect the City. The insurance and insurance limits required herein shall not be deemed as a limitation on the City's liability under the indemnities granted to NTMWD in this Agreement.

6.03 The City and Its Contractor's Insurance. The City shall have its contractor purchase and maintain such insurance as is appropriate for the work being performed and as will provide protection from claims set forth below which may arise out of or result from the City's or the City's contractor's performance of the work and the City's other obligations under the Agreement, whether it is to be performed by the City, the City's contractor, any subcontractor or supplier, or by anyone directly or indirectly employed by any of them to perform any of the work, or by anyone for whose acts any of them may be liable:

- a. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
- b. claims for damages because of bodily injury, occupational sickness or disease, or death of the City's or the City's contractor's employees;

- c. claims for damages because of bodily injury, sickness or disease, or death of any person other than the City's or the City's contractor's employees;
- d. claims for damages insured by reasonably available personal injury liability coverage which are sustained:
  - 1. by any person as a result of an offense directly or indirectly related to the employment of such person by the City or the City's contractor, or
  - 2. by any other person for any other reason;
- e. claims for damages, other than to the work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
- f. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.
- g. The City's contractors will provide insurance satisfying the City's insurance requirements.

6.04 Insurance Policies. The policies of insurance required by this Article shall:

- a. be written on an occurrence basis, as applicable, include NTMWD as an additional insured, and include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of NTMWD, and the insurance afforded to NTMWD as an additional insureds shall provide primary coverage for all claims covered thereby;
- b. include at least the specific coverages and be written for not less than the limits of liability provided herein or required by laws or regulations, whichever is greater;
- c. include contractual liability insurance covering the City's indemnity obligations in this Agreement;
- d. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to NTMWD;
- e. remain in effect at least until the work is complete; and
- f. include completed operations coverage:

1. Such insurance shall remain in effect for two years after the work is complete.

2. The City shall furnish to NTMWD evidence satisfactory to NTMWD of continuation of such insurance for two years after the work is complete.

6.05 Coverage.

a. Worker's Compensation and Employer's Liability Insurance required herein is to provide coverage for not less than the following amounts or greater where required by laws and regulations.

Workers' Compensation, etc.,	
1) State:	Statutory
2) Applicable Federal (e.g., Longshore)	Statutory
Employers' Liability	
1) Bodily Injury by Accident	\$500,000
2) Bodily Injury by Disease - Each Employee	\$500,000
3) Bodily Injury by Disease - Policy Limit	\$500,000
Insurance shall include a waiver of subrogation in favor of the Additional Insured identified in Paragraph 5.04.B.1.	

b. The Liability Insurance required herein is to provide coverage for not less than the following amounts or greater where required by laws and regulations. The City can satisfy the requirements by a combination of the underlying coverage and umbrella/excess coverage; the underlying coverage amounts will be included in the overall umbrella/excess coverage amount:

Insurance for Claims of Damages	
1) General Aggregate (Except Products - Completed Operations)	\$ 2,000,000 / Occurrence \$ 4,000,000 / Aggregate
2) Products - Completed Operations Aggregate	
3) Personal and Advertising Injury (One Person/Organization)	\$1,000,000

4) Each Occurrence (Bodily Injury and Property Damage)	\$1,000,000
5) Limit Per Person – Medical Expense	\$25,000
6) Personal Injury Liability coverage will include claims arising out of Employment Practices Liability, limited to coverage provided under standard contract.	\$1,000,000
7) Property Damage Liability insurance will provide explosion, collapse and underground coverage where applicable	\$1,000,000

c. The City’s contractor’s liability insurance shall also include completed operations and product liability coverage, and eliminate the exclusion with respect to property under the care, custody and control of the City or the City’s contractor.

d. The City’s contractor’s automobile liability insurance required herein is to provide coverage for not less than the following amounts or greater where required by laws and regulations.

Bodily Injury:	
1) Each Person	\$1,000,000
2) Each Accident	\$1,000,000
Property Damage:	
1) Each Accident	\$1,000,000
Or	
2) Combined Single Limit (Bodily Injury and Property Damage)	\$1,000,000

e. Additional insured on all insurance policies in accordance with Section 6.05 (excluding workers’ compensation) include:  
North Texas Municipal Water District

f. The City’s contractor’s contractual liability insurance required herein is to provide coverage for not less than the following amounts or greater where required by laws and regulations.

The City’s Contractual Liability Insurance	
1) General Aggregate	\$ 2,000,000

2) Each Occurrence (Bodily Injury and Property Damage)	\$ 4,000,000
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6.06 Property Insurance. The City shall purchase and maintain property insurance or self-insurance equivalent upon the work at the City’s Project site in the amount of the full replacement cost thereof (subject to deductible amounts as may be required by laws and regulations). This insurance shall: include the interests of NTMWD and its officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee.; General Contractor shall purchase and maintain a Builder’s Risk “all-risk” policy that shall at least include insurance for physical loss or damage to the work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage (other than that caused by flood), and such other perils or causes of loss. The Builder’s Risk policy shall list NTMWD and the City as a loss payee; include expenses incurred in the repair or replacement of any insured property (including but not limited to reasonable fees and charges of engineers and architects) and cover materials and equipment stored at the Site or at another location and in transit for incorporation in the work from such storage locations that was agreed to in writing by NTMWD prior to being incorporated in the work. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this section will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to NTMWD.

6.07 NTMWD’s Insurance for Project. NTMWD shall not be responsible for purchasing and maintaining any insurance to the City’s Project in the interest of the City, the City’s contractor or others involved with the work. The stated limits of insurance required are minimum only. The City shall determine the limits that are adequate. These limits may be basic policy limits or any combination of basic limits and umbrella limits. In any event, the City is fully responsible for all losses arising out of, resulting from or connected with operations under this Agreement whether or not said losses are covered by insurance. The acceptance of certificates or other evidence of insurance by NTMWD that in any respect do not comply with the Agreement does not release the City from compliance herewith.

**ARTICLE SEVEN**  
**Severability**

7.01 The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause or phrase of this Agreement is for any reason held by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation

having the force and effect of the law, the remaining portions of the Agreement shall be enforced as if the invalid provision had never been included.

## **ARTICLE EIGHT**

### **Successors and Assigns**

8.01 This Agreement shall be binding upon the Parties hereto, their successors and assigns. Neither Party will assign or transfer an interest in this Agreement without the written consent of the other Party.

## **ARTICLE NINE**

### **Venue**

9.01 The laws of the State of Texas shall govern the interpretation, validity, performance and enforcement of this Agreement. The Parties agree that this Agreement is performable in Kaufman County, Texas, and that exclusive venue shall lie in a state court in Kaufman County, Texas.

## **ARTICLE TEN**

### **Interpretation**

10.01 This is a negotiated document and should any part of this Agreement be in dispute, the Parties agree that the Agreement shall not be construed more favorably for either Party.

## **ARTICLE ELEVEN**

### **Remedies, Non-Waiver**

11.01 No right or remedy granted herein or reserved to the Parties is exclusive of any right or remedy granted by law or equity, but each shall be cumulative of every right or remedy given hereunder. No covenant or condition of this Agreement may be waived without the express written consent of the Parties. It is further agreed that one or more instances of forbearance by either Party in the exercise of its respective rights under this Agreement shall in no way constitute a waiver thereof.

## **ARTICLE TWELVE**

### **Entire Agreement**

12.01 This Agreement embodies the entire agreement between the Parties and may only be modified in writing executed by both Parties.

EACH PARTY HERETO ACKNOWLEDGES THAT THEY HAVE READ AND UNDERSTAND THE EFFECT OF THIS AGREEMENT, HAVE BEEN ADVISED BY COUNSEL AS TO THE EFFECT OF THIS AGREEMENT, AND EXECUTES THE AGREEMENT OF THEIR OWN FREE WILL AND ACCORD FOR THE PURPOSES AND CONSIDERATIONS SET FORTH.

IN WITNESS WHEREOF, North Texas Municipal Water District and the City of Mesquite have caused this Agreement to be executed either on their behalf by their duly authorized representatives or personally, as of the date first set above.

*(signature pages will follow)*

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

**City of Mesquite, Texas**

By: \_\_\_\_\_

Name: Cliff Keheley.

Title: City Manager

STATE OF TEXAS

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COUNTY OF DALLAS

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This instrument was acknowledged before me on \_\_\_\_\_, 2024, by Cliff Keheley, City Manager, of the City of Mesquite.

\_\_\_\_\_  
Notary Public, in and for the State of Texas.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

**North Texas Municipal Water District**

By: \_\_\_\_\_

Name: Jennafer P. Covington

Title: Executive Director

STATE OF TEXAS

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COUNTY OF COLLIN

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This instrument was acknowledged before me on \_\_\_\_\_, 2024, by \_\_\_\_\_ of the NORTH TEXAS MUNICIPAL WATER DISTRICT, a governmental agency and body politic and corporate, on behalf of said agency and body politic and corporate.

\_\_\_\_\_  
Notary Public, in and for the State of Texas