

STATE OF TEXAS §

COUNTY OF TARRANT §

WHEREAS, the AUTHORITY desires that CITY construct the AUTHORITY PROJECT at AUTHORITY'S expense; and

WHEREAS, the CITY has agreed to incorporate the AUTHORITY PROJECT into its final plans and specifications, and the bidding and award for construction for the CITY PROJECT; and

WHEREAS, the governing bodies of the AUTHORITY and CITY believe that this AGREEMENT is necessary for the benefit of the public, and that each party has the legal authority to provide governmental function as described in this AGREEMENT.

NOW THEREFORE, in consideration of the foregoing premises and the agreements and covenants contained herein, the AUTHORITY and CITY agree as follows:

Section 1. DEFINITION OF TERMS. Terms and expressions as used in this AGREEMENT, unless the context shows otherwise, shall have the following meanings:

- A. "CONSTRUCTION" means any one or more of the following:
 - (1) Material testing and related expenses; and
 - (2) Building, installing, and constructing;
- B. "AUTHORITY PROJECT" means the CONSTRUCTION required for or related to the improvements to the Mountain Creek Fish Creek Interceptor, Segment MC-3 that is located within the limits of the CITY PROJECT (see EXHIBIT A); and
- C. "PROJECT COSTS" mean all costs and expenses incurred by CITY in relation to the CONSTRUCTION of the AUTHORITY PROJECT.

Section 2. OBLIGATIONS OF THE AUTHORITY AND CITY

- A. The AUTHORITY is responsible for and will provide to the CITY the final design and technical specifications for the AUTHORITY PROJECT;
- B. The CITY will review and approve the general contractor(s) bidding on the PROJECT and the AUTHORITY will have the opportunity to review and approve the contractor(s)' qualifications;
- C. The CITY agrees that the AUTHORITY has the option of review, accept or reject the bids for the construction of the AUTHORITY PROJECT. If the AUTHORITY rejects the bids for the AUTHORITY PROJECT then this agreement will terminate;
- D. The AUTHORITY will fund the cost for the construction of the AUTHORITY PROJECT not to exceed \$275,000, to be paid upon receipt of an invoice from the CITY to be furnished prior to the advertisement of bids for the AUTHORITY PROJECT. If the bid price for the PROJECT exceeds \$275,000, the AUTHORITY shall approve before the CITY awards the PROJECT contract and authorizes construction of the PROJECT. In the event the AUTHORITY approves a bid price in excess of \$275,000, the CITY shall furnish an invoice for the additional cost to the AUTHORITY for payment;

- E. The CITY will manage and oversee the work of a general contractor to construct the AUTHORITY PROJECT improvements;
- F. The CITY shall require its contractor to furnish proof of insurance prior to construction of the PROJECT. CITY agrees to furnish or cause to be furnished a payment bond, performance bond, and a one-year maintenance bond covering the PROJECT, naming the AUTHORITY as an owner/obligee with regard to the AUTHORITY PROJECT on the bonds;
- G. The CITY shall require its contractor to furnish all construction submittals prior to construction of the AUTHORITY PROJECT. The AUTHORITY will have 48 hours to review and approve these submittals;
- H. The CITY shall invite the AUTHORITY to all pre-construction conferences and construction progress meetings to review construction progress and schedules of the AUTHORITY PROJECT;
- I. The CITY shall obtain the AUTHORITY'S written approval of any changes to the construction plans and specifications furnished by the AUTHORITY for the AUTHORITY PROJECT. The CITY shall also obtain written approval from the AUTHORITY of all addenda during the bidding phase of the AUTHORITY PROJECT;
- J. The CITY is required to obtain all material, labor and equipment necessary for the administration and construction of the AUTHORITY PROJECT. The AUTHORITY shall perform inspections during construction at the AUTHORITY'S sole expense and provide input to the CITY as necessary. Should AUTHORITY'S inspection reveal construction not in accordance with approved plans and specifications, addendums or change orders, the AUTHORITY will immediately notify the CITY in writing, and the CITY will take proper action to remedy the discrepancy. The CITY shall advise the AUTHORITY'S Construction Management Services and Wastewater Collection System staff at least 72 hours in advance of its intention to commence construction, and the AUTHORITY shall inform the CITY of the name of the individual responsible for inspection on behalf of the AUTHORITY;
- K. The CITY, the AUTHORITY and the AUTHORITY'S engineer will conduct a final review of the AUTHORITY PROJECT for conformance with the design of the AUTHORITY PROJECT and general compliance with the construction contract documents. The AUTHORITY'S engineer will prepare a list of deficiencies to be corrected before recommendation of final payment;
- L. The CITY shall provide the AUTHORITY one set of as-built drawings, half size (11- x 17-inch) drawings and electronic copy, within 30 days of completion of the AUTHORITY PROJECT;
- M. The CITY shall be responsible for the payment of the bid price for the AUTHORITY PROJECT and the cost of any change orders approved by the AUTHORITY;

- N. The AUTHORITY will reimburse all of the costs associated with constructing the PROJECT to the CITY. The costs include, but are not limited to, costs identified in the final bids and approved change orders not to exceed \$275,000; and
- O. Upon the completion of AUTHORITY PROJECT and acceptance of the improvements by the AUTHORITY, the AUTHORITY shall be responsible for maintenance and operation of the facilities constructed.

Section 3. FISCAL PROVISION. The AUTHORITY shall be responsible for the PROJECT COSTS made necessary as a result of the CONSTRUCTION of the AUTHORITY PROJECT, subject to the limitations set forth in Section 2. Within sixty days following completion of the AUTHORITY PROJECT and its acceptance by the AUTHORITY, the CITY will conduct a final cost accounting of the PROJECT COSTS to determine the AUTHORITY'S actual obligations. The CITY shall submit a statement for any amount due or render payment to the AUTHORITY within 90 days following completion of the AUTHORITY PROJECT and its acceptance by the AUTHORITY.

Section 4. TERM OF AGREEMENT, NOTICES.

- A. TERM OF AGREEMENT. This AGREEMENT shall be effective upon execution hereof and shall continue in force and effect until the completion of the obligations under Section 3;
- B. NOTICES. All notices or communications provided for herein shall be delivered to AUTHORITY and CITY or, if mailed, shall be sent to AUTHORITY and CITY at their respective addresses. For the purpose of notices, the addresses of the parties, until changed by written notice, shall be as follows:

AUTHORITY:

Trinity River Authority of Texas
5300 South Collins
P.O. Box 240
Arlington, Texas 76004-0240

Attention: Ms. Fiona M. Allen P.E.
Northern Region Manager

CITY:

City of Grand Prairie
317 College Street
P.O. Box 534045
Grand Prairie, Texas 75053-4045

Attention: Mr. Ron McCuller
Director of Public Works

Section 5. CAPTION. The captions to the various clauses of this AGREEMENT are for informational purposes only and in no way alter the substance of the terms and conditions of this AGREEMENT.

Section 6. IMMUNITY. It is expressly understood and agreed that, in the execution of this AGREEMENT, no party waives, nor shall be deemed hereby to waive, any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions.

Section 7. INDEMNIFICATION. To the extent allowed by law, CITY and AUTHORITY do hereby release, indemnify and hold each other and their respective officials, agents and employees, in both their public and private capacities, harmless from any and all liability, claims, costs, and expenses arising out of the performance of the AGREEMENT due to their own respective negligence or that of their officials, officers, or employees.

Section 8. SEVERABILITY. If any of the terms, sections, subsections, sentences, clauses, phrases, provisions, covenants or conditions of this AGREEMENT are for any reason held to be invalid, void or unenforceable, the remainder of the terms, sections, subsections, sentences, clauses, phrases, provisions, covenants, or conditions in this AGREEMENT shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

Section 9. GOVERNING LAW. The validity of the AGREEMENT and of any of its terms or provisions, as well as the rights and duties hereunder, shall be governed by the laws of the State of Texas.

Section 10. PLACE OF PERFORMANCE. All amounts due under this AGREEMENT, including damages for its breach, shall be paid in Tarrant County, Texas, said Tarrant County, Texas, being the place of performance as agreed to by the parties to this AGREEMENT. In the event that any legal proceeding is brought to enforce this AGREEMENT or any provision hereof, the same shall be brought in Tarrant County, Texas.

Section 11. ENTIRE AGREEMENT. This AGREEMENT contains all the terms, commitments and covenants of the parties pursuant to this AGREEMENT. Any verbal or written commitment not contained in this AGREEMENT or expressly referred to in this AGREEMENT and incorporated by reference shall have no force or effect.

Section 12. CURRENT REVENUES. The parties hereto shall make payments called for hereunder only from current revenues legally available to each party.

IN WITNESS WHEREOF, the parties acting under authority of their respective governing bodies have caused this AGREEMENT to be duly executed in several counterparts, each of which is deemed to be an original, as of the date first written above.

CITY OF GRAND PRAIRIE, TEXAS

By: _____
ANNA DOLL
Deputy City Manager

ATTEST:

By: _____
CATHY DIMAGGIO
City Secretary

(CITY'S SEAL)

TRINITY RIVER AUTHORITY OF TEXAS

By: _____
J. KEVIN WARD
General Manager

ATTEST:

By: _____
HOWARD S. SLOBODIN
Secretary, Board of Directors

(AUTHORITY'S SEAL)

APPROVED AS TO FORM

City Attorney