

INTERLOCAL COOPERATION AGREEMENT
(TIF Financing of Trinity River Vision – Central City Project)
TRWD Funding of Franchise Utility Relocations

This **INTERLOCAL COOPERATION AGREEMENT** (“**Agreement**”) is entered into between the **CITY OF FORT WORTH** (“**City**”), a home rule municipal corporation organized under the laws of the State of Texas, and **TARRANT REGIONAL WATER DISTRICT** (“**TRWD**”), a water control and improvement district organized under the laws of the State of Texas. Each of the City and TRWD is sometimes hereinafter referred to as a “**Party**” or collectively as the “**Parties**.”

RECITALS

The Parties hereby agree that the following statements are true and correct and constitute the basis upon which the Parties have entered into this Agreement:

A. TRWD and certain other parties, including the City, Tarrant County, and the U.S. Army Corps of Engineers (“**USACE**”), are currently engaged in the planning and implementation of a flood control project covering certain lands in the City known as the “Trinity River Vision – Central City Project”, as amended and defined by the Final Supplement No. 1 to the Final Supplemental Environmental Impact Statement dated March 6, 2008, prepared by the Fort Worth District of USACE (the “**TRV Project**”).

B. On December 16, 2003, the City Council of the City (the “**City Council**”) adopted Ordinance No. 15797, establishing Tax Increment Reinvestment Zone Number Nine, City of Fort Worth, Texas, generally known as the “Trinity River Vision TIF” (the “**TIF District**”) and establishing the tax increment fund of the TIF District (the “**TIF Fund**”). Ordinance No. 15797 was subsequently amended twice, first by Ordinance No. 16005, which was adopted by the City Council on June 15, 2004 in order to increase the number of members on the Board of Directors of the TIF District (the “**TIF Board**”), and then by Ordinance No. 18975-120-2009, which was adopted by the City Council on December 15, 2009 in order to enlarge the boundaries and extend the term of the TIF District.

C. On September 15, 2005, the TIF Board adopted an initial project and financing plan for the TIF District, which was approved by the City Council on January 19, 2006 pursuant to Ordinance No 16768-01-2006. On December 8, 2009, the TIF Board adopted an amended and updated project and financing plan for the TIF District, which was approved by the City Council on December 15, 2009 pursuant to Ordinance No. 18975 (the “**TIF Project Plan**”). The TIF Project Plan comprises portions of the TRV Project, including some public improvements whose construction will be undertaken or overseen by the City. Included among the TIF Project Plan activities to be undertaken by the City is the relocation of certain franchise utilities.

D. It is recognized that there will not be sufficient revenues in the TIF Fund to implement the TIF Project Plan within the timeframe required by the TRV Project. In order for the TRV Project to progress within the required timeframe, TRWD and the TIF Board executed that certain Project Cost Funding Agreement dated on or about September 29, 2010 (the “**TIF Agreement**”), as authorized by the Board of Directors of TRWD pursuant to a Resolution adopted at a duly noticed public meeting on May 18, 2010 and by the TIF Board pursuant to Resolution No. 2009-03. The Agreement calls for TRWD to advance certain costs of improvements set forth in the TIF Project Plan, as determined and governed by TRWD’s Board of Directors, and for TRWD to be reimbursed from the TIF Fund for such costs.

E. The City wishes to undertake or contract for certain work comprising a portion of the TRV Project that is eligible for TIF funding pursuant to the TIF Project Plan, generally consisting of franchise utility relocations (the “**Project Work**”). TRWD is willing to provide the City with certain funding for the Project Work (the “**TRWD Funding**”), with the understanding that TRWD will be entitled to reimbursement of one hundred percent (100%) of the TRWD Funding from the TIF District pursuant to and in accordance with the TIF Agreement. Accordingly, the City and TRWD wish to enter into this Agreement to memorialize the process by which the Project Work will be undertaken and funded.

F. This Agreement is authorized by Sections 791.001 through 791.029 of the Texas Government Code. The performance of this Agreement by the Parties will be in the common interest of the Parties and will benefit the general public.

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. INCORPORATION OF RECITALS.

The Parties hereby find and agree that the recitals set forth above are true and correct and form the basis upon which the Parties have entered into this Agreement.

2. TERM.

This Agreement shall be effective on the date as of which the latter of the City and TRWD has executed this Agreement (the “**Effective Date**”) and, unless terminated earlier in accordance with this Agreement, shall expire on the date as of which the Parties have fulfilled their obligations hereunder.

3. **TRWD FUNDING OF PROJECT WORK.**

3.1. **Initial Plans and Specifications for the Project Work; Construction Contracts.**

Prior to any request by the City for the TRWD Funding and prior to the letting of any contract for construction of such Project Work, the City will submit all plans and specifications for the Project Work (the “**Initial Plans and Specifications**”) and copies of any requests for bids, other bid documents, and any proposed construction contracts related to the Project Work (collectively, “**Construction Documents**”) to TRWD for review and comment. The City agrees to identify any such Project Work as being subject to the terms of this Agreement. Unless TRWD has any questions or concerns regarding the eligibility of such proposed Project Work for payment hereunder, or with respect to matters disclosed in the Initial Plans and Specifications or Construction Documents, TRWD will approve the same in writing within twenty (20) days of receipt. If TRWD has any questions or concerns regarding the Initial Plans and Specifications or Construction Documents, TRWD will notify the City in writing within twenty (20) days of receipt. The City agrees to meet with TRWD as reasonably necessary in order to answer any questions and address any concerns of TRWD with respect to the Initial Plans and Specifications, Construction Documents, or related matters and to consider any reasonable revisions requested in writing by TRWD to the Initial Plans and Specifications or those provisions of the Construction Documents that directly relate to or may reasonably be expected to affect the amount of TRWD Funding required to complete the Project Work. It is understood and agreed that (i) the City shall be under no obligation to consent to such revisions and (ii) if the City does not consent to any such revisions, TRWD shall be under no obligation to provide the TRWD Funding to the City, in which case TRWD may terminate this Agreement by providing the City with at least thirty (30) calendar days’ advance written notice. If TRWD does not approve in writing the Initial Plans and Specifications or Construction Documents within twenty (20) days of receipt and fails to notify the City in writing of any concerns or questions regarding the Initial Plans and Specifications or Construction Documents within such time, such Initial Plans and Specifications and Construction Documents shall be deemed reviewed and approved by TRWD. It is expressly stipulated that actual or deemed approval by TRWD of Initial Plans and Specifications and Construction Documents shall in no way constitute any representation or warranty by TRWD as to the adequacy or sufficiency of any such Plans, Specifications, or Construction Documents, and shall merely constitute TRWD’s consent in its capacity as a lender. TRWD assumes and shall assume no duty whatsoever to any person with regard to the Initial Plans and Specifications or Construction Documents.

3.2. Documentation Provided by the City as Precondition to Funding.

Once the Initial Plans and Specifications and any Construction Documents have been approved or deemed reviewed and approved by TRWD in accordance with Section 3.1, the City will be entitled to receive the TRWD Funding in accordance with this Section 3.2 and, if applicable, Section 3.3. In order to receive a reimbursement or draw of any TRWD Funding, the City shall provide TRWD with a written request for funding and any other documentation reasonably requested by TRWD to verify the amount of TRWD Funding requested. TRWD will advance to or on behalf the City the amount of reimbursement of or draw request on the TRWD Funding within thirty (30) calendar days following provision of all of the documentation specified in the preceding sentence. TRWD may provide the TRWD Funding in the form of reimbursements or advancements to the City, or as direct payments to contractors or franchise utilities, as the City and TRWD may agree, with the understanding that the City will not directly be able to pay any invoice received for Project Work unless funds for such purpose have previously been appropriated by the City Council.

3.3. Change Orders.

TRWD acknowledges that changes to the Initial Plans and Specifications may become necessary or appropriate or that an increased overall cost to complete the Project Work may become apparent after a contract for construction of the Project Work has been let. In this event, the City will submit any contract revisions or change orders to TRWD for review and comment (“**Change Orders**”). The TRWD Funding shall not be used to fund any Change Orders unless reviewed and approved or deemed approved by TRWD in accordance with the same process, and subject to the same provisions, applicable to the Initial Plans and Specifications and Construction Documents, as outlined in Section 3.1. So long as the cumulative effect of any such change orders does not increase the cost of the Project Work by more than twenty-five (25) percent, TRWD agrees that it will not unreasonably withhold, condition, or delay any such approval. In the event of a dispute the City and TRWD agree to engage an independent engineering firm to determine the reasonableness and necessity of any such change(s), and the cost of such review shall be paid by TRWD as part of the Project Work. Once a Change Order has been approved in writing by TRWD or is deemed reviewed and approved by TRWD, this Agreement shall be deemed amended to reflect the additional scope of Project Work to be undertaken pursuant to such Change Order, and to reflect the increase to the TRWD Funding necessary for the City to complete the Project Work, as amended by such Change Order. Upon the request of either Party, this Agreement may be amended from time to time by attaching exhibits identifying the Project Work subject to the terms hereof.

3.4. Project Work Completion.

The Project Work will be considered complete once the City has accepted the Work, certified completion to TRWD, and authorized final payment (“**Project Work Completion**”). The City shall promptly notify TRWD in writing following Project Work Completion and, within ten (10) business days following such notice, will repay TRWD any TRWD Funding that was drawn by the City but not actually used for the Project Work.

3.5. Inspection of Project Work.

The City shall permit TRWD to inspect the Project Work at all reasonable times and at no cost to the City, with the understanding that the City will have the right to require TRWD to be escorted by City or City contractor personnel at all times during such inspection. It is expressly stipulated and agreed that TRWD shall have no duty or obligation to perform any inspections, and to the extent it undertakes to do so, TRWD shall be acting solely in its capacity as lender under the TIF Agreement for its own purposes and not for the benefit of any other person or Party.

3.6. Inspection of Books and Records.

The City, and, to the extent applicable, the TIF Board shall permit TRWD to examine and copy the books and records of the City and/or the TIF Board pertaining to the Project Work and the TRWD Funding provided hereunder at all reasonable times and at no cost to the City or the TIF Board (except as may otherwise be provided in the TIF Agreement).

3.7. Reimbursement of TRWD Funding Under TIF Agreement.

The Parties agree that provision of the TRWD Funding pursuant to this Agreement constitutes an “Advance” under the TIF Agreement and, accordingly, that TRWD will be entitled to reimbursement of one hundred percent (100%) of the TRWD Funding pursuant to and in accordance with the TIF Agreement. TRWD hereby waives any right it may have to seek reimbursement of any portion of the TRWD Funding from any City funds other than the TIF Fund, as provided in the TIF Agreement. On March 27, 2012, the TIF Board adopted Resolution No. 2012-01 acknowledging that any TRWD Funding provided pursuant to this Agreement constitutes an Advance under the TIF Agreement.

4. DEFAULT.

If any Party is in breach of any provision of this Agreement, the other party or Parties shall provide such Party with a written notice that specifies the nature of the breach. Such Party shall have thirty (30) calendar days following receipt of such written

notice to cure the breach (or, if such Party diligently attempts to cure the breach within thirty (30) calendar days, but reasonably requires additional time, then such additional time as may reasonably be required to cure). After such time, if the breach remains uncured, the breaching Party shall be in default hereunder, and the non-defaulting Party may, at its option, terminate this Agreement by providing written notice to the defaulting Party and pursue any and all other available remedies.

5. MUTUAL COOPERATION.

The Parties shall cooperate with one another in good faith and comply with all requests of the other party or Parties as reasonably necessary to achieve Project Work Completion in a timely fashion and full compliance with all other terms and conditions of this Agreement.

6. INDEPENDENT CONTRACTOR.

Nothing contained in this Agreement is intended by the Parties to create a partnership or joint venture between the Parties, and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint any Party as an agent of any other Party for any purpose whatsoever.

7. LIABILITY.

THE CITY HEREBY RELEASES TRWD AND HOLDS TRWD HARMLESS (AND TO THE EXTENT PERMITTED BY LAW, HEREBY AGREES TO INDEMNIFY TRWD) FROM AND AGAINST ANY AND ALL CLAIMS, LAWSUITS, ACTIONS, COSTS, AND EXPENSES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, THOSE FOR PROPERTY DAMAGE OR LOSS, THAT MAY RELATE TO, ARISE OUT OF OR BE OCCASIONED BY THE PROJECT WORK, EXCEPT TO THE EXTENT CAUSED BY THE GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF TRWD.

8. NOTICES.

All written notices called for or required by this Agreement shall be addressed to the following, or such other Party or address as such Party designates in writing, by certified mail, postage prepaid, or by hand delivery:

City:

Attn: Trinity River Vision Director
City Manager's Office
1000 Throckmorton
Fort Worth, TX 76102

with a copy to:

Attn: City Attorney
City Attorney's Office
1000 Throckmorton
Fort Worth, TX 76102

TRWD:

Attn: General Manager
Tarrant Regional Water District
800 E. Northside Dr.
Fort Worth, TX 76102

with a copy to:

Attn: Lee F. Christie
Pope, Hardwicke, Christie, Schell, Kelly
& Ray, L.L.P.
306 W. 7th Street
901 Fort Worth Club Building
Fort Worth, TX 76102

9. COMPLIANCE WITH LAWS, ORDINANCES, RULES AND REGULATIONS.

This Agreement will be subject to all applicable federal, state and local laws, ordinances, rules and regulations, and the City's Charter.

10. NO WAIVER.

The failure of either Party to insist upon the performance of any term or provision of this Agreement or to exercise any right granted hereunder shall not constitute a waiver of that Party's right to insist upon appropriate performance or to assert any such right on any future occasion.

11. VENUE AND JURISDICTION.

If any action, whether real or asserted, at law or in equity, arises on the basis of any provision of this Agreement, venue for such action shall lie in state courts located in Tarrant County, Texas. This Agreement shall be construed in accordance with the laws of the State of Texas.

12. NO THIRD PARTY RIGHTS.

The provisions and conditions of this Agreement are solely for the benefit of the Parties and are not intended to create any rights, contractual or otherwise, to any other person or entity.

13. FORCE MAJEURE.

It is expressly understood and agreed by the Parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, governmental restrictions, regulations, or interferences, or delays caused by unforeseen construction or site issues, fire or other casualty, court injunction, necessary condemnation proceedings, acts of the other Party, its affiliates/related entities and/or their contractors, or any actions or inactions of third parties or other circumstances which are reasonably beyond the control of the Party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated or not (“**Force Majeure**”), the Party so obligated or permitted shall be excused from doing or performing the same during such period of Force Majeure, so that the time period applicable to such performance shall be extended for a period of time equal to the period such party was delayed due to the event of Force Majeure.

14. INTERPRETATION.

In the event of any dispute over the meaning or application of any provision of this Agreement, this Agreement shall be interpreted fairly and reasonably, and neither more strongly for or against any party, regardless of the actual drafter of this Agreement.

15. CAPTIONS.

Captions and headings used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

16. ENTIRETY OF AGREEMENT.

This Agreement, including any exhibits attached hereto and any documents incorporated herein by reference, contains the entire understanding and agreement between the Parties as to the matters contained herein. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with any provision of this Agreement.

17. COUNTERPARTS.

This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

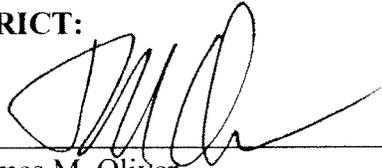
EXECUTED as of the last date indicated below:

CITY OF FORT WORTH:

By: _____
Fernando Costa
Assistant City Manager

Date: _____

TARRANT REGIONAL WATER DISTRICT:

By: _____

James M. Oliver
General Manager

Date: 6/1/2012

APPROVED AS TO FORM/LEGALITY:

By: _____
Peter Vaky
Deputy City Attorney