

MEMORANDUM OF AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
CITY OF LEWISVILLE, TEXAS
FOR ADDITIONAL WORK DURING CONSTRUCTION OF
THE LEWISVILLE DAM SAFETY MODIFICATIONS

This MEMORANDUM OF AGREEMENT (hereinafter the “MOA”) is entered into this 19th day of November 2018, by and between the Department of the Army (hereinafter the “Government”), represented by the U.S. Army Commander, Fort Worth District (hereinafter the “District Commander”), and The City of Lewisville, Texas (hereinafter the “Non-Federal Interest”), represented by Ms. Donna Barron.

WITNESSETH, THAT:

WHEREAS, the Lewisville Dam and Reservoir (hereinafter the “Project”) was authorized pursuant to the Rivers and Harbors Act of 1945 (Public Law 79-14);

WHEREAS, the Non-Federal Interest requests construction of a replacement for a raw water supply line that is located on Government owned property, which would consist of the removal of and disposal of approximately 1700 linear feet of existing water supply line located within the construction zone for dam safety modification work (hereinafter “Modification”) to be undertaken by the Government and the placement of approximately 1700 linear feet of raw water supply line in a new location on Government fee owned land (hereinafter the “Additional Work”) (as more specifically described in Exhibit “A” to this Agreement) and agrees to pay all costs associated with the Additional Work; and

WHEREAS the Government is authorized pursuant to 33 U.S.C. 701h to accept and expend funds to carry out the Additional Work in connection with Construction of the Modification.

NOW, THEREFORE, the Government and the Non-Federal Interest agree as follows:

1. The Non-Federal Interest shall provide to the Government funds to pay all costs, including the costs of environmental compliance, supervision and administration, and engineering and design, associated with the Additional Work (as more specifically described in exhibits A). While the Government will endeavor to limit the costs associated with the Additional Work to the current estimate of \$3,293,312.00, the Non-Federal Interest acknowledges that the actual costs for the Additional Work may exceed such estimated amount due to claims or other unforeseen circumstances and that the Non-Federal Interest is responsible for all costs, including any claims, related to the Additional Work.

2. Within thirty (30) calendar days of execution of this MOA, the Non-Federal Interest shall provide to the Government the sum of \$3,293,312.00. If at any time the Government determines that additional funds are needed, the Government shall notify the Non-Federal Interest in writing of the amount and shall provide documentation evidencing the need for said additional funds, and no later than thirty (30) calendar days from receipt of such notice, the Non-Federal Interest shall provide to the Government the full amount of the additional funds.
3. The Non-Federal Interest shall provide the funds to the Government by delivering a check payable to "FAO, USAED Fort Worth District" to the District Commander or providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government.
4. The Government shall not commence the Additional Work until: a) all applicable environmental laws and regulations have been complied with, including, but not limited to, the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and Section 401 of the Clean Water Act (33 U.S.C. 1341); and the Non-Federal Interest has provided to the Government authorization for entry to all lands, easements and rights-of-way the Government determines to be required for the Additional Work.
5. The Government shall provide the Non-Federal Interest with quarterly reports of obligations for the Additional Work. The first such report shall be provided within thirty (30) calendar days after the final day of the first full quarter of the Government fiscal year following receipt of the funds pursuant to this MOA. Subsequent reports shall be provided within thirty (30) calendar days after the final day of each succeeding quarter until the Government concludes the Additional Work.
6. Upon conclusion of the Additional Work and resolution of all relevant claims and appeals, the Government shall conduct a final accounting of the costs of such work and furnish the Non-Federal Interest with written notice of the results of such final accounting. Such final accounting shall in no way limit the Non-Federal Interest's responsibility to pay for all costs associated with the Additional Work, including contract claims or any other liability that may become known after the final accounting. If such costs are more than the amount of funds provided by the Non-Federal Interest, the Non-Federal Interest shall provide the required additional funds within thirty (30) calendar days of such written notice by delivering a check payable to "FAO, USAED Fort Worth District" to the District Commander or providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government. If such costs are less than the amount of funds provided by the Non-Federal Interest, the Government shall refund the excess to the Non-Federal Interest within thirty (30) calendar days of such written notice, subject to the availability of funds.
7. Before either party to this MOA may bring suit in any court concerning an issue relating to this MOA, such party must first seek in good faith to resolve the issue through negotiation or other forms of nonbinding alternative dispute resolution mutually acceptable to the parties.

8. In the exercise of their respective rights and obligations under this MOA, the Government and the Non-Federal Interest each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

9. Notices.

a. Any notice, request, demand, or other communication required or permitted to be given under this MOA shall be deemed to have been duly given if in writing and either delivered personally or mailed by registered or certified mail, with return receipt, as follows:

If to the Non-Federal Interest:

**City Manager
City of Lewisville
P.O. Box 299002
Lewisville, TX 75029]**

If to the Government:

**District Commander
U.S. Army Engineer District
Fort Worth
819 Taylor Street
Fort Worth, TX 76102**

b. A party may change the recipient or address to which such communications are to be directed by giving written notice to the other party in the manner provided in this paragraph.

10. This MOA may be modified or amended only by written, mutual agreement of the parties. Either party may unilaterally terminate further performance under this MOA by providing at least 15 calendar dates written notice to the other party. In the event of termination, the Non-Federal Interest remains responsible for any and all costs incurred by the Government under this MOA for the Additional Work and for any and all costs of closing out or transferring any ongoing contracts.

IN WITNESS WHEREOF, the parties hereto have executed this MOA, which shall become effective upon the date it is signed by the District Commander.

DEPARTMENT OF THE ARMY

CITY OF LEWISVILLE

BY: _____
KENNETH N. REED, PMP
COLONEL, EN COMMANDING

BY: _____
DONNA BARRON
CITY MANAGER

DATE: _____

DATE: _____