

AMENDED AND RESTATED INTERLOCAL AGREEMENT

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This Amended and Restated Interlocal Agreement (“Restatement”) is made and entered into by and between City of Baytown, 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 Harris County Flood Control District, a body corporate and politic under the laws of the State of Texas, hereinafter referred to as the “District,” each a “Party” to this Agreement, and are collectively referred to herein as the “Parties.”

RECITALS:

On October 12, 2021, the District and the City entered into an Interlocal Agreement, (the “Agreement”) to design and construct improvement to the City’s sewer system and install a trunkline along Oklahoma Street through the West Baytown Phase 1 Storm Sewer Improvement (the “Project”) on City property as depicted on attached Exhibit A.

The City has estimated the cost of the Project to be SEVEN MILLION ONE HUNDRED THOUSAND TEN AND 29/100 DOLLARS (\$7,100,010.29).

The District desires to contribute a maximum of TWO MILLION NINE HUNDRED FORTY-THREE THOUSAND FIVE HUNDRED THIRTY-SIX AND 54/00 DOLLARS (\$2,943,536.54) (the “District Contribution”) toward the shared cost of the Drainage Components of the Project, as defined hereinbelow. The District appropriately expended EIGHT HUNDRED NINETY THOUSAND, NINE HUNDRED THIRTY-SIX AND 26 100s Dollars (\$890,936.26) of the District’s Contribution on the Project.

The District received from the City, in accordance with the Agreement, a total of FOUR MILLION, ONE HUNDRED FIFTY-SIX THOUSAND, FOUR HUNDRED SEVENTY-THREE, AND 74/100 DOLLARS (\$4,156,473.74) (the “Original City Contribution”) and shall now return the FOUR MILLION ONE HUNDRED FIFTY-SIX THOUSAND FOUR HUNDRED SEVENTY-THREE AND 74/100 DOLLARS (\$4,156,473.74) that remain (the “Remaining City Contribution”).

The City’s financial contribution to the Program’s costs may consist, in whole or part, of Texas General Land Office (“GLO”) Community Development Block Grant – Disaster Recovery Reallocation Program (“CDBG-DR”) funds.

In order to comply with the terms of the GLO’s CDBG-DR grant, the Parties now desire to amend and restate the Agreement.

It is to the mutual benefit of the City and the District to enter into this Restatement for the use and benefit of the public.

NOW, THEREFORE, in consideration of the mutual benefit to the City and District, and other good and valuable consideration, and in accordance with Paragraph XII of the Agreement, the Parties contract, covenant, and agree to amend and restate the Agreement as follows:

TERMS:

1.

Within ninety (90) Days of the execution of this Restatement, the District shall pay to the City the District Contribution in the amount of TWO MILLION, NINE HUNDRED FORTY THREE THOUSAND, FIVE HUNDRED THIRTY-SIX, AND 54/100 DOLLARS (\$2,943,536.54) minus the appropriately expended EIGHT HUNDRED NINETY THOUSAND, NINE HUNDRED THIRTY-SIX AND 26 100s Dollars (\$890,936.26) of the District's Contribution towards the cost of the drainage components of the Project, as defined hereinbelow. At the same time, the District shall return to the City the Remaining City Contribution equal to FOUR MILLION ONE HUNDRED FIFTY-SIX THOUSAND FOUR HUNDRED SEVENTY-THREE AND 74/100 DOLLARS (\$4,156,473.74). Therefore, the "District Payment," consisting of District Contribution plus the Remaining City Contribution, shall be a total payment of SIX MILLION, TWO HUNDRED NINE THOUSAND, SEVENTY-FOUR, AND 02/100 DOLLARS (\$6,209,074.02).

The District Contribution will go toward the "Drainage Components of the Project," which is defined as storm sewer drainage improvements, pavement and sidewalk reconstruction, water and sewer line adjustments relating to the storm sewer system replacement, and engineering, design, and additional services related to the listed components. The City shall be responsible for all costs associated with the Project in excess of the District Contribution.

2.

The City will advertise and award the construction contract for the Project in accordance with procurement laws and GLO requirements. The City's determination of the lowest responsible bidder for the Project shall be final. If the City encounters environmental contamination or other issues that make it impossible to continue the Project during construction, it shall immediately halt all work until the Parties have discussed how to proceed. Under no circumstances shall the District be responsible for any delay damages, remediation costs, or any costs associated with contamination. If this Agreement is terminated by the City because of the contamination, the City will be responsible for all costs of the Project to the point of termination.

3.

In order to ensure compliance with the term of the GLO's CDBG-DR grant to the City, the City shall be solely responsible for all Project related environmental, design, procurement, and construction moving forward from the date of this Restatement. The District has already provided the City with the Final Construction Design Plan of the West Baytown Drainage Improvement Project for the City to bid, but all future design work shall be managed and/or overseen by the City. The City may make changes and amendments to the drawings and specifications within the design intent of the Project as the City deems necessary or desirable during construction; however, the City shall, within twenty (20) days, notify the District of all such changes and amendments and provide the District with updated plans for review and approval. The District shall provide comments to the City within twenty (20) calendar days of receipt of the updated plans or the updated plans will be deemed to have the District's consent. Any increased costs to the Project, whether caused by changes or amendments to the design plans or the contractor seeking a change order that increases the cost of the Project, shall be the responsibility of the City.

4.

The City shall provide the District a temporary right of entry and construction easement onto the property where the Project will be constructed. 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 Restatement. The City will include the District in all Project design and construction progress meetings

5.

The Parties clearly understand and agree, such understanding and agreement being of the absolute essence to this Restatement, that:

- A. the District shall have available the total maximum sum of SIX MILLION, TWO HUNDRED NINE THOUSAND, SEVENTY-FOUR, AND 02/100 DOLLARS (\$6,209,074.02), specifically allocated to fully discharge any and all liabilities that may be incurred by the District pursuant to the terms of the Agreement and this Restatement, and, after the City receives the District Payment, the District shall have no further liability for the Project whatsoever.
- B. the City is not currently appropriating any additional funds but shall be responsible for any cost increase in the Project, which must first be approved by the City Council of the City of Baytown and certified as available by the City's Director of Finance.

The Parties agree that all funds used under this Restatement shall be from current fiscal funds.

6.

Either Party may terminate this Restatement, with or without cause, upon thirty (30) days' written notice to the other Party and any unspent portion of the District Contribution held by the City shall be returned to the District in a timely manner. As used herein, "unspent portion of the

District Contribution” shall mean all unspent funds for the Drainage Components of the Project to which the District is contributing.

7.

Within thirty (30) days of completion of the construction of the Project, the City shall coordinate with the District, as the owner of the design contract, to provide the City with record drawings of the Project. The City 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 City will refund to the District its portion of any amount not spent as stated in this Restatement or any amendment to this Restatement. The City will maintain the Project to the extent and in the same manner as other like facilities within the City once it is complete.

8.

The City 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 City and 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 or omission by the contractor.

The Parties shall require all contractors to maintain insurance and provide performance and payment bonds for the duration of the work performed in accordance with the Texas Government Code Chapter 2253 and GLO requirements. The Parties shall require any person or entity performing work on any construction activity to complete form SF-424D, entitled “Assurances – Construction Programs,” and shall maintain documentation.

The City will require its contractors to name the City and the District as additional insureds. The City shall also require its contractors to name GLO, and its officers, employees, and authorized agents, as additional insureds on all coverage for liability arising under the Project and/or this Restatement, except on Workers’ Compensation and Professional Liability policies.

9.

The Parties will endeavor to give each other at least 72-hours-notice of release of information regarding the Project to the news media, private citizens or community organizations; 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.

10.

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:

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

City of Baytown
2401 Market St.
Baytown TX 77520
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 Postal Services post office or receptacle with proper postage affixed addressed to the respective other Party at the address prescribed above or at such other address as the receiving Party may have prescribed to the sending Party with at least ten (10) days prior written notice.

11.

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 Party and, where applicable, the GLO.

12.

Each Party shall maintain financial and project records in accordance with Generally Accepted Accounting Principles or Governmental Accounting Standards Board standards, as applicable, and 2 C.F.R. Part 200. Records shall be retained for at least three (3) years following final closeout of the State of Texas CDBG-DR grant. The GLO, United States Department of Housing and Urban Development, Texas State Auditor's Office, and other authorized representatives shall have access to such records.

13.

Any property acquired or improved with CDBG-DR funds must continue to meet a CDBG-DR National Objective for at least five (5) years after project completion, or such longer period as required by the GLO. Failure to maintain compliance may require repayment of federal funds by the City.

14.

- A. The recitals set forth in this Restatement are, by reference, incorporated into and deemed a material part of this Restatement.

- B. When terms are used in this Restatement in the singular or plural, the meaning shall apply to both. When either male or female gender is used in this Restatement, the meaning shall apply to both.
- C. One or more waivers of any covenant, term, or condition of this Restatement 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 deemed to waive or render unnecessary consent to or approval of any subsequent similar act.
- D. Neither Party shall be held liable for a loss or damage due to delay or failure in performance of any part of this Restatement from any cause beyond its control and without its fault or negligence, such causes may include acts of God, acts of civil or military authority, government regulations (except those promulgated by the Party seeking the benefit of this section), embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, strikes, power blackouts, other major environmental disturbances or unusually severe weather conditions.
- E. Unless otherwise specified in this Restatement, all remedies of the Parties under this Restatement are cumulative, and the election of any remedy by a Party shall not foreclose that Party from pursuing any other equitable or legal remedy.
- F. This Restatement 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.
- G. The Parties are undertaking governmental functions or services under this Restatement, and the purpose hereof is solely to further public good, rather than any pecuniary purpose.
- H. Notwithstanding anything contained in the Restatement to the contrary, it is expressly understood and agreed that in the execution of this Restatement, 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.
- I. 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 Restatement shall lie exclusively in Harris County, Texas.
- J. Neither Party hereto shall make, in whole or in part, any assignment of this Restatement or any obligation hereunder without the prior written consent of the other Party. This instrument contains the entire Restatement 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 Restatement.

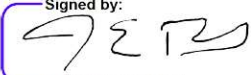
- K. Should any provision of this Restatement require judicial interpretation, the parties hereto stipulate that the court interpreting or considering the same shall not apply the presumption that the terms hereof shall be more strictly construed against a party by reason of any rule or conclusion that 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 Restatement and that each party had full opportunity to consult legal counsel of its choice before the execution of this Restatement.
- L. Any provision of this Restatement that, by its plain meaning is intended to survive the expiration or earlier termination of this Restatement, shall survive such expiration.
- M. 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.
- N. Each and every segment contained in this Restatement is, and shall be construed as, a separate and independent agreement. If any provision of this Restatement 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 Restatement and deleted to the same extent and effect as if never incorporated herein.

[SIGNATURE PAGE FOLLOWS]

Executed on _____.

CITY OF BAYTOWN, TEXAS

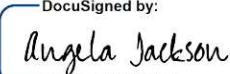
HARRIS COUNTY FLOOD CONTROL DISTRICT

Signed by: 
By: _____
Name: Jason E Reynolds
Title: City Manager

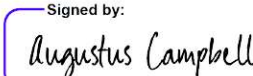
By: _____
Lina Hidalgo
County Judge

ATTEST

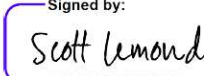
APPROVED AS TO FORM

DocuSigned by: 
By: _____
Angela Jackson
City Clerk

Jonathan Fombonne
Harris County Attorney

Signed by: 
By: _____
Augustus L. Campbell
Senior Assistant County Attorney
C.A. File No. 26GEN0795

APPROVED AS TO FORM

Signed by: 
By: _____
Scott Lemond
City Attorney

ORDER OF COMMISSIONERS COURT
Authorizing execution of Agreement

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 _____, 2026 with all members present except _____.

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

ORDER AUTHORIZING EXECUTION OF THE AMENDED AND RESTATED INTERLOCAL AGREEMENT BETWEEN THE CITY OF BAYTOWN, TEXAS AND 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:

Vote of the Court	<u>Yes</u>	<u>No</u>	<u>Abstain</u>
Judge Hidalgo	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Ellis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Garcia	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Ramsey, P.E.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. 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:

IT IS ORDERED that County Judge Lina Hidalgo be, and she is hereby, authorized to execute for and on behalf of Harris County Flood Control District, an Amended and Restated Interlocal Agreement with the City of Baytown, Texas. The Agreement is incorporated herein by reference for all purposes as though fully set forth word for word.

All Harris County and Harris County Flood Control District officials and employees are authorized to do any and all things necessary or convenient to accomplish the purpose of this Order.



Project ID: G100-00-00-G001

Watershed: San Jacinto River

Precinct: 2

- Project Boundary
- Harris County Precincts**
Judge Lina Hidalgo
- 1 - Rodney Ellis
- 2 - Adrian Garcia
- 3 - Tom S. Ramsay, P.E.
- 4 - Lesley Briones

