

FUNDING AGREEMENT FOR
OPERATION OF THE SULPHUR
RIVER BASIN AUTHORITY

THIS FUNDING AGREEMENT (the "**Agreement**"), is made and entered into this 1st day of September, 2019, (the "**Effective Date**"), by the SULPHUR RIVER BASIN AUTHORITY, a conservation and reclamation district created and operating pursuant to Article XVI, Sec. 59 of the Texas Constitution (the "**Authority**"), **with each of the following entities, individually:** CITY OF DALLAS, TEXAS ("**Dallas**"), a home rule city organized and operating pursuant to the Texas Constitution and laws of the state of Texas; CITY OF IRVING, TEXAS ("**Irving**"), a home rule city organized and operating pursuant to the Texas Constitution and laws of the state of Texas; NORTH TEXAS MUNICIPAL WATER DISTRICT ("**North Texas**"), a conservation and reclamation district created and operating pursuant to Article XVI, Sec. 59 of the Texas Constitution; TARRANT REGIONAL WATER DISTRICT ("**Tarrant**"), a conservation and reclamation district created and operating pursuant to Article XVI, Sec. 59 of the Texas Constitution; and UPPER TRINITY REGIONAL WATER DISTRICT ("**Upper Trinity**"), a conservation and reclamation district created and operating pursuant to Article XVI, Sec. 59 of the Texas Constitution. **Dallas, Irving, North Texas, Tarrant, and Upper Trinity** are collectively referred to in this **Agreement** as "**Funding Parties**." The **Authority, Dallas, Irving, North Texas, Tarrant, and Upper Trinity** are individually referred to in this **Agreement** as a "**Party**" and collectively referred to in this **Agreement** as "**Parties**."

WITNESSETH:

WHEREAS, the Authority is authorized to provide for the conservation and development of the State's natural resources within the Sulphur River Basin; and

WHEREAS, the Authority has no taxing authority and no other reliable source of funding for its operations, other than the authority to issue bonds, but presently has no near-term projects that are appropriate for a bond issuance; and

WHEREAS, the Authority, in cooperation with the Funding Parties, individually and collectively, has dedicated more than 20 years to the study and analysis of water development in the Sulphur River Basin to understand the current and future water supply resources of the Sulphur River Basin, as well as the current and future water supply demands, strategies, and needs of the citizens, businesses, and other stakeholders both inside and outside of the Sulphur River Basin as related to those water supply resources; and

WHEREAS, Dallas, Irving, North Texas, Tarrant, and Upper Trinity have contracted with the Authority in the past to support its efforts to work cooperatively with them on water planning and related projects ("**Water Resources Planning**"), and have previously contributed more than **\$7.9 million** to the Authority for Water Resources Planning; and

WHEREAS, each Funding Party desires to continue to provide financial support to the Authority in furtherance of the Authority's mission and operations; and

WHEREAS, the Authority has recently hired an Executive Director to perform

management and operational duties, including but not limited to: overseeing the Authority's budget; providing general administrative oversight; managing the Authority's contracts; fostering collaborative relationships with stakeholders both inside and outside of the Sulphur River Basin; engaging in long-term strategic planning; and identifying and addressing other issues facing the Sulphur River Basin that are within the scope of the Authority's mission and authority; and

WHEREAS, each Funding Party supports the efforts of the Authority to improve the quality of life for all within the Sulphur River Basin; and

WHEREAS, each Funding Party previously entered into that certain *Advanced Funding Agreement for Water Resources Planning in the Sulphur River Basin ("Former Advanced Funding Agreement")* between the Authority and the Funding Parties individually; and

WHEREAS, each Funding Party and the Authority recognize that the Former Advanced Funding Agreement has expired and as such the terms of this Agreement shall control and supersede the Former Advanced Funding Agreement except as otherwise provided herein; and

WHEREAS, the Authority, Dallas, Irving, North Texas, Tarrant and Upper Trinity are individually authorized to make and enter into this Funding Agreement under the District Acts, the Dallas City Charter, the Irving City Charter, the Texas Local Government Code, the Texas Interlocal Cooperation Act, Chapter 791, Texas Government Code, and other applicable laws.

NOW, THEREFORE, in consideration of the covenants, agreements and undertakings hereinafter set forth, each Funding Party, acting individually by and through its officers duly authorized in each respect by resolutions of its governing body, now agrees and binds itself to the Authority as follows:

ARTICLE I

DEFINITIONS

"*Agreement*" means this Funding Agreement, including exhibits and any written amendments thereto.

"*Authority*" or "*SRBA*" means the Sulphur River Basin Authority.

"*Boundaries of the Authority*" means the area defined in the Act of May, 29, 1985, 69th Leg., 1st C.S., ch 3, 1985 Tex. Gen. Laws 3798, as amended from time to time, composed of the territories within each county in Texas, other than Fannin County, that are located in whole or in part within the watershed of the Sulphur River and its tributaries upstream from the eastern boundary of Texas.

"*Contribution*" means the amount specified under Section 3.1 of this Agreement, payable from each Funding Party to the Authority on an annual basis for purposes of funding the ongoing operations of the Authority.

"Consulting Committee" means a committee that will consist of one representative of each Party that shall provide input, guidance and expertise regarding Water Resources Planning and the management, administration and operations of the Authority.

"Effective Date" means September 1, 2019, regardless of the particular date that each Party may execute this Agreement. For purposes of successive automatic one-year extensions of this Agreement as described under Section 5.1, the Effective Date means September 1 of each one-year extension.

"Former Advanced Funding Agreement" means that certain *Advanced Funding Agreement for Water Resources Planning in the Sulphur River Basin* between the Funding Parties individually and the Authority dated effective May 28, 2013, that was subsequently extended until August 31, 2019.

"Funding Party" means Dallas, Irving, North Texas, Tarrant, and Upper Trinity, collectively referred to as **"Funding Parties,"** and who have agreed to provide funding for operations, and potentially Water Resources Planning, of the Authority pursuant to the terms of this Agreement.

"Initial Term" means the first one-year period of this Agreement, commencing on the Effective Date and terminating on August 31, 2020.

"Party" means the Authority, Dallas, Irving, North Texas, Tarrant, and Upper Trinity, individually, and their successors and assigns, collectively referred to as **"Parties"** as signatories to this Agreement.

"Project" means one or more future Sulphur River Basin water supply projects identified by Water Resource Planning with yields that total individually or sequentially up to 727,500 acre-feet.

"Sulphur River Basin" means the watersheds of the Sulphur River and its tributaries within the Boundaries of the Authority.

"Term" means that one-year period from the expiration of the Initial Term of this Agreement to the end of the first successive one-year term, and the one-year period of each successive term thereafter.

"Termination Date" means the expiration date of the Initial Term of this Agreement as to all Parties, which shall be August 31, 2020. For purposes of successive automatic one-year extensions of this Agreement after the expiration of the Initial Term, the Termination Date means the expiration date of each successive one-year extension, which shall be August 31 of the then current term.

"Water Resources Planning" means all work necessary to support state and federal permitting, including but not limited to feasibility, geotechnical, environmental and archeological studies, hydrologic and hydraulic modeling, and preliminary design associated with the identification of future water supply resources to allow development of one or more water supply

projects within the Sulphur River Basin in a manner compatible with state and regional water supply planning.

"Withdrawing Party" means a Funding Party who withdraws from the Agreement prior to the Termination Date as provided for in Section 5.2.

"Withdrawal Notice" means the written notice of a Withdrawing Party's intent to withdraw from the Agreement provided by a Withdrawing Party to each Funding Party and the Authority.

ARTICLE II

TERMINATION OF FORMER FUNDING AGREEMENT

2.1 Termination

Prior to the Effective Date of this Agreement, the Former Advanced Funding Agreement expired pursuant to its terms. As provided in Section 5.01 of the Former Advanced Funding Agreement, the Parties agree that the rights of each Party to participate in any Project pursuant to Article VI of the Former Advanced Funding Agreement survived the expiration of the Former Advanced Funding Agreement and those provisions continue in full force and effect as well as any definitions in Article I of the agreement needed to give effect to the meaning of Article VI. Except for the survival of Article VI of the Former Advanced Funding Agreement as described herein, no other obligations or rights under the Former Advanced Funding Agreement survived its expiration.

ARTICLE III

FUNDING OF OPERATIONS OF THE AUTHORITY

3.1 Amount of Contribution

It is contemplated that the Funding Parties collectively shall make a contribution of \$200,000 to the Authority for the Initial Term of this Agreement and for each successive one-year extension of this Agreement, as such extensions are described under Section 5.1 of this Agreement. Each Funding Party to this Agreement shall make an equal annual Contribution to the Authority for the then current term of the Agreement in the amount of: \$200,000, divided by the number of Funding Parties that execute this agreement with the Authority.

By way of example, if all five (5) of the Funding Parties execute the Agreement, each Funding Party would pay to the Authority one-fifth ($1/5^{\text{th}}$) of the \$200,000 (or \$40,000) for the then current term. Similarly, if only four (4) of the Funding Parties execute the Agreement, each Funding Party would pay to the Authority one-fourth ($1/4^{\text{th}}$) of the \$200,000 (or \$50,000) for the then current term. So long as at least two (2) out of five (5) Funding Parties remain in the Agreement during any given term, the financial provisions of this Section 3.1 apply. However, notwithstanding anything in this Section 3.1 to the contrary, in no event shall a Funding Party be required to pay more than one-half of the \$200,000 (or \$100,000) per year for any term of the Agreement, even if it were the sole Funding Party to execute the agreement.

The annual amounts due under this Section 3.1 will initially be calculated based on the number of Funding Parties that have executed the agreement as of December 1, 2019, and such Contribution payments shall be due and paid to the Authority no later than December 31, 2019. If the execution by another Funding Party after December 1, 2019, causes the amount of the Contribution due by each Funding Party to be reduced under the terms of this Section 3.1, the Authority shall refund the overage paid to any Funding Party who is due such a refund promptly after the additional Contribution is received by the Authority from the late-executing Funding Party. A late-executing Funding Party's initial Contribution payment shall be due and paid to the Authority no later than 30 days after the late-executing Funding Party executes this Agreement. The Authority may send an invoice to a Funding Party that has executed this Agreement to submit payment of its Contribution under this section, which invoice shall be promptly paid.

The annual amounts due under this Section 3.1 for each successive one-year extension of this Agreement will be calculated based on the number of Funding Parties that are participating in the Agreement as of the Effective Date of each one-year extension. Such Contribution payments shall be due and paid to the Authority not later than November 1 of each successive one-year extension of this Agreement, subject to each respective Funding Party's annual appropriations process. If a Funding Party will not extend this Agreement for another one-year term, it shall timely notify the Authority and each other Funding Party as set forth under Section 5.1.

3.2 Budget and Funding from Others

The Authority shall prepare and adopt a budget each year, and shall forward a copy of the adopted budget to each Funding Party. It is the intent of the Authority to seek other sources of funding to help finance its operations and fund any shortfall in its budget that is not funded by the Contributions of the Funding Parties under Section 3.1. The Authority intends to approach local governmental entities in the Sulphur River Basin to seek those additional sources of funding. Nothing in this Agreement shall be construed to restrict or limit the ability of Authority to seek additional sources of funding from, negotiate with, accept grants from, take out loans or debt from, or contract with any local governmental entity, the Texas Water Development Board ("TWDB"), other state or federal agencies, or any other person or entity, for any purpose regarding any matter over which the Authority has jurisdiction or legal authority.

3.3 Purpose of Contributions

All funds provided by a Funding Party to the Authority shall be used by the Authority for the management, administration, operations, and other lawful functions of the Authority, including those related to the items set forth under the Authority's commitment under Article IV of this Agreement. Interest earned on contributions, and other funds paid to the Authority for operations, shall remain available for the management, administration, and operations of the Authority. The Parties agree, to the extent contributions are available, the Authority may use such contributions for Water Resources Planning. The Authority may propose additional expenses for Water Resources Planning not included in the funding amount described under Section 3.1. If one or more of the Funding Parties agree to fund the proposed expenses for Water Resources Planning, the Parties may enter into a separate agreement regarding such additional contributions and the terms and conditions for such additional funding. The Authority agrees that it shall not use any Contribution, or any interest earned thereon, to fund participation, either directly or indirectly, in any opposition to, protest of, or legal proceeding concerning, any existing

or future project or state or federal permitting effort pursued by a Funding Party during the Initial Term or any subsequent Term of this Agreement.

3.4 Consulting Committee

Each Party shall identify or otherwise designate, in writing, one (1) member, and one (1) alternate member, of its staff or governing body to serve on a consulting committee ("***Consulting Committee***") that will provide expertise, input, and guidance regarding Water Resources Planning and the Authority's management, administration, and operations, which is intended to be helpful to, but not binding on, the Authority. The designated alternate member shall act on behalf of, and in place of, its Party's designated member in that member's absence. The Consulting Committee will meet on an as-needed basis either at the call of the Authority or at the request of a Funding Party. To the extent a decision is required by the Consulting Committee, each committee member shall have one (1) vote on such decision. If a Party decides to change either its member or its alternate member, the Party shall provide written notice of such change to all Parties. If new Parties are added in the future, each new Party shall also be allowed to designate one (1) member, and one (1) alternate member, of its staff to serve on the Consulting Committee.

ARTICLE IV

AUTHORITY'S COMMITMENT

4.1 Improve the Authority's Operations and Further Its Mission

During the term of this Agreement, the Authority commits to pursue the following activities in good faith:

- (A) Proactively guide water planning, development, and conservation in the Sulphur River Basin in keeping with the Authority's mission; and
- (B) Engage in regional and state water planning with the Funding Parties and with local interests in the Sulphur River Basin, as well as other key partners and stakeholders, to facilitate the development of effective long-term strategic water plans and water supply strategies; and
- (C) Build and maintain positive relationships with key stakeholders in the Sulphur River Basin, including water users and suppliers, local public officials, water suppliers, the media, and citizens; and
- (D) Seek funding from local partners in the Sulphur River Basin to help meet the ongoing budgetary needs of the Authority; and
- (E) Seek potential financial investment opportunities for water development projects in the Sulphur River Basin from local water districts, cities, other local government entities, or other persons when engaging in water planning and the potential development of additional water supplies in the Sulphur River Basin; and
- (F) Evaluate and pursue other services that the Authority can provide in the Sulphur River Basin, including without limitation water quality initiatives, such as the Clean Rivers Program,

and implementation of the new flood planning enacted during the 86th Session of the Texas Legislature, including evaluating the impacts of such legislation on the Authority's operations and on water planning or policy in the Sulphur River Basin; and

(G) Develop the Authority into a leader for positive and proactive water planning and policy in the Sulphur River Basin.

4.2 Deliverables and Reports

(A) The Authority agrees to share all data, reports, models, permit applications, permits and any other information developed in association with Water Resources Planning with the Funding Parties for the independent use of each of the Funding Parties. Previously completed work related to Water Resources Planning is identified in Exhibit A.

(B) The Authority shall provide a progress report of its operations, administration and management, including a summary of expenditures, to the Funding Parties on March 1 and June 1 of the Initial Term, and on December 1, March 1, and June 1 of each successive Term. On August 31 of the Initial Term and each successive Term, the Authority shall provide the Funding Parties with an annual report summarizing its operations, administration and management for the year, including a summary of expenditures, any actions taken by the governing board of the Authority, and any Water Resources Planning undertaken by the Authority.

ARTICLE V

TERM OF AGREEMENT

5.1 Term of Agreement

The Initial Term of this Agreement shall be from the Effective Date through August 31, 2020 (the "Initial Term"). After the Initial Term, the term of this Agreement will automatically be extended for additional successive one-year periods unless any Funding Party provides written notice to the Authority and each other Funding Party of its intent not to so extend the term at least thirty (30) days before the expiration of the then current term or unless the Authority provides notice of termination under Section 5.2. Nothing herein prevents a Withdrawing Party or the Authority from withdrawing from the Agreement at any time during the Initial Term or any successive one-year term, provided a Withdrawing Party or the Authority complies with the requirements under Section 5.2.

5.2 Termination of Agreement as to Withdrawing Party

This Agreement shall terminate as to a Withdrawing Party ("*Withdrawing Party*") upon the expiration of thirty (30) days prior written notice ("*Withdrawal Notice*") of the Withdrawing Party's intent to withdraw, which shall be delivered to each Funding Party and the Authority. A Withdrawing Party agrees to make a good faith effort to notify the Authority and the other Funding Parties of its intent to withdraw from this Agreement prior to providing the Withdrawal Notice. Termination shall only be effective as to the Withdrawing Party, and shall not effect a termination of the Agreement as to the other Funding Parties. Notwithstanding the foregoing, (1) once a Funding Party has executed this Agreement, the Funding Party's duty to pay its full Contribution under Section 3.1 for the Initial Term and each successive one-year extension in

which the Funding Party participates shall become absolute regardless of whether the Funding Party later becomes a Withdrawing Party; (2) termination of the Agreement as to the Withdrawing Party shall not be effective until any such outstanding payments due from the Withdrawing Party for its then current year Contribution under this Agreement have been paid to and received by the Authority; and (3) the Withdrawing Party forfeits all of its Contributions to the Authority, which shall not be refunded by the Authority. The Authority may terminate the Agreement by providing written notice to each of the Funding Parties no later than 60 days prior to the expiration of the then-current term that it intends to terminate at the expiration of the then-current term.

ARTICLE VI

MISCELLANEOUS PROVISIONS

6.1 Waiver

Any waiver at any time by any Party of its rights with respect to default under this Agreement shall not be deemed a waiver of such rights with respect to any subsequent default or matter.

6.2 Remedies

Nothing in this Agreement shall be construed as, in any manner, to abridge, limit or deprive any Party hereunto of any means which it would otherwise have of enforcing any right or remedy either in law or in equity for breach of any of the provisions hereof.

6.3 Choice of Law

The Parties hereby agree and acknowledge that the place for performance by the Funding Parties and payment of funds hereunder is Bowie County, and venue for any suits arising from this Agreement shall be proper in Bowie County, Texas.

6.4 No Third Party Beneficiaries

The Parties are entering into this Agreement solely for the benefit of themselves and agree that nothing in this Agreement shall be construed to confer any right, privilege or benefit on any person or entity other than the Parties.

6.5 Applicable Laws and Regulations

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.

6.6 Cooperation

The Parties shall fully cooperate with and assist one another in obtaining all licenses, permits, authorizations, approvals, and consents required in or related to the performance of this Agreement.

6.7 Assignment

The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the respective successors, assigns, and legal representatives of each Party. **No Party may assign this Agreement or any of its rights, obligations, without the prior unanimous written consent of the other Parties, which consent of the other Parties will not be unreasonably withheld.**

6.8 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.

6.9 Severability

The provisions of this Agreement are severable and if, for any reason, any one or more of the provisions contained in the Agreement shall be held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement and this Agreement shall remain in effect and be construed as if the invalid, illegal, or unenforceable provision had never been contained in the Agreement.

6.10 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.

6.11 Good Faith Dealings

The Parties undertake to act in good faith in relation to the performance and implementation of this Agreement and to take such other reasonable measures as may be necessary for the realization of its purpose and objectives. Each Party agrees that it will not initiate a dispute against another Party unless the Party raising the dispute in good faith believes its position is legitimate. The Parties agree to attempt to resolve all disputes arising hereunder promptly, equitably, and in a good faith manner. The Parties further agree to provide each other with reasonable access, during normal business hours, to any and all non-privileged records, information, and data pertaining to any such dispute.

6.12 Relationship of the Parties

This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon any of the Parties. None of the Parties shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or

representative of, or to otherwise bind, any of the other Parties.

6.13 Remedies and Third-Party Claims

(A) Upon the violation or breach by any Party of any of the terms, provisions, covenants, representations, or warranties of this Agreement, the other Parties may pursue any available remedy, at law or in equity, including, but not limited to, specific performance.

(B) The pursuit by any Party of any remedy available under this Agreement shall not constitute an election or waiver of any other remedy available to that Party, at equity or in law, by reason of violation or breach of any of the terms, provisions, covenants, representations, or warranties of this Agreement. No waiver of any violation or breach shall be deemed or construed to constitute a waiver of any other violation or breach, and forbearance to enforce one or more of the remedies available for a violation or breach shall not be deemed to constitute a waiver of that or any other violation or breach.

6.14 Counterparts

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

ARTICLE VII

NOTICES

7.1 Notices

Notices required by the Agreement shall be in writing. The same shall be delivered by mailing certified mail, postage paid, return receipt requested, or its equivalent, to the respective Parties at the following addresses:

Authority: Executive Director
Sulphur River Basin Authority
911 North Bishop Street, Suite 104
Wake Village, TX 75501

Dallas: City Manager
Dallas City Hall
1500 Marilla Street
Room 4EN
Dallas, TX 75201

Irving: City Manager
Irving City Hall

825 West Irving Blvd.
Irving, TX 75060

North Texas: Executive Director
North Texas Municipal Water District
P.O. Box 2408
Wylie, Texas 75098

Tarrant: General Manager
Tarrant Regional Water District
800 East Northside Drive
Fort Worth, Texas 76102

Upper Trinity: Executive Director
Upper Trinity Regional Water District
900 N. Kealy Street
P.O. Drawer 305
Lewisville, Texas 75067

Any Party may change its address as shown above by written notice to the other Parties. Notices are effective upon receipt.

IN WITNESS WHEREOF, each Party hereto acting under the authority of its respective governing bodies has caused this Agreement to be duly executed in several counterparts, each of which shall constitute an original, all as of the Effective Date.

AUTHORITY:
SULPHUR RIVER BASIN AUTHORITY

By: Meg Shelton

Name: Meg Shelton

Title: Executive Director

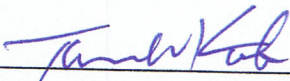
DALLAS:
CITY OF DALLAS, TEXAS

By: _____

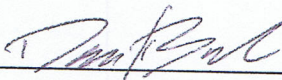
Name: _____

Title: _____

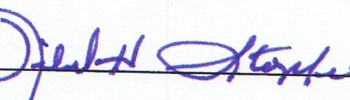
NORTH TEXAS:
NORTH TEXAS MUNICIPAL WATER DISTRICT

By: 
Name: Tom W. Kula
Title: Executive Director

TARRANT:
TARRANT REGIONAL WATER DISTRICT

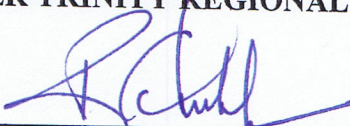
By: 
Name: Daniel T. Burman
Title: Assistant General Manager

IRVING:
CITY OF IRVING, TEXAS

By: 
Name: Richard H. Stepper
Title: Irving Mayor

Approved 12-12-19
Resolution # 2019-471

UPPER TRINITY:
UPPER TRINITY REGIONAL WATER DISTRICT

By: 
Name: Richard Lubke
Title: President

