

RESOLUTION NO. 54-2024

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS (“MESQUITE”), AUTHORIZING THE CITY MANAGER TO EXECUTE AN INTERLOCAL AGREEMENT WITH THE CITY OF FORNEY (“FORNEY”) FOR FORNEY TO PROVIDE TO MESQUITE WHOLESALE WASTEWATER SERVICE SO THAT MESQUITE MAY PROVIDE WASTEWATER SERVICE TO A PROPOSED 446 ACRE DEVELOPMENT LOCATED IN KAUFMAN COUNTY INSIDE THE CITY OF MESQUITE’S EXTRATERRITORIAL JURISDICTION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to the Interlocal Cooperation Act, Texas Government Code, Chapter 791, as amended (the “Act”), cities, counties, special districts, and other legally constituted political subdivisions of the State of Texas are authorized to enter into interlocal contracts and agreements with each other regarding governmental functions and services as set forth in the Act; and

WHEREAS, a formal wastewater service request was received by the City of Mesquite (“**Mesquite**”) for an approximately 446-acre tract located inside Mesquite’s extraterritorial jurisdiction in Kaufman County that the owner of the property plans to develop into residential, single-family housing; and

WHEREAS, the Cities of Forney, Heath, and Rockwall jointly own the Buffalo Creek Wastewater Interceptor system (“**Interceptor**”) that is located north of IH-20 and has the capacity to accept the calculated wastewater flows from the new development; and

WHEREAS, all three of these cities have agreed to allow the City of Forney (“**Forney**”) to accept Mesquite as a wastewater customer for Mesquite to provide wastewater service to the 446-acre developed tract; and

WHEREAS, Mesquite and Forney desire to execute an interlocal agreement to set forth the terms and conditions pursuant to which Forney shall provide wholesale wastewater services to Mesquite in the form attached hereto as Exhibit 1 and incorporated herein by reference (the “**Interlocal Agreement**”); and

WHEREAS, Mesquite will pay Forney a bulk rate of 1.25 times the actual cost that North Texas Municipal Water District (“**NTMWD**”) charges Forney for wastewater flows per 1,000 gallons into the Interceptor; and

WHEREAS, the provision of wholesale wastewater service by Mesquite to the developer will require the developer to construct a wastewater line of sufficient size from the developer’s property to the Interceptor’s lift station, including a wastewater meter at the point of connection; and

WHEREAS, the wastewater meter will be dedicated to Forney once the line is completed for the purpose of measuring Mesquite flows for billing purposes; and

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WHEREAS, the Mesquite City Council hereby finds that Mesquite’s participation in the Interlocal Agreement with Forney in order for Mesquite to provide wastewater service to the proposed development is in the interests of Mesquite and its citizens.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. The facts and recitations contained in the preamble of this resolution are hereby found and declared to be true and correct and are incorporated and adopted as part of this resolution for all purposes.

SECTION 2. The City Council hereby authorizes the City Manager to finalize and execute the Interlocal Agreement between Mesquite and Forney, attached hereto as Exhibit 1 and incorporated herein by reference, and to administer the Interlocal Agreement on behalf of the City including, without limitation, the City Manager shall have the authority to: (i) provide any notices per the Interlocal Agreement; (ii) approve amendments to the Interlocal Agreement provided such amendments, together with all previous amendments approved by the City Manager, do not increase City expenditures under the Interlocal Agreement in excess of \$100,000; (iii) approve or deny any matter in the Interlocal Agreement that requires the consent of the City with the exception of any assignment of the Interlocal Agreement that requires the consent of the City pursuant to the terms of the Interlocal Agreement which shall require City Council approval; (iv) approve or deny the waiver of performance of any covenant, duty, agreement, term, or condition of the Interlocal Agreement; (v) exercise any rights and remedies available to the City under the Interlocal Agreement; and (vi) execute any notices, amendments, approvals, consents, denials, and waivers authorized by this Section 2 provided, however, notwithstanding anything contained herein to the contrary, the authority of the City Manager pursuant to this Section 2 shall not include the authority to take any action that cannot be delegated by the City Council or that is within the City Council’s legislative functions.

SECTION 3. This resolution shall be in effect immediately upon its adoption.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 18th day of November 2024.

Signed by:
Daniel Aleman
D999585317D142B...
Daniel Alemán, Jr.
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

DocuSigned by:
Sonja Land
C2518095973F46A...
Sonja Land
City Secretary

Signed by:
David L. Paschall
666E18891208434...
David L. Paschall
City Attorney

**WHOLESALE WASTEWATER SERVICES AGREEMENT
BETWEEN
CITY OF FORNEY, TEXAS
AND
CITY OF MESQUITE, TEXAS**

THIS AGREEMENT (Agreement) made and entered into by and between CITY OF FORNEY, TEXAS (Forney), a Home Rule municipality situated in Kaufman County, Texas, and the CITY OF MESQUITE, TEXAS, (Mesquite) a Home Rule municipality situated in Dallas and Kaufman Counties, Texas, both organized and operating under the provisions the Constitution and laws of the State of Texas. Forney and Mesquite may be referred to herein collectively as the “Parties,” or individually as a “Party.”

RECITALS

- A. Mesquite anticipates executing a development agreement with Bellagio 443, LLC (“Developer”) relating to a development in Mesquite’s extraterritorial jurisdiction.
- B. The Developer intends to annex its property into Mesquite and Mesquite will be the retail water and wastewater provider to the residential and commercial customers within the development.
- C. Mesquite does not have wastewater facilities near the Developer’s property; however, NTMWD has a wastewater interceptor and lift station near the property (“NTMWD Facilities”).
- D. The Cities of Forney, Heath, and Rockwall are the NTMWD member-city participants in those NTMWD Facilities.
- E. Mesquite has requested wholesale wastewater service from Forney so that Mesquite may provide wastewater service to the Developer’s property utilizing the NTMWD Facilities near the property.
- F. The Cities of Heath, Rockwall, and NTMWD have consented to Forney providing Mesquite with wholesale wastewater service using the NTMWD Facilities near the property.
- G. Forney and Mesquite agree that it is of mutual benefit to the public health, safety, and welfare of both communities to make and enter into this Agreement concerning the provision of wholesale wastewater services to Mesquite for the Developer’s property.
- H. Chapter 791, Texas Government Code, including Section 791.026, thereof, authorizes the making of and entering into this interlocal agreement.

AGREEMENT

For and in consideration of the mutual promises, covenants, obligations and benefits in this Agreement, Forney and Mesquite agree as follows:

ARTICLE I DEFINITIONS

Unless the context requires otherwise, the following terms and phrases used in this Agreement shall have meanings as follows:

“Agreement” means this Agreement.

“Buffalo Creek Interceptor Lift Station” means the NTMWD lift station located at 15915 Wisner Rd., Forney, TX 75126, and which is identified on Exhibit A attached hereto and incorporated herein for all purposes.

“Forney Wastewater System” means the facilities (if any) located on Forney’s side of the Point of Connection, and the Mesquite Wastewater Meter.

“Industrial Wastewater” means the liquid and water-carried wastewater from an Industrial User as defined in the industrial waste ordinance of the City of Forney.

“Infiltration and Inflow” means water that enters a wastewater collection system through physical defects in the system or from other point sources.

“Mesquite Wastewater Collection System” means Mesquite’s sanitary sewer collection and related facilities and all other wastewater related facilities of Mesquite up to the Point of Connection.

“Mesquite Wastewater Meter” means the wastewater meter, vault, and related appurtenances of the standard type for measuring properly Wastewater delivered by Mesquite to Forney under this Agreement.

“Monthly Usage Charge” means the amount billed to Mesquite by Forney for wholesale wastewater services as calculated in accordance with Section 3.1(b) of this Agreement.

“Monthly Usage Rate” means the rate set by Forney under Section 3.1(a) of this Agreement.

“NTMWD” means the North Texas Municipal Water District.

“NTMWD Contracts” mean the February 22, 1990 City of Forney-Trinity East Fork Regional Wastewater Contract between NTMWD and Forney (“Regional Wastewater Contract”),

and the January 22, 2004 Buffalo Creek Interceptor System Contract between NTMWD, Forney, the City of Heath, and the City of Rockwall (“Buffalo Creek Interceptor Contract”).

“Point of Connection” means the point where the Mesquite Wastewater Collection System connects to Forney Wastewater System, the location of which is at the Mesquite Wastewater Meter as identified on Exhibit A of this Agreement. The specific details of the location and design of the point of connection will be determined with the consent of Forney, Mesquite, and NTMWD prior to the construction of the point of connection.

“TCEQ” means the Texas Commission on Environmental Quality.

“Wastewater” means the liquid and water carried waste discharged from sanitary conveniences of dwellings and buildings or similar sources connected to a public sanitary sewer system and Industrial Wastewater collected by a public sanitary sewer system, together with Infiltration and Inflow as may be present.

“Wholesale Service Area” means the property located in Kaufman County that is bounded on south by Markout Central Road and the east by Kaufman County Road 202 as identified on Exhibit B of this Agreement, attached hereto and incorporated herein for all purposes, which is an area within the area generally described in February 2000 report entitled “Rockwall-Heath Wastewater Feasibility Study” by Brown & Root Services, Consulting Engineers, Dallas, Texas (the “Engineering Report”) or is an area consented to by NTMWD (acting through its General Manager), and the Cities of Rockwall and Heath.

ARTICLE II WHOLESALE WATER SERVICES

2.1 Wholesale Wastewater Service.

(a) Subject to the terms and conditions of this Agreement and the requirements of applicable law, Forney agrees to provide wholesale wastewater service to Mesquite for the Wholesale Service Area. Forney shall receive Wastewater from the Mesquite Wastewater Collection System at the Point of Connection.

(b) Mesquite agrees it shall adopt and enforce: (1) wastewater ordinances and policies at least as stringent as, and not inconsistent with, Forney’s wastewater ordinances and policies; and (2) any pretreatment requirements for the retail customers as may be necessary to cause the quality of the Wastewater Mesquite delivers to the Forney Wastewater System pursuant to this Agreement to meet the requirements of this Agreement, Forney’s wastewater ordinances and policies, and the quality requirements as set out in Sections 4.01 and 4.02 of the NTMWD Contracts. If Mesquite’s Wastewater exceeds the quality requirements described in Sections 4.01 and 4.02 of the NTMWD Contracts and the NTMWD surcharges Forney, Mesquite agrees to pay Forney the amount of the surcharge. Mesquite further agrees to exclude Industrial Wastewater that is not pretreated in accordance with Forney’s requirements from the Wastewater Mesquite delivers to Forney. Mesquite acknowledges that it has received a copy of the Buffalo Creek Interceptor Contract, and in the event the quality requirements set out on Section 4.02 of the that

contract are updated, revised, or amended, Forney shall provide written notice and a copy of the updated, revised, or amended contract to Mesquite.

(c) Title to all Wastewater deliverable hereunder to Forney shall remain in Mesquite to the Point of Connection and upon passing through Point of Connection, title thereto and to all Wastewater therefrom shall pass to Forney. As between the Parties hereto, Mesquite shall be in exclusive control and possession of, and solely responsible for, all Wastewater until the same shall pass through such Point of Connection, and thereafter Forney shall be in exclusive control and possession thereof and solely responsible therefore.

(d) Forney shall be entitled to collect samples of Wastewater at or near the Point of Connection into the Forney Wastewater System or from any point within the Mesquite Wastewater Collection System and cause the same to be analyzed in accordance with accepted methods in the industry to determine if such Wastewater complies with Forney's ordinances and policies and any pretreatment requirements. If analysis discloses that the Wastewater does not comply with Forney's ordinances and policies, Mesquite shall be obligated to require the offending originator to immediately cease discharging such Wastewater into the Mesquite Wastewater Collection System or to pretreat such Wastewater such that the discharge of the prohibited Wastewater ceases immediately.

2.2 Measurement of Wastewater.

(a) Point of Connection.

(1) Mesquite shall direct the Developer to construct a wastewater line from the Developer's property to the Buffalo Creek Interceptor Lift Station of sufficient size to transport all of the Wastewater anticipated to be generated from the Developer's property. Mesquite shall direct the Developer to work with NTMWD and Forney regarding access requirements for the construction of the wastewater line across the Buffalo Creek Interceptor Lift Station property.

(2) At the Point of Connection, Mesquite shall construct and install, at Mesquite's sole cost and expense the Mesquite Wastewater Meter. Before commencement of construction and installation of the Mesquite Wastewater Meter, Mesquite shall prepare and submit to Forney and NTMWD detailed plans and specifications for the Mesquite Wastewater Meter. Forney agrees to review and to provide comments on any plans and specifications within 30 days after they are submitted to Forney for review. Mesquite shall coordinate with Forney and NTMWD regarding the timing and dates of the construction and install of the Mesquite Wastewater Meter.

(b) Once installed by Mesquite, Mesquite shall dedicate the Mesquite Wastewater Meter to Forney, and Forney will operate, maintain, and replace the Mesquite Wastewater Meter and Mesquite shall have access to the Mesquite Wastewater Meter at all reasonable times. The reading, calibration and adjustment of the Mesquite Wastewater Meter shall be done by the employees or agents of Forney. All readings of the Mesquite Wastewater Meter shall be entered upon the proper books and records to be maintained by Forney, shall be reported regularly to

Mesquite and, upon written request, Mesquite may have access to the Mesquite Wastewater Meter and to such record books during reasonable business hours.

(c) Forney shall calibrate the Mesquite Wastewater Meter in the presence of a representative of Mesquite if requested in writing by Mesquite, and the Parties shall jointly observe any adjustments that are made to the Mesquite Wastewater Meter in case any adjustment is found to be necessary.

(d) If for any reason the Mesquite Wastewater Meter is out of service or out of repair, or if upon any test, the percentage of inaccuracy of any meter is found to be in excess of five percent (5%), registration thereof shall be corrected for a period of time extending back to the time when the inaccuracy began, if such time is ascertainable; and if not ascertainable, then for a period extending back one-half (1/2) of the time elapsed since the date of the last calibration, but in no event, further back than a period of six (6) months.

2.3 Unit of Measurement. The unit of measurement for Wastewater delivered into the Forney Wastewater System pursuant to this Agreement shall be gallons, U.S. Standard Liquid Measure.

2.4 Curtailment of Service. The Parties agree that Forney may curtail Wastewater service in the event of a maintenance operation or emergency for a reasonable period necessary to complete such maintenance operations or repairs or respond to an emergency circumstance.

2.5 Mesquite Prevention of Infiltration and Inflow. Mesquite shall take actions as reasonably necessary or prudent to minimize excessive Inflow and Infiltration in the Mesquite Wastewater Collection System that is discharged into the Forney Wastewater System. Mesquite will adopt and enforce such ordinances as are reasonably necessary or prudent to minimize Inflow and Infiltration to the Mesquite Wastewater Collection System, and such ordinances shall be at least as stringent as, and not inconsistent with, Forney's ordinances and policies. Mesquite will prohibit the discharge of drainage water and stormwater run-off into the Mesquite Wastewater Collection System.

2.6 Liability of Mesquite. As between the Parties, liability for damages to third-party persons arising from the reception, transportation, delivery, treatment and disposal of all Wastewater will remain with Mesquite to the Point of Connection. Mesquite agrees that any sewer backups caused by force majeure, intrusion of roots into the Mesquite Wastewater Collection System, defects in construction of the Mesquite Wastewater Collection System or other circumstances that are not under the direct control of Forney do not arise out of the act or omission of Forney, and Forney shall have no liability in connection therewith. As between the Parties, liability for damages to third-party persons will pass to Forney at the Point of Connection to the Forney Wastewater System.

2.7 Liability of Forney. Subject to the foregoing, Forney will bear the responsibility as between the Parties for the proper reception, transportation, treatment, and disposal of such Wastewater received by it at the Point of Connection in accordance with the Agreement. However, the Parties agree that they will not construe this Agreement to cause Forney to have liability for

damages to the Forney Wastewater System, NTMWD's Regional Wastewater System, or to third-party persons arising from the delivery by Mesquite of any Wastewater that is prohibited under this Agreement. Additionally, pursuant to the Buffalo Creek Interceptor Contract, Forney's liability for damages arising from the reception and transportation of Wastewater pass to NTMWD once the Wastewater passes through NTMWD's meters.

2.8 Non-Waiver of Governmental Immunity. This Agreement shall not be construed as a waiver of any governmental immunity that Forney or Mesquite may enjoy with respect to any claims brought by third-party persons or entities.

ARTICLE III CHARGES, BILLING, AND PAYMENTS

3.1 Monthly Usage Rate and Charge.

(a) The Monthly Usage Rate is the rate per 1000 gallons of Wastewater as determined by the City Council of Forney. The Monthly Usage Rate shall be 1.25 times the bulk rate NTMWD charges Forney for wastewater services. The bulk rate NTMWD charges Forney shall be the sum of the NTMWD charges under the NTMWD Contracts, expressed as charges per 1000 gallons of Wastewater flow based on NTMWD's estimated flows for the budget year as set out in NTMWD's letter transmitting Annual Budget Charges. For example, for the 2023-2024 NTMWD budget year, the bulk rate NTMWD charges Forney is \$4.94 per 1000 gallons (\$2.85 per 1000 gallons under the Regional Wastewater Contract and \$2.09 per 1,000 gallons under the Buffalo Creek Interceptor Contract). The Monthly Usage Rate shall automatically adjust to reflect any change in the bulk rate NTMWD charges Forney.

(b) The Monthly Usage Charge shall be calculated by multiplying the then-current Monthly Usage Rate by the amount of Wastewater delivered to Forney at the Point of Connection, expressed in thousands of gallons.

3.2 Payments by Mesquite. Mesquite recognizes the statutory and contractual authority of Forney to fix and to revise (if and when necessary, in accordance with the provisions of this Agreement relating to fixing of charges) the charges for services to be rendered and made available to Mesquite hereunder so that the total amount to be paid by Mesquite shall at all times be not less than an amount sufficient to pay or provide for the payment of:

(a) the bulk rate charged by NTMWD for wastewater services provided to Forney; and

(b) all operation and maintenance expenses, including but not limited to wages and salaries, employee benefits, chemicals, the purchase and carrying of stores, materials and supplies, power and utilities, supervision, engineering and professional fees, testing, auditing, claims, insurance and all other items and expenses of a like or different nature reasonably required for the efficient maintenance and operation thereof and the performance of the provisions of this Agreement; repairs and replacements of damaged, worn-out or obsolete parts of the Forney Wastewater System; improvements, capital additions and betterments to keep the Forney Wastewater System in operation to render adequate service to Mesquite and to comply with the

requirements of, any rule or regulation or permit to discharge waste into the receiving state waters issued by any regulatory body having jurisdiction; and the administrative and general expense of Forney attributable to administration of the Forney Wastewater System.

3.3 Operating Expense. The Parties agree and Mesquite represents and covenants that all moneys required to be paid by Mesquite under this Agreement shall constitute an operating expense of the Mesquite Wastewater Collection System as authorized by the Constitution and laws of the State of Texas, including the Regional Waste Disposal Act, as amended (compiled as Chapter 30, Texas Water Code), and Article 1113, Vernon's Texas Civil Statutes, as amended.

3.4 Source of Payments. All payments required to be made by Mesquite to Forney under this Agreement shall be payable from the income of the Mesquite Wastewater Collection System. Forney shall never have the right to demand payment by Mesquite of any obligations assumed by or imposed upon it under or by virtue of this Agreement from any funds raised or to be raised by taxation, and Mesquite's obligations under this Agreement shall never be construed to be a debt of Mesquite of such kind as to require it under the Constitution and laws of the State of Texas to levy and collect a tax to discharge such obligation.

3.5 Covenant to Maintain Sufficient Income. Mesquite agrees to fix and maintain such rates and collect such charges for the facilities and services provided by the Mesquite Wastewater Collection System as will be adequate to permit Mesquite to make prompt payment of all expenses of operating and maintaining the Mesquite Wastewater Collection System, including payments under this Agreement and to make prompt payment of the interest on and principal of any bonds or other obligations of Mesquite payable, in whole or in part, from the revenues of the Mesquite Wastewater Collection System. Mesquite further agrees to comply with all of the provisions of the ordinances or indentures authorizing its bonds or other obligations which are payable, in whole or in part, from the revenues of the Mesquite Wastewater Collection System.

3.6 Billing.

(a) Forney will render bills to Mesquite at least once each month for the payments required by Section 3.2 of this Agreement. Such bills shall be due and payable at Forney's office indicated below by the 20th day after such bill is deposited into the United States mail, properly stamped, addressed and postmarked to Mesquite.

(b) For any payments made by Mesquite to Forney, Mesquite shall make all payments in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts and shall make payment to Forney at its office in the City of Forney, Texas, or at such other place as Forney may from time to time designate by sixty (60) days written notice.

3.7 Delinquency in Payment. All bills or payments to Forney become delinquent if not paid by such due date and a penalty of 5 percent shall be added to the total due. If any portion of the total due remains unpaid for 30 days from the due date, Forney shall give written notice that wastewater service will be terminated 30 days from the date of notice. If Mesquite has not paid

the amount due within that 530-day period, Forney may terminate service and Mesquite must pay all amounts due including wastewater charges, delinquency penalty, reconnection fees, and any reasonable attorney fees incurred by Forney. In addition to termination of service, Forney may pursue any and all available legal remedies which may be appropriate, including, but not limited to, the initiation of legal proceedings for the collection of any delinquent bill. All sums payable under this Agreement shall be paid without offset, counterclaim, abatement, suspension or diminution except as otherwise specifically agreed to. If Mesquite disputes the amount to be paid, it shall nevertheless promptly make payment as billed by Forney and if it is subsequently determined by an agreement or court decision that such disputed payment should have been less, Forney will then make proper adjustments so that Mesquite will receive its overpayments plus interest of 5 percent. For purposes of this section, funds shall be deemed received by Forney if a payment is received by Forney by 5:00 pm on the due date.

ARTICLE IV TERM AND REMEDIES

4.1 Term.

(a) This Agreement shall become effective upon approval by each of the respective governing bodies of Mesquite and Forney and upon the date of the last signatory to execute this Agreement and shall remain in effect from the Effective Date until 11:59 pm on September 30, 2054 (“Termination Date”).

(b) If Mesquite does not execute a development agreement with the Developer, Mesquite may terminate this Agreement with written notice.

(c) Mesquite may terminate this Agreement at any time with 1095 days written notice.

(d) Unless written notice to terminate this Agreement is provided by either Party to the other Party at least three (3) years before the Termination Date, this Agreement shall automatically renew for an additional ten (10) year period. Unless notice is provided as described in this subsection (c), this Agreement will automatically renew for perpetual successive renewal periods of ten (10) years.

4.2 Material Breach; Notice and Opportunity to Cure.

(a) In the event that one Party believes that another Party has materially breached one of the provisions of this Agreement, the non-defaulting Party will make written demand to cure and give the defaulting Party up to 30 days to cure such material breach or, if the curative action cannot reasonably be completed within 30 days, the defaulting Party will commence the curative action within 30 days and thereafter diligently pursue the curative action to completion. This period must pass before the non-defaulting Party may initiate any remedies available to the non-defaulting Party due to such breach.

(b) Any non-defaulting Party will mitigate direct or consequential damage arising from any breach or default to the extent reasonably possible under the circumstances.

(c) The Parties agree that they will negotiate in good faith to resolve any disputes and may engage in non-binding mediation, or other alternative dispute resolution methods as recommended by the laws of the State of Texas.

4.3 Equitable Relief. The Parties acknowledge that both Parties have limited in ability to terminate this Agreement in the event of the other Party's default, whether a monetary default or otherwise. In recognition of this, and that failure in the performance of the other Party's obligations could not be adequately compensated in money damages alone, the Parties agree that in the event of any default on the part of the other Party that the non-defaulting Party shall have available to it equitable remedies including, without limitation, the right to obtain a writ of mandamus or specific performance or an injunction against the defaulting Party requiring the defaulting Party to perform its duties and obligations under this Agreement.

4.4 Agreement's Remedies Not Exclusive. The provisions of this Agreement providing remedies in the event of a Party's breach are not intended to be exclusive remedies. The Parties retain, except to the extent released or waived by the express terms of this Agreement, all rights at law and in equity to enforce the terms of this Agreement in addition to, and cumulative to, remedies provided in this Agreement.

4.5 No Additional Waiver Implied. Failure to enforce or the waiver of any provision of this Agreement or any breach or nonperformance by either Party shall not be deemed a waiver by the other Party of the right in the future to demand strict compliance and performance of any provision of this Agreement. No officer or agent of either Party is authorized to waive or modify any provision of this Agreement. No modifications to or recession of this Agreement may be made except by a written document signed by all Parties' authorized representatives.

4.6 Actual Damages. No Party shall be liable or have any responsibility to the other for any indirect, special, consequential, punitive, delay-related or performance-related damages including, without limitation, lost earnings or profits. Such limitation on liability shall apply to any claim or action, whether it is based on whole or in part on agreement, negligence, strict liability, tort, statute or other theory of liability.

4.7 Rights After Termination. Except as specifically provided otherwise in this Agreement, all of the rights and obligations of the Parties under this Agreement shall terminate upon termination of this Agreement, except that such termination shall not affect any rights or liabilities accrued prior to such termination.

ARTICLE V OTHER PROVISIONS

5.1 Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes any prior understanding or oral or written agreements between the Parties respecting the subject matter of this Agreement. There have been and are no agreements,

covenants, representations, or warranties between the Parties other than those expressly stated herein or expressly provided for herein.

5.2 Force Majeure. If force majeure prevents either Party hereto from performing any of its obligations under this Agreement (except the unconditional obligation of Mesquite to make the payments required in this Agreement), in whole or in part, then the obligations of such Party, to the extent affected by such force majeure, shall be suspended during the continuance of any inability so caused, so long as such Party is exercising due diligence to resume performance at the earliest practicable time. As soon as reasonably possible after the occurrence of the force majeure relied upon, the Party whose contractual obligations are affected thereby shall give notice and full particulars of such force majeure to the other Party. The term “force majeure,” as used herein, shall include, without limitation of the generality thereof, acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, pandemics, landslides, lightning, earthquakes, 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 or inability on part of Mesquite to operate the Mesquite Wastewater Collection System hereunder, or of Forney to receive or treat waste, and any other incapacities of either Party, whether similar to those enumerated or otherwise, which are not within the control of the Party claiming such inability, and which such Party could not have avoided by the exercise of due diligence and care. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the Party having the difficulty and that the above requirement that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable to it in the judgment of the Party having the difficulty.

5.3 Addresses and Notice. Unless otherwise provided in this Agreement, 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 either Party to the other 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 in this Agreement, from and after the expiration of four (4) 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 Forney:

City of Forney, Texas
Attn: City Manager
P.O. Box 826
101 East Main Street

Forney, TX 75126
Phone: 972-564-7300

And

City of Forney, Texas
Attn: City Attorney
P.O. Box 826
101 East Main Street
Forney, TX 75216
Phone: 972-552-6580

If to Mesquite:

City of Mesquite
Attn: City Manager
1515 N. Galloway
Forney, TX 75149
Phone: 972-216-6293

And

City of Mesquite, Texas
Attn: City Attorney
1515 N. Galloway
Mesquite, TX 75149
Phone: 972-216-6272

The Parties 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 Party.

5.4 Modification. This Agreement shall be subject to change(s) or modification(s) only with the mutual consent of the governing bodies of each of the Parties hereto.

5.5 Assignability. This Agreement shall not be assignable by Forney without the prior written consent of Mesquite and shall not be assignable by Mesquite without prior written consent of Forney.

5.6 Parties in Interest. This Agreement shall be for the sole and exclusive benefit of Forney and Mesquite. Notwithstanding the foregoing, this Agreement does not create any third-party benefits to any person or entity other than the signatories hereto and their authorized successors in interest and is solely for the consideration herein expressed.

5.7 Captions. The captions appearing at the first of each numbered article and section in this Agreement are inserted and included solely for convenience and shall never be considered

or given any effect in construing this Agreement, or any provision hereof, or in connection with the duties, obligation, or liabilities of the respective Parties hereto or in ascertaining intent, if any question of intent should arise.

5.8 Severability. If any provision of this Agreement shall be held or deemed to be or shall, in fact, be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions, or in all jurisdictions because it conflicts with any provisions of any constitution, statute, administrative rule, regulation or finding, rule of public policy, or for any other reason, this Agreement shall remain in effect and be construed as if the invalid, inoperative, or unenforceable provision had never been in the Agreement, and such circumstances shall not have the effect of rendering the provision in question invalid, inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions of this Agreement invalid, inoperative or unenforceable to any extent whatever.

5.9 Necessary Documents and Actions. Each Party agrees to execute and deliver all such other and further instruments and undertake such actions as are or may become necessary or convenient to effectuate the purposes and intent of this Agreement.

5.10 Applicable Law and Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of Texas. The obligations contained within this Agreement are performable in Kaufman County, Texas. Any action in law or equity brought to enforce or interpret any provision of this Agreement shall be brought in a court of competent jurisdiction with venue in Kaufman County, Texas.

5.11 Negotiation by Counsel. The Parties acknowledge that each Party and its counsel have reviewed and revised this Agreement and agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

5.12 Due Authorization and Binding Obligation. This Agreement has been duly authorized, executed and delivered by all necessary action of the Parties. This Agreement, and the terms, covenants, and conditions herein contained, shall inure to the benefit of and be binding upon the heirs, personal representatives, successors, and assigns of each of the Parties hereto.

5.13 Counterparts and Electronic Transmissions. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original and all of which shall constitute the same instrument. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart. A telecopied, emailed, or electronically transmitted by facsimile of an executed counterpart of this Agreement shall be sufficient to evidence the binding agreement of each Party to the terms hereof. However, each Party agrees to promptly deliver to the other Party an original, duly executed counterpart of this Agreement.

5.14 Legal Construction. Whenever context is required, the singular will include the plural and the neuter will include the masculine or feminine gender, and vice versa.

5.15 Authority. This Agreement is made and entered into pursuant to the provisions of the Interlocal Cooperation Act, V.T.C.A. Government Code, Chapter 791; V.T.C.A. Local Government Code, Chapter 552; and other applicable law.

5.16 Business Days. In the event that any date or any period provided for in this Agreement shall end on a Saturday, Sunday or legal holiday, the applicable period shall be extended to the first business day following such Saturday, Sunday or legal holiday. As used herein, the term “legal holiday” means any state or federal holiday for which financial institutions or post offices are generally closed in the State of Texas.

5.17 Effective Date. The Effective Date of this Agreement is the date upon which this Agreement was executed by the last Party.

[Signature pages to follow]

CITY OF FORNEY

Charles Daniels, City Manager
City of Forney, Texas

Date _____

ATTEST:

Rosa Rios, City Secretary
City of Forney, Texas

APPROVED AS TO FORM:

Jon Thatcher, City Attorney

CITY OF MESQUITE

Cliff Keheley, City Manager
Mesquite, Texas

Date: _____

ATTEST:

Sonja Land, City Secretary
City of Mesquite, Texas

APPROVED AS TO FORM:

David L. Paschall, City Attorney

