

INTERLOCAL AGREEMENT BETWEEN THE HARRIS COUNTY FLOOD CONTROL DISTRICT AND THE CITY OF LA PORTE, TEXAS

THE STATE OF TEXAS
COUNTY OF HARRIS

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KNOW ALL MEN BY THESE PRESENTS:

THIS AGREEMENT is made and entered into pursuant to the Interlocal Cooperation Act (TEX. GOV'T CODE ANN. Ch. 791) by and between the **Harris County Flood Control District**, a body corporate and politic under the laws of the State of Texas (the "District"), and the **City of La Porte, Texas**, a municipal corporation and home-rule municipality under the laws of the State of Texas, located in Harris County, Texas, acting by and through its City Council (the "City"). The District and the City are each a "Party" to this Agreement and may collectively be referred to herein as the "Parties." This Agreement shall become effective as of the date on which it has been executed by both Parties hereto.

RECITALS:

The District owns property within the City limits and proposes to design, construct, and maintain a channel and two off-site detention basins (the "Project") along existing HCFCD Unit F101-06-00, on District owned property located south of P Street, north of N L Street and east of Lomax School Road (the "Property"), more fully described in attached Exhibit A, incorporated herein for all purposes.

The completion of the Project will result in the reduction of regional flooding.

The City is willing to participate in the Project and to contribute a maximum sum toward the total cost of the Project (the "Maximum Contribution").

It is of mutual benefit to the City and the District to enter into and implement this Agreement in accordance with Texas Government Code Chapter 791.

NOW, THEREFORE, for and in consideration of the mutual covenants, agreements and benefits to the Parties herein named, the Parties agree as follows:

TERMS:

Article 1
Plans and Construction

- 1) The Project shall consist of the design, bidding, Right of Way ("ROW") acquisition, and construction of channel improvements and construction of two detention basins (the "Work") along the F101-06-00 channel on the Property to reduce regional flooding.
- 2) Property Acquisition
 - a. Additional ROW must be acquired for construction of the two detention basins planned as part of the Project. The District, through the Harris County Real Property Division, will be responsible for the acquisition of the ROW.

- b. The cost of the acquired ROW is considered part of the Project Total Cost and will be shared between the Parties as described in Article 3 below
 - c. The detention basins are currently expected to provide approximately 39.2 acre-feet of storage volume, which is the necessary mitigation for the channel improvement work under the Project.
 - i. Should the City wish to acquire detention volume in the planned basins, the City may contribute additional funding to the acquisition cost of the ROW.
 - ii. Should the City choose not to contribute to the acquisition cost of the ROW, the entirety of the storage volume will belong to the District upon Project completion.
- 3) The District acknowledges that the City will not issue permits for the construction of the Project, and the District may not commence the construction of the Project, until the District has provided to the City sufficient documentation necessary to demonstrate to the Director of City of La Porte Public Works' (the "City Director") satisfaction that the Project will mitigate the impact of the storm water, and the Impact Analysis has been approved in writing by the City Director or their designee, whose approval shall not be unreasonably withheld or delayed.
 - 4) The District shall coordinate preparation of construction plans and specifications and administer bidding, construction, inspection, materials testing, and surveying for the Project. The District shall submit plans to the City for review and comment. The District acknowledges that the City will not issue permits for the construction of the Project, and the District may not commence the construction of the Project, until the District's Plans have been approved in writing by the City Director or their designee, whose approval shall not be unreasonably withheld or delayed.
 - 5) Upon commencement of the Work, the City shall have the right to access the Property at any time and shall have access to all related documents relevant to the construction of the Project, including, but not limited to, relevant drawings, specifications, agreements, permits, approvals, permissions, letters, denials, and any other relevant documents and correspondence, in order to verify that the Project is being constructed in compliance with this Agreement. Provided, however, that in conducting such investigations and/or inspections, the City shall not interfere with the work in progress. If, at any point during the Work, the City reasonably finds that the Work is not being undertaken in a manner that is compliant with the terms of this Agreement or any agreements, permits, approvals, or permissions issued by the City pursuant hereto, the City shall have the right to exercise any of the options provided in Article 4. It is expressly understood that the District shall be solely responsible for the maintenance of the Project and the Work during construction activities.

Article 2
Insurance

- 1) In connection with any work to be performed on the Property under this Agreement, the District shall require that each contractor for the Project provide those levels of insurance customary for the size and kind of facility contemplated prior to the contractor's entry onto the Property. All insurance policies, except Workers' Compensation, must name the City and the District as

additional insureds. Each policy must also contain an endorsement to the effect that the issuer waives any rights of subrogation against the City and the District, their officers, agents, or employees, and that it shall give at least forty-five (45) days' written notice to the City and the District before the policy may be canceled, materially changed, or non-renewed. The District shall require contractors performing Work on the Property under this Agreement to submit good and sufficient statutory payment and performance bonds as required by law.

- 2) The District will cause to be inserted in the contract for any contractor performing work on the Property under this Agreement an agreement that the contractor will indemnify, defend, protect, covenant not to sue, release, and save and hold harmless the City and the District 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.

Article 3 **Funding**

- 1) The Project will consist of channel work and the creation of approximately 39.2 acre-feet of storage and the total estimated cost of the Project is currently \$8,416,192.00. This estimate includes, but is not limited to, ROW acquisition cost and expenses; utility relocation expenses; costs and expenses for design, construction, permits, and inspections and testing; costs of engineering consultants for services performed for construction of the Project, including survey work; preliminary and final design of the Project; construction phase engineering; inspection and construction management of the Project; and construction of the Work.
 - a. District's Maximum Contribution: The District will contribute and be responsible for seventy-five percent (75%) of the total Project Costs (the "District's Maximum Contribution"). Based on the Current estimate, the District shall be responsible for Six Million Three Hundred Twelve Thousand One Hundred Forty-Four and No/100 Dollars (\$6,312,144.00).
 - b. City's Maximum Contribution: The City will contribute and be responsible for twenty-five percent (25%) of the total Project Costs (the "City's Maximum Contribution"). Based on the current estimate, the City shall be responsible for Two Million One Hundred Thousand Forty-Eight and No/100 Dollars (\$2,104,048.00).
- 2) Within forty-five (45) days after the execution of this Agreement, the City shall pay by check the full amount of its **estimated City** Maximum Contribution (\$2,104,048.00) to the District.
- 3) Upon receipt of the **estimated** City Maximum Contribution, the District shall begin the procurement necessary to award the bid and/or authorize commencement of design of the Project.
- 4) Within forty-five (45) days after completion of the Project, the District will provide the City with an accounting report that itemizes the Project Costs funded by the City's Maximum Contribution. In the event that the actual total Project Cost is less than the estimated Project Cost of \$8,416,192.00, the District shall, as soon as reasonably possible but in no event more than 180 days, reimburse the City for any funds due to the City in an amount equal to the difference between the City's **estimated Project Cost payment of Two Million One Hundred Four Thousand, Forty-Eight and No/100 Dollars (\$2,104,048.00)** and the amount that is equal

to the City's share of the actual total Project cost. In the event that actual Project Costs exceed the \$8,416,912.00 estimated Project Costs, the District shall invoice the City for its remaining **twenty-five (25%)** share of Project Costs, and the City shall, as soon as reasonably possible but in no event more than 180 days, pay the additional funds required by the City's Maximum Contribution. **However, in such event the City's obligation to pay any additional funds required by the City's Maximum Contribution shall not exceed ten percent (10%) of the City's contribution of Two Million One Hundred Four Thousand, Forty-Eight and No/100 Dollars (\$2,104,048.00) for its share of estimated Project Costs.**

- 5) Within ninety (90) days after completion of the Project, the District shall deliver to the City's Director Record Drawings for the Project.
- 6) The District has not specifically allocated any funds for the purpose of meeting its obligations hereunder. The District may, but shall not be obligated to, encumber funds from time to time for the purpose of meetings meeting its obligations hereunder.

Article 4
Termination

- 1) This Agreement shall terminate upon delivery by the District of the Record Drawings for the Project to the City's Director or payment of trued up costs under the final accounting report, whichever is later. Upon termination of the Agreement, the District shall be solely responsible for maintenance of the Project.
- 2) In the event either Party fails to perform any of its obligations as described herein after commencement of construction activities (the "Breaching Party"), the non-breaching Party shall notify the Breaching Party in writing of the failure to perform and allow forty-five (45) days with which the Breaching Party may cure; days attributable to force majeure shall not be counted toward the time to cure. If the Breaching Party does not cure the failed performance within the time specified, the non-breaching Party may terminate this Agreement, which termination shall take effect immediately upon receipt of notice to the Breaching Party. In the instance where District is the Breaching Party and fails to cure after the forty-five (45) day period, City shall be entitled to refund of the unused portion of the City's Maximum Contribution within sixty (60) days.

Article 5
Storage Volume

The District reserves to itself, in perpetuity, 39.2 acre-feet of storage volume within the Project, subject to a pro-rata reduction of storage volume in the event of an increase in the City's Maximum Contribution pursuant to Article 3 hereof.

Article 6
Notice

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

The District: Harris County Flood Control District
9900 Northwest Freeway
Houston, Texas 77092

Attention: Executive Director

The City: City of La Porte, Texas
604 Fairmont Parkway
La Porte Texas, 77571
Attention: City Manager

Notice shall be deemed delivered on the earlier of the date of actual receipt or the third day following deposit in the United States mail as described above or at such other address as the receiving Party may have prescribed by written notice to the sending party at least fourteen (14) days prior.

Article 7 Public Information

The Parties will endeavor to give each other at least 72-hours-notice of release of information regarding the Project in situations such as press releases, Texas Public Information Act requests, and community organization presentations; however, this article shall have no application to any release of information based upon approval of this Agreement or any amendment thereto by the governing bodies of the Parties.

Article 8 Miscellaneous

- 1) The recitals set forth in this Agreement are, by reference, incorporated into and deemed a material part of this Agreement.
- 2) When terms are used in the singular or plural, the meaning shall apply to both. When either the male or female gender is used, the meaning shall apply to both.
- 3) The captions used herein are for convenience only and do not control or affect the meaning or construction of this Agreement.
- 4) Each and every agreement contained in this Agreement is, and shall be construed as, a separate and independent agreement. If any provision of this Agreement should be held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby.
- 5) One or more waivers of any covenant, term, or condition of this Agreement by either Party shall not be construed as a waiver of a subsequent breach of the same covenant, term, or condition. The consent or approval by either Party shall not be construed as a waiver of a subsequent breach of the same covenant, term, or condition. The consent or approval by either Party to or of any act by the other Party requiring such consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.
- 6) *Force Majeure*. In the event that either Party is unable to perform any of its obligations under the Agreement or to enjoy any of the benefits because of natural disaster, actions or decrees of governmental bodies or communications line failure not the fault of the affected Party (referred to as a "*Force Majeure* Event"), the Party who has been so affected immediately agrees to give notice to the other Party and agrees to do everything possible to resume performance.

- 7) All remedies of the Parties under this Agreement are cumulative, and the election of any remedy by a Party shall not foreclose that Party from pursuing any other equitable or legal remedy.
- 8) This Agreement is not intended to and shall not create a joint enterprise between the City and the District. It is understood and agreed that the District and District's personnel shall not be considered employees, agents, partners, joint venturers, or servants of the City. It is also understood and agreed that the City and the City's personnel shall not be considered employees, agents, partners, joint venturers, or servants of the District.
- 9) The Parties are undertaking governmental functions or services under this Agreement and the purpose hereof is solely to further the public good, rather than any pecuniary purpose. The District shall have a superior right to control the direction and management of the Project and the responsibility for day-to-day management and control of such work, except as may otherwise expressly be provided herein.
- 10) Notwithstanding anything contained in the Agreement to the contrary, it is expressly understood and agreed that in the execution of this Agreement, neither Party waives nor shall be deemed to waive any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions.
- 11) This Agreement shall be construed and interpreted in accordance with the applicable laws of the State of Texas and City of La Porte. Venue for any disputes relating in any way to this Contract shall lie exclusively in Harris County, Texas.
- 12) Neither Party hereto shall make, in whole or in part, any assignment of this Agreement or any obligation hereunder without the prior written consent of the other Party. 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 both Parties hereto. Each Party warrants that the undersigned is a duly authorized representative with the power to execute the Agreement.
- 13) Should any provision of this Agreement require judicial interpretation, the Parties hereto stipulate that the court interpreting or considering the same shall not apply the presumption that the terms hereof shall be more strictly construed against a Party by reason of any rule or conclusion that a document should be construed more strictly against the Party who prepared the same, it being agreed that all Parties hereto have participated in the preparation of this Agreement and that each Party had full opportunity to consult legal counsel of its choice before the execution of this Agreement.
- 14) The Parties have executed this Agreement in multiple copies, each of which is an original. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms. The Parties hereby agree that each Party may sign and deliver this Agreement electronically or by electronic means and that an electronic transmittal of a signature, including but not

limited to, a scanned signature page, will be as good, binding, and effective as an original signature.

IN WITNESS WHEREOF, the Parties have executed this Agreement on

_____, 2024.

APPROVED AS TO FORM

CHRISTIAN D. MENEFEE
Harris County Attorney

HARRIS COUNTY FLOOD CONTROL
DISTRICT

By: _____
EMILY KUNST
Assistant County Attorney

By: _____
LINA HIDALGO
County Judge

APPROVED AS TO FORM:

CITY OF LA PORTE, TEXAS

By: _____
City Attorney
LD#: _____

By: _____
RICK HELTON
Mayor

ATTEST/SEAL:

By: _____
LEE WOODWARD
City Secretary

By: _____
CORBY ALEXANDER
City Manager

DATE COUNTERSIGNED:

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 all members present except _____.

A quorum was present. Among other business, the following was transacted:

**ORDER AUTHORIZING EXECUTION OF INTERLOCAL AGREEMENT BETWEEN
 THE HARRIS COUNTY FLOOD CONTROL DISTRICT AND
 THE CITY OF LA PORTE, TEXAS**

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. Lesley Briones	<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:

The District owns property within the City limits and proposes to design, construct, and maintain a channel and two off-site detention basins (the "Project") along existing HCFCD Unit F101-06-00, on District owned property located south of P Street, north of N L Street and east of Lomax School Road (the "Property"), more fully described in attached Exhibit A, incorporated herein for all purposes.

The completion of the Project will result in the reduction of regional flooding.

The City is willing to participate in the Project and to contribute a maximum sum toward the total cost of the Project (the "Maximum Contribution").

It is of mutual benefit to the City and the District to enter into and implement this Agreement in accordance with Texas Government Code Chapter 791.

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 Agreement by and

between the Harris County Flood Control District and the City of La Porte, Texas, said Agreement being incorporated herein by reference for all purposes as though fully set forth verbatim herein.

Section 3: All Harris County and Harris County Flood Control District officials and employees are authorized to any and all things necessary or convenient to accomplish the purposes of this order.