

C 7.8378
2020-0286

INTERLOCAL AGREEMENT

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

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), and executed by and between the City of Houston, a municipal corporation and home-rule city of the State of Texas, principally situated in Harris County, acting by and through its City Council (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 "HCFCDD"). HCFCDD and the City are individually referred to herein sometimes as a "Party," and they are collectively referred to herein sometimes as the "Parties."

WITNESSETH:

WHEREAS, the Parties share overlapping jurisdiction for planning, implementing and maintaining flood damage reduction and drainage infrastructure where the District's expertise lies in the design, construction, modification and maintenance of primary drainage systems such as channels and detention basins, and the City has expertise in the design, construction and maintenance of storm sewers and street drainage for these systems; and

WHEREAS, in the course of performing drainage and flood control responsibilities, each Party has acquired ownership of real property and drainage infrastructure more appropriate to the other Party's primary flood damage reduction tools, and each Party now desires to exchange ownership of and responsibility for such facilities, subject to and in compliance with this Agreement, to increase the efficiency and effectiveness of its flood control and drainage responsibilities; and

WHEREAS, the District has determined that exchanging such facilities and real property interests with the City under the terms and conditions herein is necessary and advantageous to the District, and is authorized by Texas Water Code § 49.226; and

WHEREAS, the City has determined that exchanging such facilities and real property interests with the District will benefit the public interest of the City and the terms and conditions herein will effect and maintain its public purpose, as authorized by Texas Local Government Code § 272.001; and

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

I.
Procedure for Exchange

The Parties agree that, from time to time throughout the term of this Agreement, each Party may propose a certain drainage facility located upon a real property interest held by the general public or held by the Party as an appropriate candidate for exchange under this Agreement. The Parties will establish a procedure, in a writing signed by the Executive Director of the District and the Director of Houston Public Works, or their designees named as provided herein, describing the steps leading to the exchange of ownership of and maintenance responsibility for each proposed drainage facility and any real property interest held by a Party in the real property upon which the drainage facility is located. The Parties may make amendments to the established procedure on a yearly basis in the same manner, without amendment to this Agreement. The procedure will set forth how such proposed facilities or properties will be rejected or selected for further action; the rights and responsibilities for providing and sharing surveys, removing encroachments, conducting inspections, and paying associated costs to further investigate those selected drainage facilities and properties; and the steps to effectuate and memorialize final acceptance of drainage facilities and for conveyance and acceptance of any related real property interests. Both Parties may agree to minor deviations from the established procedure as needed to carry out the intent of this Agreement without formal amendment to the procedure. If, and to the extent that, the established procedure conflicts with this Agreement, this Agreement shall control.

Once a drainage facility is selected for further action, the Parties will work cooperatively and diligently to move the facility through each step of the established procedure to final acceptance. Each Party has the discretion to reject a facility at any step in the process prior to final acceptance. The Parties will periodically create a written list of one or more drainage facilities for final acceptance of ownership and maintenance responsibility, approved for placement on the list by the accepting Party after investigation and inspection according to the established procedure, that includes a description of the facility by type and geographic location sufficient to locate the facility on the ground.

Final acceptance of the listed drainage facility or facilities located on a real property interest held by the general public shall be conclusively established by the signature of the authorized representative of the accepting Party manifesting acceptance of the listed drainage facility or facilities. The Parties hereby agree that the Executive Director of the District or his designee has the authority to bind the District, and the Director of Houston Public Works or his designee has the authority to bind the City for final acceptance of a drainage facility, and for approval of the instruments necessary to convey related real property interests. Respective designees, if any, will be named, and may be changed from time to time, in a writing signed by the Executive Director of the District or the Director of Houston Public Works.

Final acceptance of the listed drainage facility or facilities located on a real property interest held by a Party requires both (i) the signature of the authorized representative of the accepting Party manifesting acceptance of the listed drainage facility or facilities and (ii) conveyance by the owning Party and acceptance by the accepting Party of the owning Party's full real property interest. Conveyance of real property interests shall be accomplished according to law and in a separate granting instrument. Execution,

recordation, and delivery of a deed by the owning Party to the accepting Party according to the notice provision herein conclusively establishes acceptance by the accepting Party of the real property conveyed.

II. Party Obligations

Upon final acceptance by a Party, as set forth in the procedure described above, the granting Party has no further obligations concerning the granted drainage facility or related real property and is forever released from and relieved of any responsibility or liability therefor. The accepting Party accepts full ownership of the accepted drainage facility and any related real property interests conveyed, and binds itself to all responsibilities inherent in such ownership. All initial costs to make any repairs necessary to bring an accepted drainage facility and property into compliance with the accepting Party's standard criteria and all costs to maintain the facility and property in perpetuity shall be borne by the accepting Party, at its discretion and to the same extent and in a like manner as similar facilities within that Party's jurisdiction and care.

The District has not specifically allocated any funds for the purpose of meeting its obligations hereunder; however, the District may appropriate funds from time to time as necessary to perform its obligations hereunder. In the event the District shall fail or refuse to appropriate or expend funds necessary to perform any obligation hereunder, the sole remedy of the City shall be to terminate this Agreement. Notwithstanding this or any other provision of this Agreement, under no circumstances will the District be obligated under this Agreement to appropriate or expend any funds for or in the performance of this Agreement.

It is expressly understood and agreed by the Parties that the City has not appropriated funds to fulfill an obligation created by the terms of this Agreement; provided further, however, that the City may, but shall not be obligated to, from time to time budget and appropriate funds to fulfill any obligation created hereunder. In that event, the City shall make best efforts to obtain an Appropriation (defined herein) of funds in amounts sufficient to fulfill an obligation under this Agreement as the obligation arises, and shall use all reasonable and lawful means to secure the Appropriation. "Appropriation" means with respect to any payment obligation or other monetary obligation of the City that may from time to time exist or arise under this Agreement during a fiscal year, the approval and setting aside by the City of an adequate amount of funds to satisfy the payment obligation or other monetary obligation of the City. In the event an Appropriation is not obtained by the City in an amount sufficient to fulfill a payment obligation arising under this Agreement, the City shall use its best efforts to satisfy any requirements for payments or contributions of funds under this Agreement from any other source of funds legally available for this purpose. Provided, however, that nothing herein shall constitute a pledge by the City of any funds, other than funds designated pursuant to a lawful Appropriation from time to time, to pay any money or satisfy any other obligation under any provision of this Agreement. No provision of this Agreement shall be construed to be an obligation of the City to obtain an Appropriation or an obligation constituting indebtedness.

All obligations of the Parties created by the terms of this Agreement are subject to the terms of this Section.

III.
Termination

Either Party may terminate this contract, without cause, by sending written Notice of Termination to the other Party at least thirty (30) days prior to the date of termination.

Termination shall have no effect on the conveyances and acceptances completed prior to such termination date, and the rights and responsibilities thus transferred shall survive termination.

IV.
Notices

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

Director of Houston Public Works
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

And with a copy to:

City of Houston
611 Walker, 20th Floor
Houston, Texas 77002
Attn: Tanu Hiremath

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
9900 Northwest Freeway
Houston, Texas 77092
Attn: Executive Director

Notice may also be effectuated to either Party by electronic mail for purposes other than Notice of Termination (Notice of Termination must be sent as provided above), to the following electronic mail addresses:

To the District: russ.poppe@hcfcd.hctx.net

To the City: carol.haddock@houstontx.gov

V.
Miscellaneous

No Party 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.

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.

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.

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.

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.

This Agreement shall be construed and interpreted in accordance with the applicable laws of the State of Texas and City of Houston. Venue for any disputes relating in any way to this Agreement shall lie exclusively in Harris County, Texas.

EXECUTED in triplicate originals _____ (Effective Date).

APPROVED AS TO FORM:


VINCE RYAN
Harris County Attorney

HARRIS COUNTY FLOOD CONTROL
DISTRICT

By 
MITZI TURNER
Assistant County Attorney

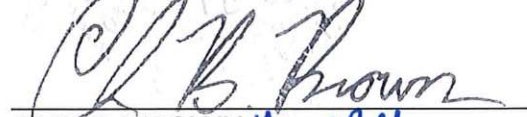
By _____
LINA HIDALGO
County Judge

ATTEST/SEAL:



City Secretary **Assistant**

COUNTERSIGNED:



CHRIS BROWN *General*
City Controller

DATE COUNTERSIGNED: 4-6-2020

APPROVED:



CAROL HADDOCK, P.E.

CITY OF HOUSTON



SYLVESTER TURNER

Mayor

Armonda Washington 4-1-2020

APPROVED AS TO FORM:



HOLLAND S. BANKS
Assistant City Attorney

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
Steve Radack	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 THE HARRIS COUNTY FLOOD CONTROL DISTRICT
 AND THE CITY OF HOUSTON**

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. Steve Radack	<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, the Parties share overlapping jurisdiction for planning, implementing and maintaining flood damage reduction and drainage infrastructure where the District's expertise lies in the design, construction, modification and maintenance of primary drainage systems such as channels and detention basins, and the City has expertise in the design, construction and maintenance of storm sewers and street drainage for these systems; and

WHEREAS, in the course of performing drainage and flood control responsibilities, each Party has acquired ownership of real property and drainage infrastructure more appropriate to the other Party's primary flood damage reduction tools, and each Party now desires to exchange ownership of and responsibility for such facilities, subject to and

in compliance with this Agreement, to increase the efficiency and effectiveness of its flood control and drainage responsibilities; and

WHEREAS, the District has determined that exchanging such facilities and real property interests with the City under the terms and conditions herein is necessary and advantageous to the District, and is authorized by Texas Water Code § 49.226; and

WHEREAS, the City has determined that exchanging such facilities and real property interests with the District will benefit the public interest of the City and the terms and conditions herein will effect and maintain its public purpose, as authorized by Texas Local Government Code § 272.001; and

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 Houston, authorizing the District, in cooperation with the City, to establish a procedure to exchange ownership of and maintenance responsibility for certain properties and drainage facilities, thereby increasing the efficiency and effectiveness of flood control and drainage services in Harris County, with no funds required by the District, said Agreement being incorporated herein by reference for all purposes as though fully set forth verbatim herein.



CITY OF HOUSTON - CITY COUNCIL

Meeting Date:

ALL

Item Creation Date: 2/27/2020

HPW – 20SWM19 Interlocal Agreement between the City of Houston and Harris County Flood Control District for the Asset Exchange Program

Agenda Item#:

Background:

SUBJECT: Interlocal Agreement between the City of Houston and Harris County Flood Control District for the Asset Exchange Program.

RECOMMENDATION: Adopt an ordinance approving and authorizing an Interlocal Agreement between the City of Houston and Harris County Flood Control District.

PROJECT NOTICE/JUSTIFICATION: This program consists of sharing overlapping jurisdiction for planning, implementing and maintaining flood damage reduction and drainage infrastructure where the Harris County Flood Control District has expertise in the design, construction, and maintenance of open channels and detention basins and the City of Houston has expertise in the design, construction and maintenance of enclosed channels and storm sewer systems. The City of Houston has determined that the exchange of drainage infrastructure and real property interest with the Harris County Flood Control District will benefit the public interest of the City of Houston and help with effectively maintaining its public purpose.

DESCRIPTION: The City of Houston will transfer selected open channels to Harris County Flood Control District for future ownership and maintenance. In exchange the City of Houston will accept selected enclosed channels (storm sewer system) for future ownership and maintenance.

LOCATION: The program will be located throughout the City of Houston.

SCOPE OF THE AGREEMENT AND FEE: The agreement between the City of Houston and Harris County Flood Control District is to initiate a program to exchange ownership and maintenance responsibility for drainage infrastructure based on which Party has the resources and expertise needed to maintain each type of drainage infrastructure. The Harris County Flood Control District has expertise in maintaining open channels and therefore under this agreement the City of Houston will transfer to Harris County Flood Control District, the ownership and maintenance responsibility of selected channels, as agreed by Harris County Flood Control District. The City has expertise in maintaining storm sewer systems and therefore Harris County Flood Control District will transfer to the City of Houston selected enclosed channels or storm sewer systems, as agreed by the City of Houston. All initial cost to make any repairs necessary to bring an accepted drainage infrastructure and property into compliance with the accepting Party's standard criteria and all costs to maintain the drainage infrastructure and property in perpetuity shall be borne by the accepting Party. Under no circumstances will the City of Houston nor Harris County Flood Control District be obligated to appropriate or expend any funds for or in the performance of this Agreement.

ACTION RECOMMENDED: It is recommended that City Council adopt an ordinance approving and authorizing an Interlocal Agreement to facilitate exchange of ownership of drainage infrastructure and associated real property between the City of Houston and Harris County Flood Control District.

DocuSigned by:

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Carol Ellinger Haddock, P.E., Director
Houston Public Works

Contact Information:

Johana Clark, P.E., PTOE
Senior Assistant Director, Transportation and Drainage Operations
Phone: (832) 395-2274

ATTACHMENTS:

Description	Type
Maps	Backup Material
Interlocal Agreement Between HCFCD and COH	Backup Material
HCFCD and COH Storm Sewer and Channel Exchange Process	Backup Material