

MEMORANDUM OF UNDERSTANDING
Trinity River Waterwheels for Floatables Management

This Memorandum of Understanding ("MOU") is effective, as of the date of final execution, ("Effective Date") by and between the **TARRANT REGIONAL WATER DISTRICT**, a water control and improvement district 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 and the general laws of the State of Texas, including Chapters 49, 50 and 51, Texas Water Code, and Chapter 268, Acts of the 55th Texas Legislature, Regular Session, 1957, as amended, ("TRWD") and the **CITY OF FORT WORTH**, a Texas home rule municipal corporation ("City"), each individually referred to as a "party" and collectively referred to as the "parties".

WHEREAS, as water suppliers for over two million people in Fort Worth, Texas and surrounding communities, TRWD and the City have a keen interest in protecting and preserving the quality of local waterways; and

WHEREAS hundreds of tons of trash and debris are deposited each year into local creeks, rivers, and waterways—including the trash and debris that accumulates along the Trinity River after a rain event—which serve as major sources of drinking water for millions of North Texans; and

WHEREAS in order to reduce the amount of trash and debris washing into local waterways, TRWD and the City seek to install up to two large, wheel-based floatable litter capture devices known as waterwheels with the ability to remove litter and debris from the Trinity River; and

WHEREAS in addition to the direct impact of removing litter and debris from the Trinity River, the waterwheels also have a significant educational outreach impact on litter awareness by serving as visual reminders of the collaborative efforts between TRWD and the City to combat litter within the watersheds; and

WHEREAS TRWD and the City developed and maintain a joint Municipal Separate Storm Sewer System ("MS4") Permit authorized by the Texas Commission on Environmental Quality and maintained by the joint Stormwater Management Plan ("SWMP") that includes litter control measures. The installation of the waterwheels will support two key activities of the SWMPs Minimum Control Measures ("MCM"): MS4 Maintenance Activities ("MCM1") and Public Involvement and Participation ("MCM7.2"); and

WHEREAS TRWD and the City will continue to encourage communities across the area to join the fight against litter and other sources of non-point source pollution by installing the waterwheels in the Trinity River to capture floatables and debris.

NOW, THEREFORE, in consideration of the mutual benefits and obligations set forth herein, the receipt and sufficiency of which are hereby expressly acknowledged, the Parties agree as follows:

1. Funding.
 - a. Funding for the waterwheel litter capture devices will proceed as outlined below:
 - i. The City will provide funding for the engineering and design of the waterwheels.
 - ii. TRWD will commit at least \$350,000.00 for the construction and installation of the waterwheels.
 - iii. The City and TRWD will collaborate to solicit private funding for the construction and installation of the waterwheels.
 - iv. After construction, all general operation, maintenance, repair expenses and trash disposal costs ("O&M Expenses") will be generally shared equally on a 50/50

basis between the Parties as detailed in section 3.c. As of the date of this MOU, it is anticipated that the annual O&M Expenses per Party should not exceed \$25,000 per waterwheel. If for any reason the annual O&M Expenses for either Party substantially exceeds the anticipated cost of \$25,000 per waterwheel, an expense report will be prepared by the Party pursuing the additional expense and shared with the other party for review. In no event shall any Party be expected to expend more than \$75,000 per year for O&M Expenses of both waterwheels.

- v. If the Parties agree to the reasonableness of the expense report, the expense report(s) will form the basis of the new obligation of each party, and the Parties will collaborate to provide additional funds to cover those costs.
 - vi. If the Parties do not agree to the accuracy of the accounting(s), they shall endeavor to resolve the disagreement through normal channels of communication and good-faith discussion.
 - vii. Funding Prioritization. The Parties agree that the funding for the waterwheels, except for engineering and design (which will be provided by the City) and each Parties' share of O&M Expenses, will be prioritized in the following order: (1) private and donor funds; and (2) TRWD funds and City funds on a 50/50 basis. For clarity, no City or TRWD funds will be expended (except for engineering and design and each Parties' share of O&M Expenses) until all private and donor funds have been exhausted.
- b. All payments or expenditures made pursuant to this MOU are made from current funds as required by Chapter 791, Texas Government Code.

2. Permitting.

- a. TRWD will be responsible for the application for the necessary federal permits from the USACE needed to construct the waterwheels in the Fort Worth Floodway.
- b. The application for any permits required by the City will be the responsibility of the City.

3. Ownership and On-Going Maintenance.

- a. The waterwheels will be owned by TRWD.
- b. TRWD and the City will jointly and equally contribute to O&M Expenses on a 50/50 basis.
- c. The intent of this MOU is for TRWD and the City to jointly share operation and maintenance (O&M) responsibilities.
- d. TRWD acknowledges and agrees that the City will be able to place and maintain certain branding or logos on the waterwheels, as necessary to satisfy the City's commitments to donors to the waterwheel project. TRWD and the City will collaborate on all other commitments related to donations.

4. Educational Campaign.

- a. Any educational campaigns or outreach may be independently developed by either party at their expense or jointly as a part of a unified approach, subject to agreement and approval from both parties.
- b. Mutually agreed upon, joint campaigns will be divided equally with a 50/50 cost share between the two parties.

5. Term and Termination.

- a. The term of this MOU shall be for five (5) years. Upon the expiration of the initial term, the MOU may be renewed year-to-year with the mutual agreement of the parties.

- b. This MOU may be terminated by convenience by either party, in its sole discretion, upon thirty (30) days written notice. At the time of termination, both parties will work together to resolve future ownership, maintenance, and cost sharing details as well as any outstanding expenses or issues.
 - c. In the event that the parties agree to dismantle any of the waterwheels, such costs will be borne mutually by both parties. This will be determined by an independent auditor hired by the party electing to dismantle a waterwheel.
6. Performance Measures.
- a. The waterwheel performance measures shall include, but not be limited to the following:
 - i. Weight of litter and debris removed by waterwheels;
 - ii. Waterwheel operation hours (as defined by time the machine is in use, other than downtime for maintenance, storm events, etc.);
 - iii. Cost of operations;
 - iv. Metrics related to any education or outreach activities.
 - b. TRWD and the City shall report performance measures annually in a written report, by the end of the MS4 permit term each year that this MOU is in existence, for incorporation into the MS4 Annual Report to be submitted to the Texas Commission on Environmental Quality.
7. Binding Nature of MOU. It is the intent of the parties that this MOU be a binding agreement between them in principle with regard to the provisions set forth herein.
8. Notices. All written notices required under this MOU must be hand delivered or sent by certified mail, return receipt requested, addressed to the proper party at the following address:

<p><u>To City:</u></p> <p>City of Fort Worth Attn: Valerie Washington, Assistant City Manager 200 Texas Street Fort Worth, TX 76102-6314</p> <p>With copy to Fort Worth City Attorney's Office at same address</p>	<p><u>To TRWD:</u></p> <p>Tarrant Regional Water District Attn: Dan Buhman, General Manager 800 E. Northside Drive Fort Worth, TX 76102-1016</p>
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9. Governing Law. The Parties agree that this MOU shall in all respects be governed by, and construed in accordance with, the laws of the State of Texas, (without regard to principles of conflict of laws that would require the application of a law of other jurisdiction), and exclusive venue shall lie in the courts of competent jurisdiction in Tarrant County, Texas.
10. Captions and Headings. Captions and headings, used in this MOU are for reference purposes only and shall not be deemed a part of this MOU.
11. Counterparts. This MOU may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument, and it shall not be necessary in making proof of this MOU to produce or account for more than one such counterpart.

12. Entire Agreement. This MOU represents the entire understanding of the Parties in relation to the subject matter hereof, and supersedes any and all previous agreements, arrangements, or discussions between them (whether written or oral) in respect of the subject matter hereof.
13. Governmental Powers. By execution of this MOU, neither TRWD nor the City waives their sovereign or governmental powers, or immunities, all of which are expressly reserved.
14. Severability. If any provision of this MOU shall be determined to be unenforceable, void, or otherwise contrary to law, such condition shall in no manner operate to render any other provision of this MOU unenforceable, void or contrary to law, and this MOU shall continue in force in accordance with the remaining terms, and provisions hereof, unless such condition invalidates, the purpose or intent of this MOU.
15. Amendment. No amendment, modification, or alteration of the terms of this MOU shall be binding, unless it is in writing, dated subsequent to this MOU, and duly executed by the Parties hereto.
16. Third Party Rights. The provisions and conditions of this MOU are solely for the benefit of TRWD and City and are not intended to create any rights, contractual or otherwise, for any person or entity.
17. Conflicts. In the event of any dispute over the meaning or application of and provision of this MOU, this MOU shall be interpreted fairly and reasonably, and neither more strongly fair or against any Party, regardless of the actual drafter of this MOU.
18. No Partnership. Nothing in this MOU shall be deemed to create a partnership, agency, joint venture, or joint enterprise between the Parties.

[signature page follows]

ACCEPTED AND AGREED:

CITY OF FORT WORTH:

<p>By: _____ Name: Valerie Washington Title: Assistant City Manager</p> <p>Date: _____, 2023</p> <p>APPROVAL RECOMMENDED:</p> <p>By: _____ Name: Cody Whittenburg Title: Code Compliance Assistant Director</p> <p>ATTEST:</p> <p>By: _____ Name: Jannette S. Goodall Title: City Secretary</p>	<p>CONTRACT COMPLIANCE MANAGER: By signing I acknowledge that I am the person responsible for the monitoring and administration of this contract, including ensuring all performance and reporting requirements.</p> <p>By: _____ Name: Nixalis Benitez Title: Environmental Supervisor</p> <p>APPROVED AS TO FORM AND LEGALITY:</p> <p>By: _____ Name: Matthew A. Murray Title: Assistant City Attorney</p> <p>CONTRACT AUTHORIZATION: M&C: Form 1295:</p>
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TARRANT REGIONAL WATER DISTRICT:

<p>Tarrant Regional Water District</p> <p>By: _____ Name: Dan Buhman Title: General Manager</p> <p>Date: _____, 2023</p>
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