

TRINITY RIVER AUTHORITY OF TEXAS  
FIRST AMENDMENT TO WASTEWATER TRANSPORTATION CONTRACT (WALKER-  
CALLOWAY SYSTEM)

THE STATE OF TEXAS  
TRINITY RIVER AUTHORITY OF TEXAS

This First Amendment to the Wastewater Transportation Contract for the Walker-Calloway System ("*First Amendment*") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2017, by and between the CITY OF NORTH RICHLAND HILLS, TEXAS ("*North Richland Hills*"), the CITY OF HURST, TEXAS ("*Hurst*"), each a municipal corporation acting under the laws of the State of Texas, and their Home Rule Charters, and the TRINITY RIVER AUTHORITY OF TEXAS ("*Authority*"), a conservation and reclamation district and political subdivision of the State of Texas created and functioning under Article 16, Section 59, of the Texas Constitution, pursuant to Chapter 518, Acts of the 54th Legislature of the State of Texas, Regular Session, 1955, as amended ("*Authority Act*"). Hurst and North Richland Hills are individually referred to herein as a "*City*" and collectively referred to herein as the "*Cities*."

The Cities and Authority acknowledge that this First Amendment is made and entered into subject to the terms, covenants and conditions of the Wholesale Wastewater Contract between the Authority, the Cities and the City of Fort Worth ("*Fort Worth*"), dated December 2, 1987 ("*Wholesale Wastewater Contract*"). The Wholesale Wastewater Contract is incorporated into this First Amendment by reference as if quoted herein and for all purposes and remains in full force and effect.

RECITALS

WHEREAS, the Cities previously entered into separate contracts with the Authority, both dated April 18, 1969 ("*Initial Contracts*"), for the Authority's issuance of revenue bonds and construction of the Walker-Calloway Branch Outfall Trunk Sewer System for the transportation, treatment and disposal of sanitary sewage, industrial waste and other wastes and treatment of Cities wastewater ("*System*");

WHEREAS, the wastewater treatment services are subject to the Wholesale Wastewater Contract;

WHEREAS, the Authority has constructed the necessary infrastructure for the System which connect into a wastewater pipeline owned by Fort Worth and all of the Authority's revenue bonds issued to construct the System have been paid in full and are no longer outstanding and the Initial Contracts expired according to its terms;

WHEREAS, on October 24, 2001, the Cities and the Authority entered into a contract ("*Contract*") whereby the Authority agreed to continue providing, and the Cities agreed to pay for transportation of Cities wastewater, and treatment of Cities wastewater by Fort Worth under terms of the Wholesale Wastewater Contract and to pay the Authority all operation and maintenance charges for the System;

WHEREAS, as the System has been constructed, improved and expanded to date, the Authority and the Cities anticipate further construction, improvement and expansion projects which will be financed through the issuance of the Bonds by the Authority (as hereinafter defined);

WHEREAS, pursuant to 8.01(e) of the Contract, the Cities and the Authority deem it necessary and desirable to enter into this First Amendment to the Contract to provide a means for the security and payment of Bonds to be issued in one or more series for improvements, enlargements, modifications and extensions to the System;

WHEREAS the System and the future improvements, enlargements, modifications and extensions of the System are described in an engineering report of RJN, Inc., entitled "The Walker-Calloway Branch Outfall Trunk Sewer System Preliminary Design Report – Final" , dated June 16, 2016 (the "RJN Engineering Report"); and

WHEREAS, the Cities and the Authority are authorized to make and enter into this First Amendment under the Authority Act and other applicable laws;

WHEREAS, this preamble is made a part of this First Amendment for all purposes;

WHEREAS, the Contract shall remain in full force and effect in accordance with its terms except as amended and supplemented by this First Amendment;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Authority agrees to issue Bonds from time to time for improvements, enlargements, modifications and extensions to the System under this First Amendment and the Contract, and the Cities agrees to make payments on the Bonds as provided herein and continue to make payments for Operation and Maintenance Expenses, as defined in the Contract, as provided therein.

### **Section 1. DEFINITIONS.**

(a) The Section of the Contract entitled "DEFINITION OF TERMS" is hereby amended to add the following defined terms:

(1) "Advisory Committee" means the committee created to consult with and advise the Authority with respect to the System as provided in Section XI of this Contract.

(2) "Bonds" or "Authority's Bonds" means any bonds issued by the Authority for improving, enlarging, modifying or extending the System, whether in one or more series or issues, or any bonds issued to refund same or to refund any refunding bonds.

(3) "Bond Resolution" means any resolution of the Board of Directors authorizing the issuance of Bonds and providing for their security and payment, as such resolution(s) may be amended from time to time as therein permitted.

(4) “Engineering Report” means the RJN Engineering Contract including all amendments and supplements thereto and as changed by change orders entered after acquisition and construction contracts for the System had been executed.

(5) “RJN Engineering Report” has the meaning assigned in the preamble to the Contract.

(b) The term “Annual Requirement” in the Contract is hereby deleted in its entirety and replaced with the following definition of “Annual Requirement”: “‘Annual Requirement’ means the total amount of money required for the Authority to pay all (1) Operation and Maintenance expenses of the System, (2) the principal of, redemption premium, if any, and interest on, Bonds, and the interest thereon, to improve, enlarge, modify and extend the System, as such principal, redemption premium, if any, and interest become due, less interest to be paid out of bond proceeds or from other sources if permitted by any resolution authorizing the issuance of such Bonds, and all amounts required to redeem any such Bonds prior to maturity when and as provided in any such resolution plus the fees, expenses, and charges of each paying agent/registrar for paying the principal of and interest on such Bonds and for authenticating, registering, and transferring such Bonds on the registration books, (3) to pay the proportionate amount of any special, contingency, or reserve funds required to be accumulated and maintained by the provisions of any such Bond Resolution and (4) to pay any amount in addition thereto sufficient to restore any deficiency in any of such funds required to be accumulated and maintained by the provisions of any such Bond Resolution, with respect to such Bonds or under this Contract and the First Amendment.”

(c) The term “Contract” in the Contract and this First Amendment means the Contract as amended and supplemented by this First Amendment.

**Section 2. PROJECT FUNDING.** I. CONDITIONS PRECEDENT of the Contract is hereby amended to add the following subsections:

“1.04. PROJECT FUNDING. (a) Subject to the terms and provisions of this Contract, the Authority will provide and pay for the cost of the improvements, enlargements, modifications and extensions of the System, by issuing its Bonds, in one or more series from time to time, in amounts which will be sufficient to accomplish such purposes. It is expressly understood and agreed, however, that any obligations on the part of the Authority to improve and extend the System when necessary or advisable and to provide additional services of the System to the Cities shall be conditioned (i) upon the Authority's ability to obtain all necessary permits, material, labor, and equipment, (ii) upon the ability of the Authority to finance the cost of the System through the actual sale of Bonds (or as otherwise provided to the Authority by the Cities), and (iii) subject to all present and future valid laws, orders, rules, and regulations of the United States of America, the State of Texas, and any regulatory body having jurisdiction.

(b) The Authority agrees to issue Bonds from time to time for improvements, enlargements, modifications and extensions to the System that are reasonable and necessary in accordance with the Engineering Report. The Authority shall present any proposed issuance of its Bonds for improvements, enlargements, modifications and extensions to the Advisory Committee. No issuance of the Authority's Bonds shall be conditioned upon or require approval of the governing bodies of either City.

1.05. CONSULTING ENGINEERS. The Authority and the Cities agree that the Authority will choose the consulting engineers for the System, provided that the consulting engineers may be changed at the option of the Authority. The Authority agrees to issue its Bonds, payable from and secured by Annual Payments made under this Contract, to improve, enlarge, modify and extend the System in accordance with this Contract, and the Authority agrees to issue its Bonds for such purposes when required. The proceeds from the sale and delivery of such Bonds also will be sufficient to fund to the extent deemed advisable by the Authority a debt service reserve fund, a contingency fund, and interest on the Bonds during construction; and such proceeds also will be used for the payment of the Authority's expenses and costs in connection with the System (including all engineering and design costs and expenses, and the cost of the land and interests therein related to the System) and the Bonds, including, without limitation, all financing, legal, printing, and other expenses and costs related to the issuance of such Bonds and the System. Each Bond Resolution of the Authority shall specify the maximum principal amount of the Bonds to be issued thereunder, which shall mature within the maximum period, and shall bear interest at not to exceed the maximum rates, then permitted by law, and each Bond Resolution shall create and provide for the maintenance of a revenue fund and an interest and sinking fund, and may provide for a debt service reserve fund, and any other funds deemed advisable, all in the manner and amounts as provided in such Bond Resolution. The Cities agrees that when any Bonds are actually issued and delivered to the purchaser thereof, the Bond Resolution authorizing the Bonds shall for all purposes be deemed to be in compliance with this Contract, and the Bonds issued thereunder will constitute Bonds as defined in the First Amendment for all purposes."

**Section 3. TERM.** "2.01. TERM" of the Contract is hereby amended in its entirety as follows:

"2.01 Term. This Contract shall continue in force and effect while any Bonds are outstanding. Notwithstanding Section 9.01, no modification of this Contract may be made while Bonds are outstanding unless the Contract, as proposed to be modified, makes provisions for the full and prompt repayment of all Bonds issued for the System."

**Section 4. ANNUAL REQUIREMENT.** "5.03. ANNUAL REQUIREMENT" of the Contract is hereby amended in its entirety as follows:

"5.03 ANNUAL REQUIREMENT. (a) Under this Contract, the Annual Requirement is the total amount of money required during each Authority Fiscal Year for the Authority to pay all Operation and Maintenance Expenses of the System and debt service on Bonds. This includes annual operation and maintenance expenses attributable to the System of an ordinary or recurring nature plus maintenance of an extraordinary nature.

(b) It is acknowledged and agreed that payments to be made under this Contract will be the only source available to the Authority to operate and maintain the System and pay debt service on Bonds, and in compliance with the Authority's duty to fix and from time to time revise the rates of compensation or charges for services of the System rendered and made available by the Authority,

the Annual Requirement will change from time to time, and that each such Annual Requirement shall be allocated among the Cities as hereinafter provided, and that the Annual Requirement for each Annual Payment Period shall be provided for in each Annual Budget and shall at all times be not less than an amount sufficient to pay or provide for the payment of:

(i) An "Operation and Maintenance Component" equal to the amount paid or payable for all Operation and Maintenance Expenses of the System for the Annual Payment Period as follows: the Operation and Maintenance Expenses shall be shared equally by the Cities, 50% to each City; provided however, the Cities shall share Extraordinary Maintenance or Repair Expenses based on design capacity, 20.6% to Hurst and 79.4% to North Richland Hills; and

(ii) A "Bond Service Component" equal to the sum of the amounts described below for the Annual Payment Period which shall be based on design capacity, 20.6% to Hurst and 79.4% to North Richland Hills.

- (A) the principal of, redemption premium, if any, and interest on, the Bonds, as such principal, redemption premium, if any, and interest become due, less interest to be paid out of Bond proceeds or from other sources if permitted by any Bond Resolution, and all amounts required to redeem any Bonds prior to maturity when and as provided in any Bond Resolution, plus the fees, expenses, and charges of each Paying Agent/Registrar for paying the principal of and interest on the Bonds, and for authenticating, registering, and transferring Bonds on the registration books; and
- (B) the proportionate amount of any special, contingency, or reserve funds required to be accumulated and maintained by the provisions of any Bond Resolution; and
- (C) any amount in addition thereto sufficient to restore any deficiency in any of such funds required to be accumulated and maintained by the provisions of any Bond Resolution.

**Section 5. PAYMENTS BY THE CITIES.** "5.05. PAYMENTS BY THE CITIES" of the Contract is hereby amended in its entirety as follows:

"5.05. PAYMENTS BY THE CITIES. (a) For the services to be provided to the Cities under this Contract, each of the Cities shall pay, at the time and in the manner hereinafter provided, its share of the Annual Requirement and shall constitute each City's Annual Payment. Each of the Cities shall pay its part of the Annual Requirement for each Annual Payment Period directly to the Authority, in monthly installments, on or before the 10th day of each month, in accordance with the schedule of payments furnished by the Authority.

(b) For each Annual Payment Period, each City shall pay its proportionate share of the Annual Requirement. It is further provided that the Authority may adjust its estimates of the Annual Requirement, during any period within the Annual Payment Period and such revised

estimates may be made on the basis of actual metered contributing flow, actual Operation and Maintenance Expenses, and actual billings for wastewater service from Fort Worth, including revised billings for B.O.D. and T.S.S. strength. The Cities will be furnished an Adjusted Annual Payment schedule to reflect any adjustments. At the close of each Annual Payment Period the Authority may redetermine the actual metered number of gallons of contributing flow and the actual B.O.D. and T.S.S strength discharged into the System by each City during said period. Each City's actual percentage of the total contributing flow may be redetermined by dividing such City's actual contributing metered flow by the total of both City's actual contributing metered flow. Each of the City's actual strength charges shall be determined by computing the amount of B.O.D. and T.S.S. strength charges by Fort Worth which are attributable to that City. The Operations and Maintenance Component of each City's Adjusted Annual Payment may be determined by multiplying such City's redetermined volume percentage times the actual volume charges by Fort Worth and adding each City's actual B.O.D. and T.S.S. strength charges.

(c) The actual Operation and Maintenance Expenses and any remaining Extraordinary Maintenance or Repair Expenses, as well as funds required to return the Operating Reserve Fund to the required level specified in 5.01, will also be charged to each City as previously defined in 5.03 of this Section.

(d) Notwithstanding the foregoing, the Annual Requirement, and each Cities share thereof, may be redetermined, after consultation with each of the Cities, at any time during any Annual Payment Period, to the extent deemed necessary or advisable by the Authority, if:

(i) Unusual, extraordinary, or unexpected expenditures for Operation and Maintenance Expenses are required which are not provided for in the Authority's Annual Budget for the System or in any Bond Resolution;

(ii) Operation and Maintenance Expenses are substantially less than estimated;

(iii) The Authority issues Bonds which require an increase in the Bond Service Component of the Annual Payment; or

(iv) The Authority receives either significantly more or significantly less revenues or other amounts than those anticipated.

(e) Each of the Cities shall make payments to the Authority required by this Section on or before the 10th day of each month of each Annual Payment Period. If either of the Cities at any time disputes the amount to be paid by it to the Authority, such complaining party shall nevertheless promptly make such payment or payments, but if it is subsequently determined by agreement or court decision that such disputed payments made by such complaining party should have been less, or more, the Authority shall promptly revise and reallocate the charges among the Cities in such manner that such complaining party will recover its overpayment or the Authority will recover the amount due it. All amounts due and owing to the Authority by each of the Cities or due and owing to any of the Cities by the Authority shall, if not paid when due, bear interest at the rate of ten (10) percent per annum from the date when due until paid. The Authority shall, unless specifically prohibited by law, discontinue the services of the System to any City which

remains delinquent in any payments due hereunder for a period of sixty days, and shall not resume such services while such City is so delinquent. It is further provided and agreed that if any City should remain delinquent in any payments due hereunder for a period of one hundred twenty days, and if such delinquency continues during any period thereafter, such City's Annual Requirement shall be deemed to have been zero during all periods of such delinquency, for the purpose of calculating and redetermining the percentage of each Annual Payment to be paid by the non-delinquent City, and the Authority shall redetermine such percentage on that basis in such event so that the non-delinquent City shall be required to pay all of the Annual Requirement. However, the Authority shall pursue all legal remedies against any such delinquent City to enforce and protect the rights of the Authority, the other City, and the holders of the Bonds, and such delinquent City shall not be relieved of the liability to the Authority for the payment of all amounts which would have been due hereunder, in the absence of the next preceding sentence. It is understood that the foregoing provisions are for the benefit of the holders of the Bonds so as to insure that all of the Annual Requirement will be paid by the non-delinquent City during each Annual Payment Period regardless of the delinquency of a City. If any amount due and owing by any of the Cities to the Authority is placed with an attorney for collection, such City shall pay to the Authority all attorney's fees, in addition to all other payments provided for herein, including interest.

(f) If, during any Annual Payment Period, any City's Annual Payment is redetermined in any manner as provided or required in this Section, the Authority will promptly furnish such City with an updated schedule of monthly payments reflecting such redetermination.

**Section 6. SPECIAL PROVISIONS.** Subsection (d) of "8.01. SPECIAL PROVISIONS" of the Contract is hereby amended in its entirety amended as follows:

"(d) Each City represents and covenants that all payments to be made by it under this Contract shall constitute reasonable and necessary "operating expenses" of its combined waterworks and sewer system, and that such payments will be made from revenues of its combined waterworks and sewer system. Each City represents and has determined that the services to be provided by the System are necessary and essential to the operation of its aforesaid system, and that the System constitutes the best available and adequate method for discharging, receiving, treating, and disposing of its wastewater, and, accordingly, all payments required by this Contract to be made by such City shall constitute reasonable and necessary operating expenses of its system, as described above, with the effect that the obligation to make such payments from revenues of such system shall have priority over any obligation to make any payments from such revenues of principal, interest, or otherwise, with respect to all bonds or other obligations heretofore or hereafter issued by such City. Each City agrees to continuously operate and maintain its respective combined waterworks and sewer system, and to fix and collect such rates and charges for water services and/or sewer services to be supplied by its system as aforesaid as will produce revenues in an amount equal to at least (i) all of the expenses of operation and maintenance expenses of such system, including specifically its payments under this Contract, (ii) its payments from such revenues required under any other contracts, and (iii) all other amounts as required by law and the provisions of the ordinances or resolutions authorizing its revenue bonds or other obligations now or hereafter outstanding, including the amounts required to pay all principal of and interest on such bonds and other obligations."

**Section 7. MODIFICATION.** “9.01. MODIFICATION” of the Contract is hereby amended in its entirety as follows:

“9.01 MODIFICATION. This Contract may be changed or modified only with the consent of the governing bodies of the Authority and the Cities. No such change or modification may be made which will affect adversely the prompt payment when due of all monies required to be paid by the Cities under the terms of this Contract or which may adversely affect the prompt payment of debt service on Bonds issued by the Authority.”

**Section 8. DISPUTES.** “Section XI. DISPUTES” of the Contract is hereby deleted in its entirety and amended and replaced with the following:

#### SECTION XI. ADVISORY COMMITTEE

11.01. ADVISORY COMMITTEE. (a) The Authority shall create an advisory committee (“*Advisory Committee*”) to consult with and advise the Authority and the Cities with respect to the System. The governing body of each the Authority and the Cities annually shall appoint one of the members of its governing body or one of its employees as a voting member of the Advisory Committee for the System; provided, however, that a City shall not appoint its member of the Advisory Committee until the effective date of such City's contract. The Advisory Committee shall elect appropriate officers which may include a Chairman, a Vice Chairman, and a Secretary. The Advisory Committee may establish bylaws governing the election of officers, meeting dates, and other matters pertinent to the functioning of the Advisory Committee. The Advisory Committee shall have access to and may inspect at any reasonable times all physical elements of the System and all records and accounts of the Authority pertaining to the System. A copy of the minutes of the meetings of the Advisory Committee and all other pertinent data, shall be provided to the members of the Advisory Committee.

The Advisory Committee shall consult with and advise the Authority, through its General Manager or his designated representative, with regard to the following matters pertaining to the System:

- (i) The issuance of Bonds;
- (ii) The operation and maintenance of the System;
- (iii) The terms and conditions of the contracts with the Cities, consistent with the provisions of this Contract;
- (iv) Contracts for services to entities which are not a party to this Contract, and the prices, terms, and conditions of such contracts consistent with the provisions of this Contract;
- (v) The Authority's Annual Budget, prior to its submission by the Authority's General Manager to the Authority's Board;
- (vi) Review of the Authority's Annual Audit;
- (vii) All other pertinent matters relating to the management of the System; and
- (viii) Improvements and extensions of the System.

(b) The term of membership on the Advisory Committee shall be at the pleasure of each governing body represented, respectively, and each member shall serve until replaced by



such governing body. All expenses of the Advisory Committee in discharging its duties under this Section shall be considered as an Operation and Maintenance Expense of the System.

**Section 9. TERM.** The effective date of this First Amendment shall be \_\_\_\_\_, 2017. Following its effective date, the Contract, as amended, shall continue in full force and effect while any Bonds are outstanding. It is understood by the Authority and the Cities that this First Amendment is being entered into to allow for the issuance of Bonds for improvements, enlargements, extensions and modifications to the System and with the knowledge and belief that the Wholesale Wastewater Contract and the Contract, as amended, will be amended, modified or supplemented. Notwithstanding Section 9.01 of the Contract, no modification of the Contract, as amended, may be made while Bonds are outstanding unless the Contract, as amended, as proposed to be modified, makes provisions to allow for the Authority's full and prompt repayment of all Bonds.

**Section 10. SEVERABILITY.** If any provision of the Contract or First Amendment 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, rule of public policy, or any other reason, 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 the Contract or this First Amendment invalid, inoperative or unenforceable to any extent whatever.

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IN WITNESS WHEREOF, the Authority and the Cities, acting under authority of their respective governing bodies, have caused this First Amendment to be duly executed in several counterparts, each of which shall constitute an original.

TRINITY RIVER AUTHORITY OF TEXAS

By \_\_\_\_\_  
J. Kevin Ward; General Manager

ATTEST:

\_\_\_\_\_  
Howard Slobodin; Secretary

CITY OF HURST, TEXAS

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Secretary

CITY OF NORTH RICHLAND HILLS, TEXAS

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Secretary