

AMENDED MATCHING GRANT FUNDING COMMITMENT AGREEMENT

The City of Tulsa ("COT"), Regional Metropolitan Utility Authority ("RMUA"), the Tulsa Metropolitan Utility Authority ("TMUA"), and the Broken Arrow Municipal Authority ("BAMA") hereby enter into this Amended Matching Grant Funding Commitment Agreement (the "Agreement") on the last date identified herein accompanying a signature. The parties hereto agree as follows:

SECTION I - RECITALS

WHEREAS, the COT is a municipality within the State of Oklahoma having adopted its initial Charter in 1908;

WHEREAS, the RMUA was created by a Declaration of Trust, dated as of October 10, 1972, for the use and benefit of the Cities of Tulsa, Broken Arrow, Jenks, Bixby, and Owasso, Oklahoma, under authority of and pursuant to the provisions of Title 60, Oklahoma Statutes 2021, Section 176 to 180.3, inclusive, as amended and supplemented, and other applicable statutes of the State of Oklahoma;

WHEREAS, the TMUA was created by a Declaration of Trust, dated as of April 5, 1957, for the use and benefit of the City of Tulsa, Oklahoma, under authority of and pursuant to the provisions of Title 60, Oklahoma Statutes 2021, Section 176 to 180.3, inclusive, as amended and supplemented, and other applicable statutes of the State of Oklahoma;

WHEREAS, BAMA was created by a Declaration of Trust, dated as of July 1, 1979, for the use and benefit of the City of Broken Arrow, Oklahoma, under authority of and pursuant to the provisions of Title 60, Oklahoma Statutes 2021, Section 176 to 180.3, inclusive, as amended and supplemented, and other applicable statutes of the State of Oklahoma;

WHEREAS, the COT, TMUA, RMUA, and BAMA desire to construct a fertilizer production facility at the Haikey Creek Wastewater Treatment Plant, a trust asset of RMUA;

WHEREAS, once constructed the fertilizer production facility will realize operational cost savings and be more environmentally sound than the current procedures being utilized;

WHEREAS, the total construction cost of the fertilizer production facility is estimated to be FORTY-EIGHT MILLION DOLLARS (\$48,000,000.00);

WHEREAS, the parties desire to enable the COT to execute a grant agreement with the United States Department of Agriculture (the "USDA") for federal grant funds in the amount of Twenty Percent (20%) of the total estimated construction cost of the fertilizer production facility through the Fertilizer Production Expansion Program (the "FPEP"), Funding Opportunity No. RD-RBS-22-01-FPEP;

WHEREAS, a requirement of the USDA FPEP grant award is that the COT demonstrate that sufficient matching funds are currently available to pay eighty percent (80%) of the total

construction cost of the fertilizer production facility, or alternatively, that the COT provide the USDA a commitment and certification that sufficient matching funds will be available in the future to pay eighty percent (80%) of the fertilizer production facility as part of the grant agreement execution;

WHEREAS, the parties desire to enable COT to provide the USDA a commitment and certification that sufficient matching funds will be available in the future to pay eighty percent (80%) of the total construction cost of the fertilizer production facility;

WHEREAS, the COT, RMUA, TMUA, and BAMA entered into the original Matching Grant Funding Commitment Agreement on December 14, 2022 to memorialize the obligations of each entity to obtain the USDA FPEP grant and construct the fertilizer production facility; and

WHEREAS, the COT, RMUA, TMUA, and BAMA desire to enter this Amended Agreement to memorialize the obligations of each entity to obtain the USDA FPEP grant and construct the fertilizer production facility.

SECTION II - SPECIFIC TERMS

1. The COT agrees to provide a commitment and certification to accompany its USDA FPEP grant agreement that matching funds totaling eighty percent (80%) of the estimated cost to construct the fertilizer production facility, not to exceed THIRTY-EIGHT MILLION FOUR-HUNDRED THOUSAND DOLLARS (\$38,400,000.00), will be available in the future pursuant to the terms of this Agreement.
2. RMUA herein agrees to pay to the COT all FPEP matching grant funds required pursuant to the grant terms, not to exceed THIRTY-EIGHT MILLION FOUR HUNDRED THOUSAND DOLLARS (\$38,400,000.00), on a progressive pay basis within thirty (30) days of receipt of periodic invoices from the COT for expenditures incurred in constructing the fertilizer production facility.
3. TMUA herein agrees to pay to the RMUA Fifty Percent (50%) of all matching grant funds required pursuant to the grant terms, not to exceed NINETEEN MILLION TWO-HUNDRED THOUSAND DOLLARS (\$19,200,000.00), on a progressive pay basis within thirty (30) days of receipt of periodic invoices from the RMUA for expenditures incurred in constructing the fertilizer production facility.
4. BAMA herein agrees to pay to the RMUA Fifty Percent (50%) of all matching grant funds required pursuant to the grant terms, not to exceed NINETEEN MILLION TWO-HUNDRED THOUSAND DOLLARS (\$19,200,000.00), on a progressive pay basis within thirty (30) days of receipt of periodic invoices from the RMUA for expenditures incurred in constructing the fertilizer production facility.
5. The COT will allocate the negative pooled interest resulting from expending funds in advance to the RMUA Operating Account.

6. RMUA agrees to repay the COT for any project costs disallowed by the USDA within thirty (30) days of receipt of a notice of disallowance.

SECTION III – GENERAL TERMS

7. **Default** - A party's failure to timely perform the obligations identified herein shall be a material breach and default of this Agreement. In the event of default, the non-defaulting party may pursue all available legal remedies.
8. **Warranties and Representations** – The parties expressly warrant and represent that they are the exclusive owners of all rights and obligations herein and that they have not assigned, transferred or purported to assign or transfer, voluntarily or involuntarily, or by operation of law, any rights or obligations.
9. **Contractual Terms** - It is expressly understood and agreed that the terms and provisions of this Agreement are contractual, and not mere recitals, and that the covenants contained herein, are fully and finally binding on all parties.
10. **Governing Law** - This Agreement shall be governed by and construed in accordance with the domestic laws of the State of Oklahoma without giving effect to any choice or conflict of law provision or rule (whether of the State of Oklahoma or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Oklahoma and that venue is only proper in the District Court of Tulsa County.
11. **Binding Effect** - This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors, and assigns.
12. **Entire Agreement** - This Agreement represents the entire agreement and understanding between the parties regarding the subject herein, and this Agreement shall supersede any and all prior agreements, arrangements and understandings related to the subject matter hereof. No amendment, modification or waiver of this Agreement shall be valid unless in writing and signed by all parties.
13. **Counterparts** - This Agreement may be executed in any number of counterparts, but together they constitute but one and the same agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement in multiple copies on the respective dates therein below reflected to be effective on the date executed by the Mayor of the City of Tulsa.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

APPROVED BY:

Broken Arrow Municipal Authority, Chairperson

**Broken Arrow Municipal
Authority, General Manager**

ATTEST:

BAMA Secretary

APPROVED AS TO FORM:



Assistant City Attorney

THE TULSA METROPOLITAN UTILITY AUTHORITY
An Oklahoma Public Trust

Chair

Date

ATTEST:

Secretary

Date

APPROVED AS TO FORM:

Attorney for TMUA

Date

RECOMMENDED:

Director of Water and Sewer

Date

TULSA UTILITY BOARD
A Charter agency of the City of Tulsa

Chair

Date

ATTEST:

Secretary

Date

**REGIONAL METROPOLITAN
UTILITY AUTHORITY**

Secretary

Chairman

Date: _____

APPROVED AS TO FORM

RECOMMENDED:

**Attorney for Regional Metropolitan
Utility Authority**

City Engineer

CITY OF TULSA, OKLAHOMA
An Oklahoma Municipal Corporation

Monroe Nichols, Mayor

Date

ATTEST:

Tulsa City Clerk

Date

APPROVED AS TO FORM:

Tulsa Assistant City Attorney

Date