

**GRAND PRAIRIE – MANSFIELD
INTERLOCAL COOPERATIVE WASTEWATER TRANSPORTATION
AGREEMENT**

**THE STATE OF TEXAS §
 §
COUNTY OF ELLIS §**

THIS INTERLOCAL COOPERATIVE WASTEWATER TRANSPORTATION AGREEMENT (the “*Agreement*”) is entered into this ____ day of _____, 2015 (the “*Effective Date*”) by and between the cities of Grand Prairie and Mansfield (hereinafter referred to as “*Grand Prairie*” and “*Mansfield*” respectively), both of which are Texas municipal corporations and each acting herein through their duly authorized officials.

WITNESSETH:

WHEREAS, Grand Prairie and Mansfield have existing interlocal cooperative agreements dated January, 2, 2004; January 25, 2010; and February 27, 2012, relating to the conveyance of treated water through the City of Mansfield; the placement of a water distribution line within the Mansfield right-of-way on Day Miar Road and an agreement for the purchase of treated water and shared cost of a water transmission line.

WHEREAS, Grand Prairie is the owner of certain wastewater facilities in the southern sector of its wastewater system (“*GP SSWWS*”) capable of transporting raw wastewater collected by Grand Prairie to the Trinity River Authority (“*TRA*”) Mountain Creek Regional Wastewater Treatment Plant (“*Mountain Creek WWTP*”); a map of the GP SSWWS is attached hereto as **Attachment A**, and is incorporated herein for all purposes;

WHEREAS, Mansfield collects raw wastewater through its wastewater collection system, and it desires to transport such wastewater to the TRA Mountain Creek WWTP.

WHEREAS, Mansfield desires, and Grand Prairie agrees to allow, the introduction of raw wastewater (“*Wastewater*”) into the Grand Prairie Wastewater System for subsequent transport to the TRA Mountain Creek WWTP, under the terms of this Agreement.

WHEREAS, TRA desires to receive Wastewater at the TRA Mountain Creek WWTP from Mansfield, under the terms of this Agreement.

WHEREAS, Grand Prairie, Mansfield are authorized under Chapter 791 of the Texas Government Code, the Interlocal Cooperation Act, to contract with one another for the provision of wastewater transportation service.

NOW, THEREFORE, this Agreement is made and entered into by and between Grand Prairie and Mansfield for good and valuable consideration, and said Parties acting herein by and through their authorized representatives:

I. PURPOSE

The purpose of this Agreement is to provide for the terms and conditions whereby Mansfield may deliver up to 3.0 million gallons per day (“**MGD**”) of Wastewater (“**WW Flow**”) into the GP SSWWS at the Point of Entry, more specifically shown on **Exhibit A**, attached hereto and incorporated herein for all purposes, and Grand Prairie will transport and deliver such Wastewater to the TRA Mountain Creek WWTP at the Point of Exit, more specifically shown on **Exhibit A**, for treatment and disposal by TRA. Accordingly, Grand Prairie agrees to lease to Mansfield capacity in the GP SSWWS, as expanded under Section III of this Agreement, to transport the WW Flow from the Point of Entry to the Point of Exit.

II. TERM

This Agreement shall be effective for twenty (20) years (the “**Term**”) from the Effective Date or until such time as ownership of the GP SSWWS is transferred to another entity. At the end of the Term, if Grand Prairie still owns the GP SSWWS, then this Agreement may be renewed upon the agreement of both Parties.

III. PAYMENT WASTEWATER TRANSPORT SYSTEM INFRASTRUCTURE

In consideration for the expenses incurred by Grand Prairie to design, construct, and install the GP SSWWS and to design, construct, and install an expansion of capacity of such system as a result of Mansfield’s proposed usage under this Agreement (the “**Project**”), Mansfield agrees to pay Grand Prairie a total of \$1,684,988 (the “**Payment**”). The Payment amount is the estimated cost, based on Mansfield’s proportional usage of the GP SSWWS, as expanded, including upsizing, to accommodate Mansfield’s WW Flow under this Agreement as detailed in Exhibit B. After final acceptance of the Project by Grand Prairie, the Parties agree to have a final “settle-up” of Project costs, based upon actual costs incurred by Grand Prairie for the Project. All costs incurred by Grand Prairie to transport Mansfield’s Wastewater Flows from the Point of Entry to the Point of Exit at Mountain Creek WWTP shall be solely borne by Mansfield, as more specifically described in Section VI, herein. Mansfield shall also be solely responsible for any and all costs to design, construct, and install wastewater infrastructure to deliver Wastewater to the Point of Entry and to tie into the GP SSWWS. Such facilities shall include, but are not limited to, a wastewater line to tie-in to Line A (**Exhibit A**), metering facilities and any and all appurtenances related to transport and measuring of wastewater prior to entry to the Point of Entry. Mansfield shall provide Grand Prairie with proposed plans and specifications for tying into the GP SSWWS for approval prior to physically connecting to the GP SSWWS; and such approval shall not be unreasonably withheld or delayed. Grand Prairie is not required to accept wastewater from Mansfield at the Point of Entry prior to Mansfield delivering the Payment to Grand Prairie. Mansfield shall make the Payment from current revenues available to Mansfield.

IV. DELIVERY OF WASTEWATER TO TRA MOUNTAIN CREEK WWTP FOR TREATMENT

The Parties to this Agreement understand that Grand Prairie and Mansfield will be solely responsible for paying TRA for the costs to treat that Party's respective portion of the wastewater delivered to TRA at the Mountain Creek WWTP from the GP SSWWS, separate and apart from this Agreement. Mansfield, at its sole cost, will provide and install wastewater metering facilities for billing purposes per TRA's specifications at the Point of Entry of the GP SSWWS. Mansfield will calibrate such wastewater meter in accordance with TRA's schedule; but if there is no schedule, then Mansfield will calibrate the wastewater meter once per calendar year, at its sole cost. Grand Prairie shall be notified at least one week prior to such calibration and may opt to have a representative present. Mansfield will transfer ownership of such metering facilities to TRA, when requested by TRA. Additionally, Mansfield will deliver its "buy-in" payment to TRA for capacity in the TRA Mountain Creek WWTP, per terms required by TRA. Grand Prairie is not required to accept wastewater from Mansfield at the Point of Entry prior to Mansfield providing Grand Prairie with proof of such payment to TRA. In the event that TRA does not accept the meter, and/or does not agree to bill Mansfield separately, then Grand Prairie shall bill and Mansfield shall promptly pay additional charges billed to Grand Prairie by TRA, based on the meter readings at the Mansfield point of entry to the Grand Prairie System.

V. EXISTING AGREEMENTS

Nothing herein shall change, modify or nullify any existing interlocal agreement or contract between the two cities, unless specifically detailed herein.

VI. MAINTENANCE OF THE GP SSWWS/ PAYMENT OF COSTS

a. Grand Prairie shall own, operate, maintain, and control the GP SSWWS, as expanded by the Project. Subject to the terms and provisions of this Agreement, Mansfield shall pay Grand Prairie, on a monthly basis, an initial rate of \$_.10 per 1000 gallons to transport Wastewater from the Point of Entry to the Point of Exit (the "Transportation Rate"). Grand Prairie may adjust the Transportation Rate from time to time, but no more often than one time per calendar year, to reflect its change in costs to operate and maintain the GP SSWWS, which shall be based on the annual percentage of total flow attributed to Mansfield multiplied by Grand Prairie's actual operating costs.

b. Grand Prairie and Mansfield acknowledge and agree, as between these two Parties, that the strength of the WW Flows delivered to TRA at the Point of Exit is regulated by TRA. WW Flows delivered by Mansfield to the Point of Entry for transportation shall consist only of Wastewater which is amenable to biological treatment and conforms to TRA's wastewater quality standards at the TRA Mountain Creek WWTP. Grand Prairie, in accordance with Section VI.c., below, may require Mansfield to develop pre-treatment facilities that are necessary for Grand Prairie to accommodate the WW Flows and/or pay for fines, penalties, and charges incurred from TRA due to the strength of the WW Flows received at the Point of Entry.

Such additional facilities shall be designed, permitted, constructed, operated, and maintained at Mansfield's sole cost.

c. Grand Prairie shall be entitled to collect samples of WW Flows at the Point of Entry and cause the same to be analyzed by various applicable quantitative and qualitative methods to determine if such Wastewater is within the parameters for the TRA Mountain Creek WWTP. If such analysis determines that the WW Flows is not within the allowable parameters for 6 consecutive months, then Grand Prairie may require Mansfield to design and construct facilities, upstream of the Point of Entry, to pre-treat such WW Flows to meet the parameters for the TRA Mountain Creek WWTP.

d. If Mansfield knowingly or unknowingly disposes and delivers WW Flows to the Point of Entry which is in violation of any regulatory requirement or exceeds the parameters for the TRA Mountain Creek WWTP, then Mansfield shall be solely responsible for and pay one hundred percent (100%) of any and all damages incurred by Grand Prairie as a result, in whole or in part, of such flows, including, but not limited to, court orders, settlement agreements, regulatory fines, administrative penalties, Grand Prairie administrative costs, engineering and legal fees, repairs, replacement facilities, damage to the GP SSWWS, and all other associated costs resulting from such violation.

e. It is anticipated that TRA will at some point acquire ownership of the transport facilities from Grand Prairie. At such time, all transport and maintenance charges by Grand Prairie to Mansfield shall cease.

VII. DEFAULT

In the event that either Party defaults on or materially breaches any one or more of the provisions of this Agreement, the non-defaulting/breaching Party shall give the other Party thirty (30) days to cure such default or material breach after the non-defaulting/breaching Party has made written demand to the other Party to cure the same. A breach is material if a Party fails to meet or otherwise violates its obligations and responsibilities as set forth in this Agreement, including, but not limited to, the payment of money. If the defaulting/breaching Party fails to cure such breach or default within such thirty (30) day period, then the non-defaulting/breaching Party shall have the right, but not the obligation, to terminate this Agreement upon written notice to the defaulting/breaching Party. If any default is not capable of being cured within thirty (30) days (excluding a failure to make payments under this Contract), then the non-defaulting/breaching Party may not terminate this Agreement or exercise any other remedies under this Agreement so long as the defaulting/breaching Party diligently and continuously pursues curative action to completion. Remedies under this Agreement are cumulative, and each Party will have all remedies available to it at law or in equity at the time of the claim or institution of suit.

VIII. GENERAL ADMINISTRATIVE PROCEDURES

The following shall apply to this Inter Local cooperative Agreement:

a. Venue – The Parties agree that the actions performed under this Agreement are performed in in Grand Prairie, Ellis County, Texas, and if legal action is necessary to enforce this Agreement, then exclusive venue will lie in Ellis County, Texas and shall be governed by construed and enforced in accordance with the laws of the state of Texas.

b. Modifications --This agreement may be expanded and/or modified from time to time upon the agreement of both parties in order to complete arrangements and schedules anticipated by the agreement and/or to accommodate unanticipated or unusual circumstances, however this Agreement may not be changed, revised or otherwise amended by any party hereto except by writings signed by all the parties hereto or their successors.

c. Severance Clause -- If any section, subsection, clause, sentence phrase or portion of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such shall be deemed a separate distinct and independent provision and such holding shall not affect the validity of the remaining portion hereof.

d. Force Majeure -- In the event any Party is rendered unable, wholly or in part, by force majeure to carry out its obligations under this Agreement, other than the obligation to make payments of amounts accrued and due hereunder at the time thereof, it is agreed that upon such Party's giving notice in full particulars of such force majeure in writing to the other Party within a reasonable time after the occurrence of the cause relied upon, then the obligations of the Party giving such notice, so far as they are affected by such cause, shall be suspended during the continuance of any inability so caused by for no longer period, and such cause shall so far as possible be remedied with all reasonable dispatch. The term "force majeure," as employed herein, shall mean interference not reasonably within the control of the Party claiming force majeure.

e. Assignment -- This Agreement shall be binding upon and inure to the benefit of the respective Parties hereto and their successors and assigns.

f. Notice -- Any notice, request or other communication under this Agreement shall be given in writing and shall be deemed to have been given by any party to the other party upon either of the following:

1. Three days after the date of the mailing thereof, as shown by a post office receipt, if mailed to the party hereto by registered or certified mail at the address specified below; or
2. The date of the receipt thereof by such other party if not so mailed registered or certified mail.
3. Notice may be made to Grand Prairie by contacting the following:

The City of Grand Prairie
Attention: City Manager
317 W. College
P.O. Box 534045
Grand Prairie, TX 75053-4045
(972) 237-8012 office

(972) 237-8088 facsimile

4. Notice may be made to Mansfield by contacting the following:

The City of Mansfield
Attention: City Manager
1200 E. Broad St.
Mansfield, TX 76063
(817) 276-4200 office

Any Party may designate a change of address or addressee by providing written notice to the other Party.

g. Headings -- All headings of the Articles of this Agreement have been inserted for convenience and reference only and are not to be considered as part of the Agreement, and in no way shall they affect the interpretation of any provisions of this Agreement.

h. Waiver -- A waiver by any party of any default by the other hereunder shall not be deemed a waiver by such party of default of the others, which may thereafter occur.

i. Invalidity -- In case any one or more of the Articles, sections, provisions, clauses, paragraphs, or words of this Agreement shall for any reasons be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect any other Articles, sections, provisions, clauses, paragraphs or words of this Agreement, and it is intended that this Agreement shall be severable and shall be construed and applied as if such invalid or unconstitutional Article, section, provision, clause, paragraph or word had not been included herein.

j. This Agreement shall be subject to change or modification only with the mutual written consent of the Parties.

Multiple Originals -- This Agreement may be executed in a number of identical counterparts which, taken together, shall constitute collectively one (1) Agreement. Executed by the Cities of Grand Prairie and Mansfield, and TRA, each representative governmental entity acting by and through its City Manager or other duly authorized official in the manner required by each respective City's Charter, or otherwise as required by law, on the date herein below specified.

Executed this _____ day of _____ 2016.

City of Grand Prairie

Tom Hart, City Manager

Date _____

ATTEST

By _____
City Secretary City of Grand Prairie

APPROVED AS TO FORM:

By _____
City Attorney, Grand Prairie

City of Mansfield

Clayton W. Chandler, City Manager

Date _____

ATTEST

By _____
City Secretary, Mansfield

APPROVED AS TO FORM:

By _____
City Attorney, Mansfield