



Legislation Text

File #: AGR 18-005, **Version:** 1

Consideration of and action on Amendment No. 2 to the interlocal agreement with the Harris County Flood Control District for the reconciliation of final costs of the property acquired for the Patrick's Bayou stormwater detention basin, and authorizing payment to HCFCD pursuant to the amendment.

Summary:

In 2008, after many years of studying alternatives to reduce the incidence of flooding in the north end of Deer Park, the HCFCD and the City of Deer Park entered into an Interlocal Agreement, dated July 8, 2008, to acquire property for construction of the Patrick's Bayou stormwater detention facility. HCFCD and the City of Deer Park contributed \$1,500,000 each toward the total cost of the acquisition of the property originally estimated at \$3,000,000.

The concept from the outset was that the two entities would share equally in the cost of the land purchase but that HCFCD would administer all aspects of the acquisition, including surveying, appraisal, legal, etc. Therefore, the interlocal agreement provided that HCFCD was responsible for coordinating preparation of field and environmental surveys and other activities necessary for acquisition of the Property; appraisal of the Property and proceeding with acquisition in its usual and customary fashion and in compliance with all applicable competitive bidding and property acquisition laws. In the event, the Property could not be acquired by voluntary sale and purchase, the agreement stated that HCFCD was to use its power of eminent domain (i.e. condemnation) to acquire the Property, in the names and on behalf of both parties (HCFCD and the City).

The property needed for construction of the stormwater detention basin was an approximate 42.8 acre tract owned by the H. Ben Taub Estate. Negotiations to purchase the property were unsuccessful, so, pursuant to the interlocal agreement and discussions with the City, HCFCD proceeded with condemnation proceedings. In 2010, HCFCD and the City of Deer Park amended the Interlocal Agreement, dated June 22, 2010, to increase the sum contributed by each to \$4,500,000, toward the new total cost estimated at \$9,000,000. On July 28, 2010 the Special Commissioners appointed by a judge to hear the condemnation case made an award in the amount of \$9,000,000 as just compensation. The amount of the award was deposited by HCFCD/City in the Court's Registry, thus establishing July 28, 2010 as the "date of taking" for purposes of determining just compensation at trial.

The case went to trial on September 4, 2014 in Harris County Civil Court at Law No. 2. On September 23, 2014 the jury returned a verdict of \$11,636,238 as the market value of the property as of the "date of taking." This amount exceeded the Special Commissioners Award by \$2,636,238. The property owner was also awarded "pre-judgement" interest in the amount of \$557,945.85 for the period of July 28, 2010 to October 21, 2014. Court costs were also assessed in the amount of \$53,678.64. Additional post judgement interest would have to be paid to the property owner if the judgement was not finalized as of October 21, 2014. The case was appealed to the 14th Court of Appeals and on August 25, 2016 the appeals court upheld the County Civil Court at Law No. 2's ruling. As such, post judgement interest in the amount of \$306,816.53 for the period of October 21,

2014 to August 25, 2016 became due.

Since the final judgement for acquiring the property and interest paid during the appeal process exceeds the total Project Cost of \$9,000,000 reflected in the Interlocal Agreement, as amended, it is proposed that the agreement be amended again to reflect the final cost share. The total Project Cost is now \$12,554,679.02 and HCFCD and Deer Park would pay each one-half (or \$1,777,339.51) of the remaining portion of the total. This makes total Maximum Contribution by each party of \$6,277,339.51 toward the total cost. HCFCD has already paid the full amount due so by approval of this amendment the City of Deer Park would reimburse HCFCD for the City's share of \$1,777,339.51 within 30 days. Within ninety (90) days after the date of HCFCD's receipt of Deer Park's payment, HCFCD shall take the necessary actions to finalize the ownership of the property in the names of both parties ((HCFCD and the City).

The costs are summarized below:

\$ 9,000,000.00	Amount of Special Commissioner's Award (July 28, 2010)
2,636,238.00	Additional compensation award by County Civil Court at Law No. 2 (S
557,945.85	Pre-judgement interest (Period of July 29, 2010 to October 21, 2014)
53,678.60	Court Costs in County Civil Court at Law No. 2 case
306,816.53	Post judgement interest (10/21/14 to 8/25/16) pending appeal
<u>\$12,554,679.02</u>	Total Land Acquisition Cost
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<u>(9,000,000.00)</u>	Amount already paid by HCFCD and City (\$4,500,000 each)
<u>\$ 3,554,679.02</u>	Total Balance Due (HCFCD + City)
<u>\$ 1,777,339.51</u>	City's 50% share of balance due

Fiscal/Budgetary Impact:

Funding is available in Fund 32 from the 2010 Certificates of Obligation for drainage for this expense.

Approve amendment No. 2 to the interlocal agreement with the Harris County Flood Control District and authorize payment pursuant to the amendment.