

Controller's Office

To the Honorable Mayor and City Council of the City of Houston, Texas:

I hereby certify, with respect to the money required for the contract, agreement, obligation or expenditure contemplated by the ordinance set out below that:

- ( ) Funds have been encumbered out of funds previously appropriated for such purpose.
- ( ) Funds have been certified and designated to be appropriated by separate ordinance to be approved prior to the approval of the ordinance set out below.
- ( ) Funds will be available out of current or general revenue prior to the maturity of any such obligation.
- ( ) No pecuniary obligation is to be incurred as a result of approving the ordinance set out below.
- ( ) The money required for the expenditure or expenditures specified below is in the treasury, in the fund or funds specified below, and is not appropriated for any other purposes.
- ( ) A certificate with respect to the money required for the expenditure or expenditures specified below is attached hereto and incorporated herein by this reference.
- (x) Other - Grant Funds Available

*Cliff Brown*  
General Mgr

City Controller of the City of Houston, Texas

Date: 1-28, 2020

5303-6400 520132

\$ 6,000,000.00

FUND REF: ✓ ✓ ✓ AMOUNT: - ✓ ENCUMB. NO.: RF20189-20

City of Houston, Texas Ordinance No. 2020-76

AN ORDINANCE APPROVING AND AUTHORIZING AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF HOUSTON, TEXAS AND HARRIS COUNTY TO REMOVE SILT AND SEDIMENT FROM LAKE HOUSTON; CONTAINING PROVISIONS RELATING TO THE SUBJECT; AND DECLARING AN EMERGENCY.

\* \* \* \*

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS**

Section 1. The City Council hereby approves and authorizes the contract, agreement or other undertaking described in the title of this Ordinance, in substantially the form as shown in the document which is attached hereto and incorporated herein by this reference. The Mayor, or, in the absence of the Mayor, the Mayor Pro-Tem is hereby authorized to execute such document and all related documents on behalf of the City of Houston. The City Secretary, or in the absence of the City Secretary, any Assistant City Secretary is hereby authorized to attest to all such signatures and to affix the seal of the City to all such documents.

Section 2. The Mayor is hereby authorized to take all actions necessary to effectuate the City's intent and objectives in approving such agreements or other undertaking described in the title of this ordinance, in the event of changed circumstances.

Section 3. The City Attorney is hereby authorized to take all action necessary to enforce all legal obligations under said contract without further authorization from Council.

Section 4. There exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor; however, in the event that the Mayor fails to sign this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this 29<sup>th</sup> day of January, 2020.

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Mayor of the City of Houston, Texas

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is FEB 04 2020.

At J. Horner  
City Secretary **Assistant**

Prepared by Legal Dept. J. Swanson  
(JN:yjs 01-09-2020) Senior Assistant City Attorney  
(Requested by Harry Hayes, Director, Solid Waste Management Department)  
(L.D. File No. 0741800060003)

CAPTION PUBLISHED IN DAILY COURT  
REVIEW  
DATE: FEB 04 2020

AYE	NO	
✓		<b>MAYOR TURNER</b>
••••	••••	<b>COUNCIL MEMBERS</b>
✓		PECK
	<b>ABSENT</b>	DAVIS
✓		KAMIN
✓		EVANS-SHABAZZ
✓		MARTIN
✓		THOMAS
✓		TRAVIS
✓		CISNEROS
✓		GALLEGOS
✓		POLLARD
✓		MARTHA CASTEX-TATUM
✓		KNOX
✓		ROBINSON
✓		KUBOSH
✓		PLUMMER
✓		ALCORN
<b>CAPTION</b>	<b>ADOPTED</b>	

**THE STATE OF TEXAS** §  
  §  
**COUNTY OF HARRIS** §

**INTERLOCAL AGREEMENT**

THIS AGREEMENT (“Agreement”), effective when signed by all Parties (“Effective Date”), is made and entered into pursuant to the Interlocal Cooperation Act (Tex. Gov’t. Code Ann. §§791.001, et seq., by and between the **CITY OF HOUSTON**, a home rule city of the State of Texas (“City” or “Subrecipient”) and **HARRIS COUNTY, TEXAS**, a body corporate and politic under the laws of the State of Texas (“County”) (herein referred to individually as the “Party” and collectively as the “Parties”).

**RECITALS:**

**WHEREAS**, the State of Texas has appropriated \$365 million from the Texas infrastructure resiliency fund to the Texas Water Development Board (“TWDB”) to provide matching funds for projects sponsored by municipalities and counties in Texas and approved for the Public Assistance grant program administered by the Federal Emergency Management Agency (“FEMA”); and

**WHEREAS**, the Texas Legislature reserved \$30 million of the TWDB appropriation to provide a grant to Harris County to remove accumulated silt and sediment deposits located at the confluence of the San Jacinto River and Lake Houston (“Grant money”); and

**WHEREAS**, the Parties desire to remove the silt and sediment accumulation in Lake Houston and major tributaries as shown on attached Exhibit A to facilitate flood control and to increase the drinking water capacity of Lake Houston (“Project”); and

**WHEREAS**, the Project will consist of two phases: Phase One will remove accumulated materials near and at the mouth bar on the west fork of the San Jacinto River; Phase Two will remove accumulated materials in the West Fork and East Fork of the San Jacinto River and other locations in Lake Houston; and

**WHEREAS**, the County will designate the City as a Subrecipient of the \$30 million in Grant money; and the City will contribute \$6 million toward Phase One of the Project, manage the entire Project and assume all long-term dredging operations on Lake Houston; and

**WHEREAS**, the City, in its sole discretion, will determine how to execute the Project.

NOW, THEREFORE, in consideration of the mutual covenants, agreements, and benefits to the Parties, and consistent with the responsibilities and duties of each to protect the public health and safety of City and County residents, the Parties agree as follows:

## **TERMS**

### **I. MANAGEMENT**

- 1.1. The purpose of this Agreement is to remove sediment and accumulated materials to facilitate flood control and to increase the drinking water capacity of Lake Houston, therefore, benefitting both Parties. Overall management and direction of the Project under this Agreement is assigned to the City's Director of Public Works or his or her designee (the "Director"). The Director is authorized to approve and direct the provision of services under this Agreement, except where, by City Charter or state law, the City Council is required to act on behalf of the City.
- 1.2. The City shall give notice to a consultant to undertake and complete the Scope of Services for the Project, which has been divided into two phases and is depicted on attached Exhibit A: In Phase One, accumulated materials near and at the mouth bar on the west fork of the San Jacinto River will be removed. In Phase Two, accumulated materials in the West Fork of the San Jacinto River, East Fork of the San Jacinto River and other locations in Lake Houston will be removed. The City and its consultants shall follow all requirements of the grant program and all applicable local, state and federal requirements, including environmental compliance requirements in conducting activities pursuant to this Agreement.
- 1.3. The City shall provide weekly progress reports of its activities pursuant to this Agreement, including amount of sediment removed and locations, to the County by sending an email as set out in paragraph VI below.

### **II. PAYMENT**

- 2.1 The City will contribute \$6 million and the County will provide \$10 million of the Grant money to be used by the City as Subrecipient for Phase 1 of the Project, which includes dredging operations to remove an estimated minimum of 400,000 cubic yards of material on the west fork of the San Jacinto River. The County will set up a separate account dedicated to the Grant and pay the City monthly after the County reviews and approves each invoice.
- 2.2 The City agrees to pay the Contractor after completion and acceptance of the work specified in each work order for silt and sediment removal services after receipt of an invoice that includes an amount based upon the unit pricing detailed in the respective contracts. The City will send the receipts to the County by email as provided in paragraph VI below. The County will have fifteen (15) calendar days to review and approve the invoices for conformance to Grant requirements.
- 2.3 During Phase One of the Project, the County will request \$20 million of the remaining available Grant money be placed in the separate account to pay to the City as Subrecipient based on approved invoices for the City to complete hydrographic surveys of the East and

West Forks of the San Jacinto River and Lake Houston and to bid out a dredging contract for work in these areas.

- 2.4 In accordance with Tex. Gov't Code § 791.011(d)(3), each Party to this Agreement warrants that all payments required under this Agreement will be made from current revenues available to the paying Party.

### **III. TERM AND TERMINATION**

- 3.1 This Agreement shall commence upon the date executed by the Parties and expire upon the date that dredging and sediment removal operations are deemed completed or otherwise terminated based on a determination by the City and the County that the threat to the public health and safety has been sufficiently addressed.
- 3.2 Any Party may terminate this Agreement at any time by giving the other Parties thirty (30) days' written notice.
- 3.3 The obligations, including financial obligations, of each Party arising prior to any termination, or that expressly or by their nature extend beyond the expiration or termination of this Agreement, shall survive termination.

### **IV. NO PERSONAL LIABILITY; NO WAIVER OF IMMUNITY**

- 4.1 Nothing in this Agreement shall be construed as creating any personal liability on the part of any officer, director, employee, or agent of any public body that may be a Party to the Agreement, and the Parties expressly agree that the execution of the Agreement does not create any personal liability on the part of any officer, director, employee, or agent of the Parties.
- 4.2 The Parties agree that no provision of this Agreement extends any Party's liability beyond the liability provided in the Texas Constitution and the laws of the State of Texas.
- 4.3 Neither the execution of this Agreement nor any other conduct of any Party relating to this Agreement shall be considered a waiver by any Party of any right, defense, or immunity on behalf of any Party, its employees or agents, under the Texas Constitution or the laws of the State of Texas. It is understood that the City and the County are independent governmental entities and do not have the authority to bind the other or to act as agent for the other. 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.

### **V. INDEPENDENT PARTIES**

- 5.1 It is expressly understood and agreed by the Parties that nothing contained in this Agreement shall be construed to constitute or create a joint venture, partnership,

association or other affiliation or like relationship between the Parties, it being specifically agreed that their relationship is and shall remain that of independent parties to a contractual relationship as set forth in this Agreement. It is further expressly understood and agreed by the Parties that the County and the County's personnel shall not be considered employees, agents, partners, joint venturers, or servants of the City. The Party undertaking work under this Agreement shall have a superior right to control the direction and management of such work and the responsibility for day-to-day management and control of such work except as may otherwise expressly be provided herein.

## VI. NOTICES

- 6.1 All notices required to be given under this Agreement, other than weekly reports as set out below, shall be duly served upon personal delivery to the addresses below, or by when mailed by certified mail, return receipt requested, addressed to the City or County at the following addresses:

City: City of Houston  
611 Walker, 12<sup>th</sup> Floor  
Houston, Texas 77002  
Attn: Director Solid Waste Management  
Email: [Harry.Hayes22@houstontx.gov](mailto:Harry.Hayes22@houstontx.gov)

County: Office of the County Engineer  
1001 Preston, 5<sup>th</sup> floor  
Houston, Texas 77002  
Attn: John Blount, P.E.  
Email: [John.blount@eng.hctx.net](mailto:John.blount@eng.hctx.net)

- 6.2 Any Notice given hereunder is deemed given upon hand delivery or three (3) days after the date of deposit in the United States Mail.
- 6.3 Each Party shall have the right to change its respective address by giving at least fifteen (15) days' written notice of such change to the other Parties.
- 6.4 Other communications, except for Notices required under this Agreement, may be sent by electronic means or in the same manner as Notices described herein.

## VII. COVENANT NOT TO SUE, INDEMNIFICATION AND RELEASE

- 7.1 **BOTH PARTIES COVENANT NOT TO SUE AND AGREE TO RELEASE THE OTHER PARTY, ITS AGENTS, OFFICERS, CONTRACTORS, SERVANTS, EMPLOYEES, REPRESENTATIVES, LICENSEES, AND INVITEES FROM AND AGAINST ANY AND ALL LOSSES, LIABILITY, CLAIMS, DEMANDS, FINES, COSTS AND CAUSES OF ACTION OF EVERY CHARACTER AND KIND RESULTING FROM PERSONAL INJURY, ILLNESS, OR DEATH OF PERSON(S), OR DAMAGE TO OR LOSS OF PROPERTY OCCURRING,**

**GROWING OUT OF, INCIDENT TO, OR RESULTING DIRECTLY OR INDIRECTLY FROM THE ACTIONS OF THE OTHER PARTY, ITS EMPLOYEES, AGENTS, SERVANTS, REPRESENTATIVES, LICENSEES, OR INVITEES IN SECURING, EXERCISING, OR IN ANY MANNER PERFORMING THE TERMS AND CONDITIONS OF THIS AGREEMENT. THIS COVENANT NOT TO SUE AND TO RELEASE SHALL APPLY EVEN THOUGH ANY INJURY, SICKNESS, OR DEATH OR DAMAGE TO OR LOSS OF PROPERTY IS CAUSED IN WHOLE OR IN PART BY ANY DEFECT IN OR CONDITION OF ANY PROPERTY, AREA, FACILITIES, EQUIPMENT, TOOLS, OR OTHER ITEMS WHICH MAY BE PROVIDED BY EITHER PARTY, WHETHER OR NOT SUCH DEFECT OR CONDITION WAS KNOWN OR SHOULD HAVE BEEN KNOWN BY THE PARTY. THE COVENANT NOT TO SUE AND TO RELEASE PROVIDED HEREIN SHALL NOT BE CONSTRUED IN ANY WAY TO LIMIT INSURANCE COVERAGES PROVIDED BY THE CITY FOR THE COUNTY PURSUANT TO THE TERMS OF THIS AGREEMENT, WHICH INSURANCE REQUIREMENT IS INDEPENDENT FROM AND IN ADDITION TO SUCH COVENANT NOT TO SUE AND TO RELEASE. THIS COVENANT NOT TO SUE AND AGREEMENT TO RELEASE CONTAINED HEREIN ARE EQUALLY BINDING UPON THE PARTIES AND THEIR PERMITTED SUCCESSORS AND ASSIGNS.**

- 7.2 The City will cause to be inserted in the Contracts that the consultant will indemnify, protect, covenant not to sue, release, and save and hold harmless the City and the County 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 scope of work under this Agreement, or on account of any act of omission by the contractor.

#### **VIII. NO WARRANTIES OR REPRESENTATIONS**

- 8.1 The County has not made any determination on the property rights for the waterways slated for the Project and has not evaluated whether the City has the authority to conduct the Project.

#### **IX. INSURANCE**

- 9.1 The City shall furthermore require that its Consultants, at all times during the term of this Agreement, maintain insurance coverage with not less than the type and requirements set forth below. Such insurance is to be provided at the sole cost of the Consultant. These requirements do not establish limits of the Consultant's liability.
- 9.2 All policies of insurance shall waive all rights of subrogation against the County, its officers, employees and agents. The County shall be named an "additional insured" on the Consultant's insurance policy. Such insurance shall include not less than the minimum coverages as stated in the current "Harris County General Conditions for Roads, Bridges and Related Work."



## X. MISCELLANEOUS

- 10.1 This Agreement shall be governed by the laws of the State of Texas and the forum for any action under or related to the Agreement is exclusively in a state or federal court of competent jurisdiction in Texas. Venue for any litigation relating to this Agreement is Houston, Harris County, Texas.
- 10.2 The recitals set forth in this Agreement are, by reference, incorporated into and deemed a part of this Agreement.
- 10.3 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.
- 10.4 This Agreement contains the entire agreement between the Parties relating to the rights herein granted and the obligations herein assumed. This Agreement supersedes and replaces any prior agreement between the Parties pertaining to the rights granted and the obligations assumed herein. This Agreement shall be subject to change or modification only by a subsequent written modification approved and signed by the governing bodies of each Party. In addition, each Party warrants that the undersigned is a duly authorized representative with the power to execute the Agreement.
- 10.5 No 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 Parties.
- 10.6 If any term of this Agreement is ambiguous, it shall not be construed for or against any Party on the basis that the Party did or did not write it.
- 10.7 This Agreement shall not be considered as specifying the exclusive remedy for any Agreement default, but all remedies at law and in equity may be availed of by any Party to this Agreement and shall be cumulative.
- 10.8 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.

**APPROVED AS TO FORM:**

**VINCE RYAN**  
County Attorney

**HARRIS COUNTY, TEXAS**

By: \_\_\_\_\_  
Assistant County Attorney

By: \_\_\_\_\_  
Lina Hidalgo  
County Judge

**APPROVED:**

By: \_\_\_\_\_  
John R. Blount, P.E.  
County Engineer

**CITY OF HOUSTON**

By: \_\_\_\_\_  
Sylvester Turner  
Mayor

**APPROVED:**

By: Harry J. Hayes  
Director, Solid Waste Department

**ATTEST/SEAL:**

By: \_\_\_\_\_  
City Secretary

**COUNTERSIGNED BY:**

By: \_\_\_\_\_  
City Controller

**APPROVED AS TO FORM:**

By: J. L. Dawson  
Senior Assistant City Attorney  
L.D. File No. 0741900123001

**DATE COUNTERSIGNED:**

\_\_\_\_\_