

WATER DISCONNECTION AGREEMENT

THIS AGREEMENT is made and entered into by and between Talty Special Utility District (Talty SUD), a Texas Water Code Chapter 65 special utility district, and the City of Mesquite (City), a Texas home-rule municipality. Talty SUD and the City may be collectively referred to herein as the “Parties.”

RECITALS

WHEREAS, Talty SUD holds water Certificate of Convenience and Necessity (CCN) No. 10850 (Talty SUD Water CCN);

WHEREAS, Talty SUD’s CCN includes areas that are in the City’s corporate and extraterritorial limits;

WHEREAS, the City intends to provide retail sewer service, drainage utility services, and solid waste collection services to areas within its city limits and extraterritorial jurisdiction, including in areas within Talty SUD’s CCN;

WHEREAS, as is the practice with the City, the City intends to determine sewer service usage for purposes of billing its retail customers using the customer’s water usage during the month;

WHEREAS, Texas Water Code § 13.147 authorizes the Parties to execute an agreement that provides for the termination of water service for non-payment of sewer service; and

WHEREAS, Texas Water Code § 13.250 authorizes Talty SUD to disconnect water service for a customer’s the failure to pay the City charges for the City’s sewer service;

WHEREAS, by cooperating with each other regarding billings and disconnections, the Parties are able to ensure water and sewer services, drainage utility service, and solid waste collection services are provided in areas where both the City provides sewer, drainage utility, and solid waste collection services and Talty SUD provides water service, thereby ensuring the continued growth and economic development of the area;

WHEREAS, this Agreement will accomplish legitimate public purposes of the Parties and will permit the provision of water and sewer service in the Parties overlapping jurisdictions that will benefit the public health, safety and welfare of their respective present and future customers within each Parties’ jurisdictions; and

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained in this Agreement, including the recitals set forth above, and other good and valuable consideration, the receipt of which is hereby acknowledged, by their representatives affixing signatures below, Talty SUD and the City agree as follows:

AGREEMENT

ARTICLE 1 BILLING AND CUSTOMER INFORMATION

1.01 **New Sewer, Drainage Utility, and Solid Waste Collection Services Customers.**

A. By January 30th of each year, the City will provide Talty SUD with a list of addresses that can or do receive sewer service, drainage utility service, or solid waste collection services from the City (collectively “City Services”) that are located in Talty SUD’s water service area. For sewer service customers, the list will indicate if the sewer service connection is an active or inactive customer. By February 27th of each year, Talty SUD will provide to the City the list of active water service customers that are also the City’s sewer, drainage utility, or solid waste collection services customers (collectively, “City Customers”). The Parties agree to work together to ensure each Party’s list of shared customers is correct.

B. Within three (3) business days, the City agrees to notify Talty SUD in writing of any new City Customers that will be receiving water service from Talty SUD. The notification will include the customer’s name, and service and billing addresses.

C. If Talty SUD receives a request for water service at a location to which the City provides City Services, Talty SUD agrees to not connect the new customers to Talty SUD’s water system unless and until the customer presents Talty SUD with written proof that the customer has established City Services with the City. Talty SUD will notify the City in writing of any water service connections to customers which are receiving or going to receive City Services.

1.02 **Water Usage Data.** By the thirtieth (30th) day of each month, Talty SUD will submit to the City the list of Talty water service accounts that receive sewer service from the City and the amount of water used by each of those accounts during the previous month.

ARTICLE 2 DISCONNECTION OF WATER SERVICE

2.01 **Disconnection for Failure to Pay for Sewer Services.**

A. Talty SUD will disconnect water service to any City Customer for non-payment of the customer’s City Services bill and all associated fees and penalties.

B. The City shall provide Talty SUD with a copy of the written termination of service notification to the customer and the deadline by which the customer was required to make payment to the City in accordance with the City’s ordinances.

C. Talty SUD will disconnect water service to the delinquent customer by the close of business the next business day after receipt of the City’s notice during the business hours as determined by Talty SUD.

D. Talty SUD shall not provide water service to the disconnected customer until Talty SUD receives written notification from the City that the delinquent sewer bill, along with all associated fees and penalties have been paid to the City.

E. Talty SUD is not obligated to collect any delinquent bill on behalf of the City. If any City Customer attempts to pay a delinquent bill to Talty SUD, Talty SUD will direct the customer to the payment location provided to Talty SUD by the City.

F. Upon payment to the City of any delinquent bills and all associated fees and penalties, the City shall notify Talty SUD in writing and by email that Talty SUD may reconnect water service.

2.02 **Disconnections for Failure to Pay for Water Services.**

A. If Talty SUD disconnects water service for non-payment of the customer's water service bill (said customer also being a City Customer), Talty SUD will provide written notification to the City providing the City with the name of the customer whose service is terminated and the customer location.

B. The City will provide Talty SUD the disconnected customer's payment history and whether the customer is delinquent in paying the City's bill. If the customer is delinquent in paying the City's bill, Talty SUD shall not reconnect the customer to water service until Talty SUD receives written notification from the City that the delinquent bill, along with all associated fees and penalties have been paid to the City, as provided by Section 2.01.F.

**ARTICLE 3
COMPENSATION**

3.01 **Compensation for Services.**

A. As compensation for services performed by Talty SUD pursuant to Article 2 of this Agreement, the City shall pay Talty SUD a Service Trip Fee for each disconnection of service performed. The Service Trip Fee shall be equal to the City's the then-current Reconnect Service Fee, as adopted in the City's Comprehensive Fee Schedule Code of Ordinances, Appendix D, Comprehensive Fee Schedule, Article XV, Section 15-100. Within 10 days after the effective date of any changes to the City's Reconnect Service Fee, the City will notify Talty SUD in writing of the change.

B. The City shall remit the Service Trip Fees to Talty SUD by the thirtieth (30) day of the month after the City collects the fee from the customer.

3.02 **Delinquency of Payment.** All amounts due and owing to Talty SUD by the City shall be paid in accordance with Section 3.01.B., and if not paid when due, bear simple interest at the maximum post-judgment interest rate as set out in Section 304.002, Texas Finance Code, or any successor statute from the date when due until paid, provided that such rate shall never be

usurious or exceed the maximum rate as otherwise permitted by law. If the City at any time disputes the amount to be paid by it to Talty SUD, the City shall nevertheless make the disputed payment or payments within the payment period set forth herein, and notify Talty SUD of the disputed amount. After investigation, if it is subsequently determined by mutual agreement or court decision that the disputed amount paid by the City should have been less or more, Talty SUD shall promptly revise and reallocate the City's payments in a manner that the City or Talty SUD will recover the amount due. If any amount due and owing by the City is placed with an attorney for collection by Talty SUD and Talty SUD prevails, then the City shall pay to Talty SUD, in addition to all other payments provided for by this Agreement, including interest, Talty SUD's reasonable collection expenses, including court costs and attorney's fees. The City further agrees that Talty SUD may, at its option, terminate this Agreement, or it may discontinue disconnecting water service for failure to pay for the City's sewer service until all judgment amounts due and unpaid are paid in full with interest as therein specified. Notwithstanding anything in this Agreement to the contrary, the Parties agree that any default shall not result in termination of this Agreement until sixty (60) days after the date that the alleged defaulting Party receives written notice from the non-defaulting Party specifying the default and the requirements to cure the same.

ARTICLE 4 MISCELLANEOUS

4.01 Term and Termination.

A. This Agreement shall be effective upon execution by the parties and in force and effect until 11:59 p.m. Central time on December 31, 2040, unless terminated pursuant to subsection B of this Section or Section 3.02.

B. The City may terminate this Agreement by providing Talty SUD with thirty (30) days written notice of the City's intent to terminate the Agreement.

4.02 **Regulatory Requirements.** This Agreement is subject to all applicable federal, state, and local laws and any applicable ordinances, rules, orders, and regulations of any local, state, or federal governmental authority having jurisdiction. This Agreement is specifically subject to all applicable sections of the Texas Water Code and the rules of the Public Utility Commission of Texas, or any successor agency subject to Section 4.08 below regarding severability and provided that changes in the law shall not be applied retroactively to amend this Agreement unless retroactivity is required by law.

4.03 **Remedies.** It is not intended hereby to specify (and this Agreement shall not be considered as specifying) an exclusive remedy for any default by either Party, but all such other remedies existing at law or in equity shall be cumulative including, without limitation, specific performance may be availed of by either Party. The prevailing Party shall be entitled to any reasonable attorney's fees, court costs or other expenses incurred in bringing or defending any suit alleging such default or claim. Except as provided in this section and Section 3.02, no Party shall be in default under this Agreement until notice of the alleged failure of such Party to perform has been given (which notice shall set forth in reasonable detail the nature of the alleged failure) and until such Party has had a reasonable time to cure the alleged failure (such reasonable time

determined based on the nature of the alleged failure, but in no event less than 15 days after written notice of the alleged failure has been given). In addition, no Party shall be in default under this Agreement if within the applicable cure period the Party to whom notice was given begins performance and thereafter diligently and continuously pursues performance until the alleged failure has been cured within a reasonable period of time. Notwithstanding the foregoing, nothing herein prevents Talty SUD from recovering any amount due from the City for a delinquent payment under section 3.02 above as adjudged in a final judgment.

4.04 **Actual Damages**. If an event of default shall occur, then the aggrieved Parties shall be entitled to specific performance, and injunctive relief. No party shall be liable or have any responsibility to the other for any indirect, special, consequential, punitive or 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.

4.05 **Assignability**. Neither Party may assign its rights or obligations under this Agreement without first obtaining the written consent of the other Party, which consent shall not be unreasonably withheld or delayed.

4.06 **No Third Party Beneficiaries**. 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.

4.07 **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.

4.08 **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.

4.09 **Waiver and Amendment**. 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.

4.10 **Force Majeure.** If for any reason of force majeure, either Party is rendered unable, wholly or in part, to carry out its obligations under this Agreement, then that Party shall give notice of the reasons in writing to the other Party within a reasonable time after the occurrence of the force majeure event. The obligation of the Party giving the notice, so far as it is affected by the force majeure and provided the cause is not reasonably within its control, shall be suspended during the continuance of the inability then claimed, but for no longer period and to no greater extent than the force majeure causes such inability. The term “force majeure” as used in this Agreement shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemy, order or actions of any kind of government of the United States or the State of Texas, or any civil or military authority, insurrection, riots, epidemics, pandemics, landslides, lighting, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, explosions, breakage or accident to dams, machinery, pipelines, canals, or other structures, partial or entire failure of water supply including pollution (accidental or intentional), and any other cause not reasonably within the control of either Party.

4.11 **Captions.** The sections and captions contained herein are for convenience and reference only and are not intended to define, extend or limit any provision of this Agreement.

4.12 **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.

4.13 **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.

4.14 **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.

4.15 **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 or emailed electronically transmitted 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.

4.16 **Legal Construction.** Whenever context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa.

4.17 **Notices.** Any notice required or contemplated by this Agreement 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 Mesquite:

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

And

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

If to Talty SUD:

Talty SUD
Attn: General Manager

If by mail: PO Box 890
Forney, Texas 75126

If by hand delivery: 12475 Windy Lane
Forney, Texas 75126

Phone: 972-552-4422
FAX: 972-552-2338

The Parties hereto shall have the right from time to time to change their respective addresses, and each shall have the right to specify as its address any other address within the United States of America by at least five (5) days' written notice to the other party.

4.18 **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.

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

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CITY OF MESQUITE

Cliff Keheley, City Manager
City of Mesquite, Texas

Date

ATTEST:

Sonja Land, City Secretary
City of Mesquite, Texas

APPROVED AS TO FORM:

David L. Paschall, City Attorney

TALTY SPECIAL UTILITY DISTRICT

BY: _____

Scot Boisvert
President of Talty SUD

Date: _____

ATTEST:

Bill Hart
Board Secretary, Talty SUD