

## **JOINT PARTICIPATION INTERLOCAL AGREEMENT**

This Joint Participation Interlocal Agreement (“Agreement”) is entered into by and between **Harris County** (“County”) and **Harris County Municipal Utility District No. 540** (“District”) pursuant to the Interlocal Cooperation Act, Tex. Gov’t Code Ch. 791.001, *et seq.* County and District may each be referred to herein individually as a “Party” or collectively as the “Parties”.

### **RECITALS**

WHEREAS, it is of mutual benefit to both Parties to prepare an update to the previously approved Master Drainage Plan (“MDP”) for the District to detail the proposed improvements for Peek Road to determine that the assumptions from the previously approved MDP still apply and no additional detention is needed for the Peek Road Improvements (“Project”) as generally illustrated in Exhibit A attached hereto and incorporated herein by reference;

WHEREAS, both Parties desire to cooperate in accordance with the terms of this Agreement to jointly accomplish the construction of the Project; and

WHEREAS, both Parties agree that all funds used under this Agreement shall be from current fiscal funds.

NOW THEREFORE, in consideration of the mutual promises, obligations, and benefits herein set forth, the Parties agree as follows:

### **TERMS**

#### **Section 1. Responsibilities of the Parties**

##### **A. County’s Responsibilities**

- (i) The County will provide or cause to be provided a detailed drainage model of the existing and proposed Peek Road system to be used by the District.
- (ii) The County will provide an opportunity for the District to review the construction plans, in regards to ensure outfall projection and erosion protection in the detention pond.

##### **B. District’s Responsibilities**

- (i) Upon execution of the Agreement, the District shall provide an invoice to the County for their cost of the Project in accordance with Section 2 of this Agreement.

- (ii) The District shall hold one (1) coordination call with the Harris County Flood Control District watershed coordinator to go over project approach and discuss any issues.
- (iii) The District shall update sub-basin delineations to remove Peek Road from the sub-basins (as provided by the County) so as to isolate the hydrologic input in the HEC-RAS model. Update sub-basin TC & R based on previously approved methodology for the 2, 10, 100, and 500-year TP-40 storm events.
- (iv) The District shall provide direct input provided hydrographs from the Project's XP-SWMM models into the HEC-RAS model at the Peek Road crossing for both existing and proposed conditions. Results will be compared to determine if any additional detention is required due to the Peek Road improvements. If additional detention volume is required beyond what has been constructed, then a separate proposal will be submitted for budget and schedule to determine additional detention alternatives and needs.
- (v) The District shall prepare a technical signed and sealed memorandum for inclusion in the Project's overall Preliminary Engineering Report and report results to MUD 540 board. This Agreement excludes any updates to the XP-SWMM Cypress Creek overflow model.

## **Section 2. Funding of the Project**

Notwithstanding any provision in this Agreement to the contrary, the following provisions will apply to all payments made under this Agreement:

- A. The County agrees to provide \$20,000.00 of the cost necessary for the Project.
- B. The County agrees to provide payment to the District within fourteen (14) business days of receipt of the invoice.

## **Section 3. Term and Termination**

- A. This Agreement shall commence upon final execution by all the Parties (the "Effective Date") and shall remain in full force and effect until the completion of the Project ("Term").
- B. This Agreement may be terminated at any time by mutual written consent of the Parties, or as otherwise provided under this Agreement.

## **Section 4. Limitation of Appropriation**

- A. District understands and agrees, said understanding and agreement also being of the absolute essence of this Agreement, that the County is not currently appropriating any funds for the Project. County may appropriate funds to complete the Project, but such

funds shall not under any conditions, circumstances, or interpretations thereof exceed the sum certified available by the Harris County Auditor.

- B. District understands and agrees, said understanding and agreement also being of the absolute essence of this Agreement, that failure of the Harris County Auditor to certify funds or to certify sufficient funding for any reason shall not be considered a breach of this Agreement.

### **Section 5. Miscellaneous**

- A. Non-Assignability. The County and the District bind themselves and their successors, executors, administrators, and assigns to the other Party of this Agreement and to the successors, executors, administrators, and assigns of such other Party, in respect to all covenants of this Agreement. Neither the County nor the District shall assign, sublet, or transfer its interest in this Agreement without the prior written consent of the other Party
- B. Notice. Any notice required to be given under this Agreement (“Notice”) shall be in writing and shall be duly served when it shall have been (a) personally delivered to the address below, (b) deposited, enclosed in a wrapper with the proper postage prepaid thereon, and duly registered or certified, return receipt requested, in a United States Post Office, addressed to County or the District at the following addresses:

District: Harris County Municipal Utility District No. 540  
c/o Allen Boone Humphries Robinson LLP  
3200 Southwest Freeway, Suite 2600  
Houston, Texas 77027  
Attention: Katie Sherborne  
Email: ksherborne@abhr.com

County: Harris County Engineering Department  
1111 Fannin Street, 11<sup>th</sup> Floor  
Houston, Texas 77002  
Attention: Interagency Agreement Coordinator

Any Notice given by mail hereunder is deemed given upon deposit in the United States Mail and any Notice delivered in person shall be effective upon receipt.

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 Party.

Other communications, except for Notices required under this Agreement, may be sent by electronic means or in the same manner as Notices described herein.

- C. Independent Parties. 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. The County is an independent contractor and neither it, nor its employees or agents shall be considered to be an employee, agent, partner, or representative of the District for any purpose. The District, nor its employees, officers, or agents shall be considered to be employees, agents, partners or representatives of the County for any purposes. Neither Party has the authority to bind the other Party.

- D. No Third Party Beneficiaries. This Agreement shall be for the sole and exclusive benefit of the Parties and their legal successors and assigns. The County is not obligated or liable to any party other than the District for the performance of this Agreement. Nothing in the Agreement is intended or shall be deemed or construed to create any additional rights or remedies upon any third party. Further, nothing contained in the Agreement shall be construed to or operate in any manner whatsoever to confer or create rights or remedies upon any third party, increase the rights or remedies of any third party, or the duties or responsibilities of County with respect to any third party.
- E. Waiver of Breach. No waiver or waivers of any breach or default (or any breaches or defaults) by either Party hereto of any term, covenant, condition, or liability hereunder, or the performance by either Party of any obligation hereunder, shall be deemed or construed to be a waiver of subsequent breaches or defaults of any kind, under and circumstances.
- F. No Personal Liability; No Waiver of Immunity.
- (1) Nothing in the Agreement is 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 County.
  - (2) The Parties agree that no provision of this Agreement extends the County's liability beyond the liability provided in the Texas Constitution and the laws of the State of Texas.
  - (3) Neither the execution of this Agreement nor any other conduct of either Party relating to this Agreement shall be considered a waiver by the County of any right, defense, or immunity on behalf of itself, its employees or agents under the Texas Constitution or the laws of the State of Texas.
- G. Applicable Law and Venue. 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. The exclusive venue for any action under or related to the Agreement is in a state or federal court of competent jurisdiction in Houston, Harris County, Texas.
- H. No Binding Arbitration; Right to Jury Trial. The County does not agree to binding arbitration, nor does the County waive its right to a jury trial.

I. Contract Construction.

- (1) This Agreement shall not be construed against or in favor of any Party hereto based upon the fact that the Party did or did not author this Agreement.
- (2) The headings in this Agreement are for convenience or reference only and shall not control or affect the meaning or construction of this Agreement.
- (3) When terms are used in the singular or plural, the meaning shall apply to both.
- (4) When either the male or female gender is used, the meaning shall apply to both.

J. Recitals. The recitals set forth in this Agreement are, by this reference, incorporated into and deemed a part of this Agreement.

K. Entire Agreement; Modifications. 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.

L. Severability. The provisions of this Agreement are severable, and if any provision or part of this Agreement or the application thereof to any person, entity, or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part of this Agreement to other persons, entities, or circumstances shall not be affected thereby.

M. Survival of Terms. Any provision of this Agreement that, by its plain meaning, is intended to survive the expiration or earlier termination of this Agreement shall survive such expiration or earlier termination. If an ambiguity exists as to survival, the provision shall be deemed to survive.

N. Multiple Counterparts/Execution. This Agreement may be executed in several counterparts. Each counterpart is deemed an original and all counterparts together constitute one and the same instrument. In addition, each Party warrants that the undersigned is a duly authorized representative with the power to execute the Agreement.

O. Warranty. By execution of this Agreement, the District warrants that the duties accorded to the District in this Agreement are within the powers and authority of the District.

**[EXECUTION PAGE FOLLOWS]**

**HARRIS COUNTY**

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

**HARRIS COUNTY MUNICIPAL  
UTILITY DISTRICT NO. 540**

By: \_\_\_\_\_  
Shawn Pachlhofer  
President

APPROVED AS TO FORM:

CHRISTIAN D. MENEFE  
County Attorney

ATTEST

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

By: Philip Berzins  
Philip Berzins  
Assistant County Attorney  
CAO File No.: 22GEN3546



# Peek Road Segment 3

Exhibit A

Beckendorf Rd

Beckendo

Peek Road Segment 3  
Layout

Aurora Pr Dr

True Fortune Dr

Peek Rd

Peek Rd

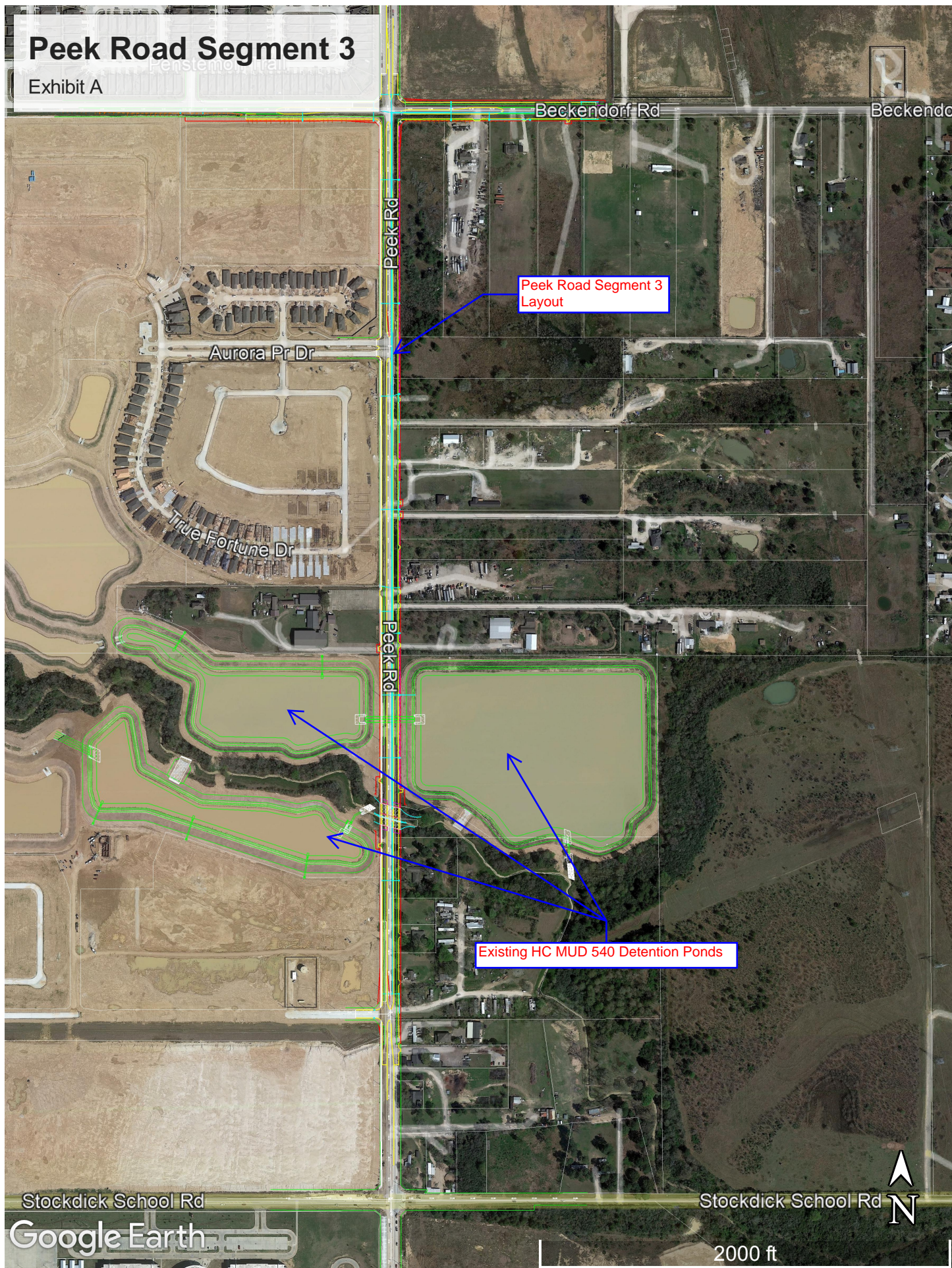
Existing HC MUD 540 Detention Ponds

Stockdick School Rd

Stockdick School Rd

Google Earth

2000 ft





## ORDER OF COMMISSIONERS COURT

The Commissioners Court of Harris County, Texas, met in regular session at its regular term at the Harris County Administration Building in the County of Houston, Texas, on \_\_\_\_\_, with all members present except \_\_\_\_\_.

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

### **ORDER AUTHORIZING EXECUTION OF A JOINT PARTICIPATION INTERLOCAL AGREEMENT BETWEEN HARRIS COUNTY AND HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 540 TO PREPARE AN UPDATE TO THE PREVIOUSLY APPROVED MASTER DRAINAGE PLAN AND ALL RELATED APPURTENANCES IN HARRIS COUNTY PRECINCT 4**

Commissioner \_\_\_\_\_ introduced an order and moved that Commissioners Court adopt the order. 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
Judge Lina Hidalgo	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Rodney Ellis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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:

#### IT IS ORDERED THAT:

1. The Harris County Judge is authorized to execute on behalf of Harris County the attached Joint Participation Interlocal Agreement between Harris County and Harris County Municipal Utility District No. 540 to prepare an update to the previously approved Master Drainage Plan and all related appurtenances in Harris County Precinct 4.
2. All Harris County officials and employees are authorized to do any and all things necessary or convenient to accomplish the purposes of this order.