

**MEMORANDUM OF UNDERSTANDING**  
**Between the**  
**UNITED STATES DEPARTMENT OF AGRICULTURE**  
**NATURAL RESOURCES CONSERVATION SERVICE**  
**and**  
**CITY OF MCKINNEY, TEXAS**  
**Sponsor for**  
**East Fork Above Lavon Watershed**  
**Floodwater Retarding Structure No. 2A**

THIS MEMORANDUM OF UNDERSTANDING is between the United States Department of Agriculture, Natural Resources Conservation Service, hereinafter referred to as NRCS, and the City of McKinney, Texas, Sponsoring Local Organization for this project, hereinafter referred to as the City.

**AUTHORITIES, STATUES, LAWS**

The authority of NRCS to enter into this memorandum of understanding is Section 14 of The Watershed Protection and Flood Prevention Act, 16 U.S.C. 1012, as added by Section 313 of Public Law 106-472. This section authorizes NRCS to provide technical and financial assistance to local project sponsors for rehabilitation of aging dams constructed under the Watershed Protection and Flood Prevention Act (Public Law 83-566), the Flood Control Act of 1944 (Public Law 78-534), the Pilot Watershed Program and the Resource Conservation and Development (RC&D) Program.

**STATEMENT OF PURPOSE**

Previously the NRCS provided technical and/or financial assistance to local sponsors for works of improvement. These works of improvements are part of a project which includes sixty-four floodwater retarding structures (FRS) in the East Fork Above Lavon Watershed. This project was originally authorized and installed under the Flood Control Act of 1944 (Public Law 78-534). NRCS has determined that FRS No. 2A is eligible for rehabilitation under the authority previously cited.

According to the project plan, and operation and maintenance agreement for this project, Collin County Soil and Water Conservation District and the City will be responsible for the operation and maintenance of FRS No. 2A to assure it will function as designed and constructed after completion of the rehabilitation of the structure. The City has an interest in extending the service life of FRS 2A and meeting applicable safety and performance standards.

The City recognizes that the process of rehabilitating FRS No. 2A will take significant advanced preparation, and would like to initiate work with NRCS on specific areas of rehabilitation planning. NRCS concurs with the City initiating work on specific areas of planning of the rehabilitation project.

Federal funds for a particular rehabilitation project will be equal to 65 percent of the total costs of the rehabilitation project, but will not exceed 100 percent of the actual construction costs incurred in the rehabilitation. Also, the City will be responsible for the acquisition of all landrights and permits. The value of non-federal in-kind contributions can be credited to the City's 35 percent share of the total cost of the rehabilitation project.

## GOAL

The primary goal of this memorandum of understanding is to establish a framework under which the City and NRCS may proceed with work on specific aspects of the proposed rehabilitation project.

This memorandum of understanding establishes a basis for cooperation between the parties to define acceptable in-kind contributions for this project. Therefore, the parties pledge to work together with the mutual goal of rehabilitation of this project within the current limits of their respective authorities and available funding.

## SCOPE OF MEMORANDUM OF UNDERSTANDING

The City may provide all or a portion of the sponsor's 35 percent share of the total cost of the rehabilitation project by providing an in-kind contribution of services and landrights. NRCS and the City agree that the following services and the maximum in-kind credit values may be considered for credit to the City's share of the total rehabilitation cost of this project:

Land Rights acquisition	\$100,000
Contract Administration	\$50,000
Construction - Estimate	\$1,512,500
Total	\$1,662,500

The City shall provide NRCS with documentation of the actual costs incurred for the services for determination of final credit values.

## LIMITATIONS

- The in-kind credit values shown above will be the maximum to be considered for the above stated services and landrights (unless later amended and agreed to by both parties).
- The in-kind credit values will not exceed 35 percent of the total costs of the rehabilitation project described above. The City will receive no cash reimbursement or credit for in-kind contributions that exceed the agreed amount.
- The in-kind credit values will be determined as set forth in the NRCS National Contract Grants and Agreements Manual, Sections 510.64 through 510.67.
- In-kind contributions represent the value of donated expendable property and noncash contributions made toward the City's share of the cost by the City and non-Federal parties or non-Federal projects.
- Determination of the final amounts to be credited shall be at the sole discretion of the NRCS.
- No credit for in-kind contributions will be given for City's actions normally needed for carrying out their previously assigned responsibilities for this project.
- This memorandum of understanding is not a fund-obligating document.

- There is no guarantee that funds will be appropriated by Congress for the dam rehabilitation project described in this memorandum of understanding.
- There is no guarantee that, if funds are appropriated by Congress, the dam rehabilitation project described in this memorandum for understanding will be given any priority for completion by NRCS.
- There is no guarantee that, if the dam rehabilitation project described in this memorandum of understanding is selected as a NRCS priority rehabilitation project, the alternatives currently considered by the City will be the NRCS recommended or the final alternative selected by the City.
- The technical quality of the services provided must be concurred in by NRCS prior to in-kind credit being given.
- Only services and landrights acquisition provided by the City after the date of approval of this MEMORANDUM OF UNDERSTANDING (date of State Conservationist signature below) will be credited.
- All actions taken and costs incurred by the City prior to the time of the approval of the rehabilitation plan will be entirely at its own risk. Therefore, there is no guarantee, implied or otherwise, that any services or landrights provided by the City will be credited as an in-kind contribution.

### **CIVIL RIGHTS**

The parties will be in compliance with the nondiscrimination provisions contained in the Titles VI and VII of the Civil Rights Act of 1964, as amended; the Civil Rights Restoration Act of 1987 (Public Law 100-259); and other nondiscrimination statutes, namely, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, Americans with Disabilities Act of 1990, and in accordance with regulations of the Secretary of Agriculture (7CFR-15, Subparts A & B), which provide that no person in the United States shall, on the grounds of race, color, national origin, age, sex, religion, marital status, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Agriculture or any agency thereof.

### **TERMINATION**

This memorandum of understanding can be modified or terminated at any time by mutual consent of both parties or can be terminated by either party giving 60 days written notice to the other party.

**CITY OF MCKINNEY, TEXAS**

By: *Rick Chaffin*

Title: \_\_\_\_\_

Date: 10/09/09

by Rick Chaffin, Deputy City  
Manager and authorized signatory

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**UNITED STATES DEPARTMENT OF AGRICULTURE  
NATURAL RESOURCES CONSERVATION SERVICE**

By: *Donald W. Gohmert*

Title: STATE CONSERVATIONIST

Date: OCT 22 2009