

STATE OF TEXAS                   §           INTER-LOCAL COOPERATION AGREEMENT FOR COST  
  §           ALLOCATION AND PAYMENT FOR THE REGIONAL WASTE  
COUNTY OF COLLIN           §           WATER LIFT STATION AND FORCE MAIN PROJECT

This Inter-Local Cooperation Agreement (“Agreement”) is by and between the City of Allen, Texas (“Allen”) and the Town of Fairview, Texas (“Fairview”) (collectively the “Parties” or singularly the “Party”), acting by and through their authorized officers.

**WITNESSETH:**

**WHEREAS**, the Parties intend or have entered into that certain Inter-Local Cooperation Agreement with North Texas Municipal Water District for the Regional Waste Water Lift Station and Force Main Project (the “Project Agreement”); and

**WHEREAS**, Allen and Fairview benefit from collaborating on the design, construction, and implementation of the Project (hereinafter defined) being ready for future development within the applicable basin; and.

**WHEREAS**, the Parties desire to cooperate in the design, construction, maintenance and operation of a new wastewater collection system comprised of a gravity pipeline that would extend from Allen into Fairview (the “Gravity Pipeline”) and discharge into a regional a new lift station facility to be owned by NTMWD, generally following Sloan Creek (the “Sloan Creek Lift Station”) that would collect gravity flow from Allen and Fairview and discharge through a regional force main (the “Sloan Creek Force Main”) to be owned and maintained by NTMWD, extending from the proposed Sloan Creek Lift Station to the existing Wilson Creek NTMWD Lift Station Facility, as generally depicted in **Exhibit “A”** (collectively the “Project”); and

**WHEREAS**, the Parties desire to enter into an Inter-Local Cooperation Agreement relating to the allocation and payment of costs for the design and construction of a portion of the Project; and

**WHEREAS**, the Inter-Local Cooperation Act, Texas Government Code, Chapter 791 authorizes any local governments to contract with one or more local governments to perform governmental functions and services under the terms of the Act;

**NOW THEREFORE**, in consideration of the foregoing and other consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**Article I**  
**Purpose**

The purpose of this Agreement is to set forth the obligations of the Parties regarding the allocation and payment of costs for the design and construction of a portion of the Project as set forth in the Project Agreement.

## **Article II Definitions**

“Allen” shall mean the City of Allen, Collin County, Texas.

“Effective Date” shall mean the last date of execution hereof.

“Fairview” shall mean the Town of Fairview, Collin County, Texas.

“Gravity Pipeline” shall mean a gravity pipeline that extends from Allen into Fairview and discharges into the Sloan Creek Lift Station that will serve as the point of entry for both Allen and Fairview into the NTMWD Upper East Fork Interceptor System (UEFIS), generally following Sloan Creek, as generally depicted in **Exhibit “A”**.

“Manholes” shall mean manholes with stub-outs to the North and the South to be constructed with adequate distance to the flow metering equipment for future connection by Fairview and Allen gravity sewer lines to the Sloan Creek Lift Station.

“NTMWD” shall mean the North Texas Municipal Water District.

“NTMWD Project” shall mean the Sloan Creek Force Main and the Sloan Creek Regional Lift Station (including all connection Manholes).

“Project” shall collectively mean the Sloan Creek Force Main, the Gravity Pipeline and the Sloan Creek Lift Station.

“Sloan Creek Force Main” shall mean a regional force main that would extend from the Sloan Creek Lift Station to the existing Wilson Creek NTMWD Lift Station to be owned, operated and maintained by NTMWD as **further described** in the Project Agreement.

“Sloan Creek Regional Lift Station” shall mean a new lift station facility to be owned and maintained by NTMWD, that would collect gravity flow from Allen and Fairview as **further described** in the Project Agreement.

## **Article III Term; Termination**

3.1 The term of this Agreement shall begin on the last date of execution of the Parties (the “Effective Date”) and shall continue until the Parties have fully satisfied their respective obligations herein, unless sooner terminated as provided herein.

3.2 Either Party may terminate this Agreement if the other Party breaches any of the terms or conditions of this Agreement and such breach is not cured within thirty (30) days after receipt of written notice thereof. This Agreement shall automatically terminate without further notice or action in the event the Project Agreement is not executed by the Parties and NTMWD or in the event the Project Agreement is terminated.

## **Article IV Project Payment**

4.1 Gravity Pipeline. Allen has agreed pursuant to the Project Agreement to contract with an engineer or firm for the design of the Gravity Pipeline and shall be responsible for all expenses associated with design of the Gravity Pipeline subject to Fairview reimbursement as provided herein.

4.2 NTMWD Project.

- (a) NTMWD has agreed pursuant to the Project Agreement to solicit proposals for the design of the NTMWD Project. Allen and Fairview have agreed to share the design costs associated with the Sloan Creek Lift Station in accordance with estimated contributing flows in the design report prepared by Birkhoff, Hendricks & Carter, I.L.P.H&C, dated April 25, 2018 with Fairview being responsible for twenty-five percent (25%) of such costs and Allen being responsible for seventy-five percent (75%) of such costs. Allen has agreed subject to reimbursement by Fairview provided herein to pay the Fairview share of the design costs of the Sloan Creek Lift Station to NTMWD pursuant to the Project Agreement within five (5) business days after the NTMWD award of such contract.
- (b) NTMWD has agreed pursuant to the Project Agreement to solicit bids, award one or more contracts, and manage the construction of the NTMWD Project. NTMWD shall bid the Sloan Creek Force Main with the Sloan Creek Lift Station in such a way that the Sloan Creek Force Main costs shall be identifiable apart from the Sloan Creek Lift Station. NTMWD, Allen and Fairview have agreed that with respect to the costs of construction of the Sloan Creek Lift Station that Allen shall be responsible for seventy-five percent (75%) of the costs of construction associated with Sloan Creek Lift Station and Fairview shall be responsible for twenty-five percent (25%) of the costs of construction associated with Sloan Creek Regional Lift Station. Allen has agreed subject to reimbursement by Fairview as provided herein to pay the Allen and Fairview share of the construction costs of the Sloan Creek Regional Lift Station to NTMWD within five (5) business days after the NTMWD award of such contract. Notwithstanding the foregoing or any other provision of this Agreement or the Project Agreement to the contrary, Fairview's obligation to reimburse Allen for Fairview's twenty-five percent (25%) share of the design and construction costs associated with the Sloan Creek Lift Station shall in no event exceed \$2,600,000.00. To the extent that the amount that represents twenty-five percent (25%) of said design and construction costs exceeds \$2,600,000, Fairview shall not be obligated to pay such excess amount; provided, however, that Allen may request that the Fairview Town Council consider agreeing to pay all or a portion off such excess amount.

#### 4.3 Project Cost Reimbursement.

- (a) Allen has agreed to advance funds on behalf of Fairview to pay to NTMWD the Fairview share of the costs to design and construct Sloan Creek Lift Station, which costs are anticipated to be paid in one or more installments to NTMWD, one payment for design, one payment for construction and a final reconciliation payment following completion of the Sloan Creek Lift Station. Fairview agrees to reimburse Allen such funds as set forth herein, and subject to the \$2,600,000 capped amount of Fairview's payment as described in Section 4.2(b), above.
- (b) With respect to the costs for the design of the Sloan Creek Lift Station Fairview shall reimburse Allen such costs the sooner of: (i) the date of Fairview connection and contribution of flows to the new Sloan Creek Lift Station; and (ii) the date which is five (5) years after the date of payment by Allen to NTMWD for the costs for the design of the Sloan Creek Lift Station.
- (c) With respect to the costs for the construction of the Sloan Creek Regional Lift Station Fairview shall reimburse Allen such costs the sooner of: (i) the date of Fairview connection and contribution of flows to the new Sloan Creek Regional Lift Station; and (ii) the date which is five (5) years after the date of payment by Allen to NTMWD for the costs for the construction of the Sloan Creek Regional Lift Station.
- (d) With respect to any final reconciliation payment for either or both the costs for the design and construction of the Sloan Creek Lift Station Fairview shall reimburse Allen such costs paid by Allen on behalf of Fairview to the NTMWD the sooner of: (i) the date of Fairview connection and contribution of flows to the new Sloan Creek Lift Station; and (ii) the date which is five (5) years after the date of payment by Allen to NTMWD for the costs for the construction of the Sloan Creek Lift Station. The amount of any such reconciliation payment shall be subject to and take into account the \$2,600,000.00 capped amount of Fairview's payment as described in Section 4.2(b), above.
- (e) It being the intention of the Parties that Fairview shall reimburse Allen all funds advanced by Allen on behalf of Fairview the sooner of: (i) the date of Fairview's connection and contribution of flows to the new Sloan Creek Lift Station; and (ii) within five years after the date each time Allen makes any payment to NTMWD on behalf of Fairview.

## **Article V Miscellaneous**

5.1 Assignment. This Agreement may not be assigned by any Party hereto without the prior written consent of all other Parties.

5.2 Notice. Except as may be provided otherwise herein, any notice, demand or request required or permitted to be delivered hereunder shall be deemed received when delivered in person or sent by United States Mail, postage prepaid, certified mail, or by hand-delivery or facsimile transmission addressed to the Party at the address set forth below:

If intended for Allen:

City of Allen  
Attn: Peter H. Vargas  
City Manager  
3<sup>rd</sup> Floor, Allen City Hall  
305 Century Parkway  
Allen, Texas 75013  
214.509.4100 – telephone  
214.509.4118 - facsimile

With a copy to:

Peter G. Smith  
Nichols, Jackson, Dillard, Hager &  
Smith, L.L.P.  
1800 Ross Tower  
500 N. Akard  
Dallas, Texas 75201  
214.965.9900 – telephone  
214.965.0010 – facsimile

If intended for Fairview:

Town of Fairview  
Attention: Julie Couch  
Town Manager  
372 Town Place  
Fairview, Texas 75069  
972.562.0522 – telephone  
972.886.4203 – facsimile

With a copy to:

Attn: Clark McCoy  
Town Attorney  
Wolfe Tidwell McCoy, LLP  
2591 Dallas Parkway, Suite 300  
Frisco, Texas 75034  
972.712.3530 – telephone  
972.712.3540 – facsimile

Any Party may, at any time, by written notice to the other Party, designate different or additional persons or different addresses for the getting of notices hereunder.

5.3 Amendment. This Agreement may be amended by the mutual written agreement of both Parties hereto.

5.4 Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

5.5 Governing Law. The validity of this Agreement and any of its terms and provisions as well as the rights and duties of the Parties, shall be governed by the laws of the

State of Texas; and venue for any action concerning this Agreement shall be in the State District Court of Collin County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

5.6 Entire Agreement. This Agreement represents the entire agreement among the Parties with respect to the subject matter covered by this Agreement. There is no other collateral, oral or written agreement between the Parties that in any manner relates to the subject matter of this Agreement.

5.7 Recitals. The recitals to this Agreement are incorporated herein.

5.8 Counterparts. This Agreement may be executed in any number of counterparts, each of whom shall be deemed an original and constitute one and the same instrument.

5.9 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

5.10 Conditions Precedent. This Agreement is expressly subject to, and the obligations of the Parties are expressly conditioned upon Allen and Fairview entering the Project Agreement.

5.11 Current Funds. Each Party paying for the performance of governmental functions or services under this Agreement shall make those payments from current revenues available to the paying Party.

*(Signature Page to Follow)*

**EXECUTED** this \_\_\_\_ day of \_\_\_\_\_, 2018.

**CITY OF ALLEN, TEXAS**

By: \_\_\_\_\_  
Peter H. Vargas, City Manager

**Attest:**

By: \_\_\_\_\_  
Shelley B. George, City Secretary

**Approved as to Form:**

By: \_\_\_\_\_  
Peter G. Smith, City Attorney

**EXECUTED** this \_\_\_\_ day of \_\_\_\_\_, 2018.

**TOWN OF FAIRVIEW, TEXAS**

By: \_\_\_\_\_  
Julie Couch, Town Manager

**Attest:**

By: \_\_\_\_\_  
Town Secretary

**Approved as to Form:**

By: \_\_\_\_\_  
Clark McCoy, Town Attorney

# EXHIBIT "A"

