

INTERLOCAL AGREEMENT

THE STATE OF TEXAS §
 §
 COUNTY OF HARRIS §

This Agreement is made and entered into pursuant to Texas Government Code Ann. 791.001, et seq. (the Interlocal Cooperation Act), by and between **City of Deer Park**, a body corporate and politic under the laws of the State of Texas, located within Harris County, and hereinafter referred to as the “City,” and the **Harris County Flood Control District**, a body corporate and politic under the laws of the State of Texas, hereinafter referred to as the “District,” or “HCFCD,” each a “Party” to this Agreement, and are collectively referred to herein as the “Parties.”

WITNESSETH:

WHEREAS, it is to the mutual benefit of the City and the District to enter into this Agreement for the use and benefit of the public, and

WHEREAS, the District is willing to “acquire the detention storage right-of-way, prepare the bid documents, permit, bid, design and construct” (“Scope”) the Project, and

WHEREAS, the City desires to improve its storm sewer system drainage components and construct a detention basin for the College Park subdivision, hereinafter referred to as the “Project”, as shown in the attached Exhibit A; and

WHEREAS, the District’s mission is to provide flood damage reduction projects that work, with appropriate regard for community and natural values, and desires to contribute to the Project to reduce the flood risk to City residents; and

WHEREAS, when the District completes the Project, it will convey the property it acquired for the detention storage to the City for the City to maintain; and

WHEREAS, the Parties estimate Project Scope to cost of SIX MILLION, FOUR-HUNDRED AND FIFTY-SIX THOUSAND, SEVEN HUNDRED AND FOUR DOLLARS (\$6,456,704) (“Total Project Cost” shown in attached Exhibit B, and

WHEREAS, the City is willing to contribute THREE MILLION, TWO HUNDRED TWENTY-EIGHT THOUSAND, THREE HUNDRED FIFTY-TWO DOLLARS (\$3,228,352) (“City Contribution”) toward the Total Project Cost; and

WHEREAS, the District is willing to contribute a maximum of THREE MILLION, TWO HUNDRED TWENTY-EIGHT THOUSAND, THREE HUNDRED FIFTY-TWO DOLLARS (\$3,228,352) (“District Contribution”) toward the Total Project Cost; and

WHEREAS, it is to the mutual covenants, agreements and benefits to the Parties to enter into this Agreement for the use and benefit of the Public, the Parties agree as follows:

I.
PAYMENTS

Within forty-five (45) days of the execution of this Agreement, by both Parties, the City shall pay the District the City Contribution. The District will contribute the District Contribution toward the Total Project Cost, as defined herein below.

II.
REVIEWS

The District shall provide the City design plans for the Project at thirty (30), sixty (60) and ninety (90) percent complete for its review. The City shall provide comments to the District within twenty (20) days after receipt or the plans will be deemed approved.

III.
PROPERTY AND EASEMENT ACQUISITION

Once the initial design is complete and the Parties have identified property and easement needed for the Project, the District will acquire the property and easement using its acquisition procedures. After the Project is complete, the District will convey all Project property and easement, to the City, for the City to maintain.

Where the storm sewer improvements will be constructed, the City herein gives the District a temporary right of entry and construction easement to City property, to complete the Project.

IV.
BIDS

The District will award Project Scope elements in accordance with competitive bidding laws applicable to the District.

The District's determination of the lowest responsible bidder for the Project's construction shall be final. If the District encounters environmental contamination or other issues, during work on City property for the storm sewer improvements, that make it impossible to continue the Project's construction, all work shall immediately halt until the Parties have discussed how to proceed. Under no circumstances shall the District be responsible for any remediation costs or any costs associated with contamination on City property. If this Agreement is terminated by the City because of the contamination, the City will be responsible for the full (one-hundred percent) costs of the Project to the point of termination.

V.
SITE ACCESS

The City shall have access at all reasonable times to the Project construction site and to all relevant drawings, specifications, contract documents, and records to verify that the Project is constructed in compliance with this Agreement. The District will include the City in all Project design and construction progress meetings.

VI.

PROJECT ACCOUNTING

The City has been advised by the District and the City clearly understand and agree, such understanding and agreement being of the absolute essence to this Agreement, that the District shall have available the total maximum sum of the District Contribution specifically allocated to fully discharge any and all liabilities that may be incurred by the District pursuant to the terms of this Agreement, and that any cost increases in the Project to be paid by the District must first be approved by Harris County Commissioners Court and certified as available by the County Auditor.

The District Contribution will go toward the drainage component(s) of the Project as defined as: property acquisition, site preparation, pavement and sidewalk reconstruction, designing and constructing the Project, utility adjustments, and additional services related to the listed components.

In the event that: (i) Project changes or amendments result in an increase in Total Project Cost, the District shall obtain City approval prior to proceeding with the changes or amendments.

The District, upon approval by Harris County Commissioners Court, will pay one-half, fifty (50) percent of an increase in Total Project Cost, for Project related costs, that exceed the District Contribution and;

The City, upon the approval of their Council, will pay one-half, fifty (50) percent of an increase in Total Project Cost, for Project related costs, that exceed the City Contribution and the full (one-hundred percent) cost of any element not associated with the storm sewer system drainage components and detention basin.

Such payment(s) shall be made by the City to the District within thirty (30) days after the approval by the City Council.

The District will conduct an accounting of all monies expended and distinguish which monies were spent on drainage and non-drainage components of the Project following the completion of the Project. The District will refund to the City its portion of any amount not spent as stated in this Agreement or any amendment to this Agreement.

VII.

TERMINATION

The City or the District may terminate this Agreement, except as stated in Paragraph IV above, without cause, by a thirty (30) days written notice to the other Party until such time as the District starts the property acquisition process. In this instance, the District will refund to the City any unspent portion of the City Contribution.

If the City terminates this Agreement after the District has started the property acquisition process, the District may: a) dismiss any lawsuit associated with the property acquisition and the City shall pay any costs associated with the dismissal or b) acquire the property for its use. In this instance, the District will refund to the City any remaining funds in the City Contribution.

If the District terminates this Agreement after the District has started the property acquisition process, the District may: a) dismiss any lawsuit associated with the property acquisition and pay any costs associated with the dismissal, or b) acquire the property and convey the property to the City and the City pays any cost of the property over the estimated amount of the property as shown in Exhibit B. In example b), the District would keep any unspent portion of the District Contribution.

For this Agreement, the Parties agree that the property acquisition process has started when Harris County Commissioners Court has officially declared the acquisition of the property a public necessity.

VIII.
PROJECT COMPLETION

Within thirty (30) days of completion of the construction of the Project, the District shall provide the City with record drawings of the Project. The City will maintain the completed Project to the extent, and in the same manner, as other like facilities within the City.

IX.
(RESERVED)

X.
INDEMNIFICATION

The District will cause to be inserted in the construction contract for the Project an agreement that the contractor will indemnify, defend, protect, covenant not to sue, release, and save and hold harmless the District and City and all their representatives from all suits, actions, or claims of any character brought on account of any injuries or damages sustained by any person or property in consequence of any neglect in safeguarding the work or through the use of unacceptable materials in the construction of the Project or any associated improvements, or on account of any act of omission by the contractor. The District will require its contractors to name the District and the City as additional insureds.

XI.
RELEASE OF INFORMATION

The Parties agree to give each other at least seventy-two (72) hours' notice of release of information regarding the Project to the news media, private citizens or community organizations.

XII.
NOTICES

All notices and communications under this Agreement shall be mailed by certified mail, return receipt requested, or delivered to the District at the following address:

Harris County Flood Control District
Attention: Executive Director
9900 Northwest Freeway
Houston, Texas 77092

All notices and communications under this Agreement shall be mailed by certified mail, return receipt requested, or delivered to the City at the following addresses:

City of Deer Park
Attn. Mayor
710 East San Augustine Street
P.O. Box 700
Deer Park, Texas 77536-4258

XIII.
CONSENT

No Party hereto shall make, in whole or in part, any assignment of the Agreement or any obligation hereunder without the prior written consent of the other Parties.

XIV.
RIGHTS

This instrument contains the entire agreement between the Parties relating to the rights herein granted and the obligations herein assumed. Any modifications concerning this instrument shall be of no force or effect, excepting a subsequent modification in writing, signed by the Parties hereto.

XV.
SEVERABILITY

If any provision of this Agreement is construed to be illegal or invalid, this will not affect the legality or validity of any of the provisions hereof. The illegal or invalid provisions will be deemed stricken from this Agreement and deleted to the same extent and effect as if never incorporated herein.

EXECUTED on _____.

APPROVED AS TO FORM:

CHRISTIAN D. MENEFEE
Harris County Attorney

**HARRIS COUNTY FLOOD CONTROL
DISTRICT**

By: _____
LAURA FIORENTINO CAHILL
Senior Assistant County Attorney

By: _____
LINA HIDALGO,
County Judge

ATTEST:

CITY OF DEER PARK

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

THE STATE OF TEXAS §
 §
 COUNTY OF HARRIS §

The Commissioners Court of Harris County, Texas, convened at a meeting of said Court at the Harris County Administration Building in the City of Houston, Texas, on _____, with the following members present, to-wit:

Lina Hidalgo	County Judge
Rodney Ellis	Commissioner, Precinct No. 1
Adrian Garcia	Commissioner, Precinct No. 2
Tom S. Ramsey, P.E.	Commissioner, Precinct No. 3
R. Jack Cagle	Commissioner, Precinct No. 4

and the following members absent, to-wit: _____ constituting a quorum, when among other business, the following was transacted:

ORDER AUTHORIZING EXECUTION OF AN INTERLOCAL AGREEMENT
 BETWEEN CITY OF DEER PARK AND
 THE HARRIS COUNTY FLOOD CONTROL DISTRICT

Commissioner _____ introduced an order and made a motion that the same be adopted. Commissioner _____ seconded the motion for adoption of the order. The motion, carrying with it the adoption of the order, prevailed by the following vote:

		Yes	No	Abstain
AYES:	Judge Lina Hidalgo	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
NAYS:	Comm. Rodney Ellis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ABSTENTIONS:	Comm. Adrian Garcia	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Comm. Tom S. Ramsey, P.E.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Comm. R. Jack Cagle	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The County Judge thereupon announced that the motion had duly and lawfully carried and that the order had been duly and lawfully adopted. The order thus adopted follows:

WHEREAS, it is to the mutual benefit of the City and the District to enter into this Agreement for the use and benefit of the public.

WHEREAS, the District is willing to “acquire the detention storage right-of-way, prepare the bid documents, permit, bid, design and construct” (“Scope”) the Project and

WHEREAS, the City desires to improve its storm sewer system drainage components and construct a detention basin for the College Park subdivision, hereinafter referred to as the “Project”, as shown in the attached Exhibit A; and

WHEREAS, the District's mission is to provide flood damage reduction projects that work, with appropriate regard for community and natural values, and desires to contribute to the Project to reduce the flood risk to City residents; and

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WHEREAS, the District is willing to contribute a maximum of THREE MILLION, TWO HUNDRED TWENTY-EIGHT THOUSAND, THREE HUNDRED FIFTY-TWO (\$3,228,352) ("District Contribution") toward the Total Project Cost; and

WHEREAS, it is to the mutual benefit of the City and the District to enter into this Agreement for the use and benefit of the public.

NOW, THEREFORE, BE IT ORDERED BY THE COMMISSIONERS COURT OF HARRIS COUNTY, TEXAS THAT:

Section 1: The recitals set forth in this order are true and correct.

Section 2: County Judge Lina Hidalgo is hereby authorized to execute for and on behalf of the Harris County Flood Control District, an Interlocal Agreement by and through the Harris County Flood Control District and the City of Deer Park, said Agreement being incorporated herein by reference for all purposes as though fully set forth verbatim herein.