

INTERLOCAL AGREEMENT

This Interlocal Agreement ("Agreement") is made and entered into by and between **Harris County**, a body corporate and politic under the laws of the State of Texas ("County"), and **Airline Improvement District**, a special district created under Chapter 3817 of the Texas Special District Local Laws Code ("District"). The County and District each may also be referred to individually herein as a "Party", or collectively as the "Parties".

RECITALS:

It is of the mutual benefit of the Parties to construct a water distribution and sanitary sewer system along West Bertrand and West Mierianne Streets in the North Shepherd Manor Subdivision of Harris County, Texas ("Project");

The Project includes construction of water distribution lines and gravity sanitary sewer lines ("Project Facilities") and abandonment of water wells and on-site sewage facilities;

The estimated construction cost of the Project, including testing and a 5% contingency, is \$1,242,160.00 ("Estimated Project Cost");

County has available \$1,041,500.00 to contribute toward the construction costs of the Project from Community Development Block Grant ("CDBG") funds, pursuant to Title 1 of the Housing and Community Development Act of 1974 which is intended to benefit low and moderate income individuals and families;

County is willing to construct the Project if District will contribute up to \$200,660.00 toward the construction costs for the Project and be responsible for operation, maintenance and repair ("Maintenance") of the Project Facilities constructed in accordance with the terms of this Agreement; and

Therefore, the Parties desire to enter into this Agreement to facilitate construction and funding of the Project and to ensure that the Project Facilities will be maintained by a responsible Party.

I. Responsibilities of the Parties

A. District Responsibilities. Upon execution of this Agreement by the Parties hereto, the District shall:

- i) Provide or cause to be provided, engineering services and related support services necessary to prepare the plans, specifications, and estimates ("PS&E") for construction of the Project;
- ii) Submit the PS&E to the County for review and approval. The Plans must be in compliance with any and all applicable state, County, and federal regulations and procedures relating to public wastewater systems and must also comply with the provisions set forth in Section IV of this Agreement;
- iii) Provide up to \$200,660.00 toward the Project's cost ("Leverage Funds"); and
- iv) Upon completion of the Project, assume full ownership and responsibility for the maintenance and repair of the Project facilities to the same extent and in the same manner as other like District facilities, provided that District may transfer ownership and maintenance and repair obligations for the Project subject to the restrictions in Section V below.
District understands and agrees that after completion of the Project, the County shall not have any obligation to contribute to the operation or Maintenance of the Project Facilities

nor shall the County be held responsible for any damages as a result of a lack of maintenance or improper maintenance of the Project Facilities.

B. County Responsibilities. Upon execution of this Agreement by the Parties hereto, County shall:

- i) Upon completion of the PS&E for the Project, and approval by the County of the PS&E, the County shall advertise for and receive bids for construction of the Project, in a manner similar to other County projects;
- ii) Award the Project's construction contract in accordance with the usual and customary procedures of the County;
- iii) Manage the construction of the Project in accordance with usual County procedures for similar projects; and
- iv) Provide up to \$1,041,500.00 in CDBG grant funds toward the Project's cost ("Grant Funds"), subject to certification of the availability of funds for the Project by the Harris County Auditor.
- v) District understands and agrees that after completion of the Project, the County shall not have any obligation to contribute to the operation or Maintenance of the Project nor shall the County be held responsible for any damages as a result of a lack of Maintenance or improper Maintenance of the Project.

II. County's Changes to Plans

County may make such changes and amendments to the Plans within the general scope of the Project as the Harris County Engineer necessary or desirable during construction of the Project so long as the original scope and intent of the Project is unchanged.

III. County's Right to Reject Bids

The County may reject all bids and re-advertise for bids. Upon receipt and tabulation of bids for the Project, Harris County Commissioners Court ("Commissioners Court") will determine the lowest and best bid for the construction of the Project. Commissioners Court's determination of the lowest and best bidder is final and conclusive.

IV. Compliance

- A. The Project's design and construction shall meet all TCEQ design and construction criteria. The facility also must meet the accessibility requirements at 24 C.F.R. Part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). Any covered facilities, as defined at 24 C.F.R. §100.201, must meet the design and construction requirements at 24 C.F.R. §100.205, which implement the Fair Housing Act (42 U.S.C. 3601-3619).
- B. District represents and warrants that it is capable and willing to provide the Maintenance called for in the Agreement, and agrees to render the Maintenance in accordance with the generally accepted standards applicable to the Maintenance. District shall use that degree of care and skill commensurate with the profession to comply with all applicable federal, state, and local laws, ordinances, rules, and regulations relating to the Maintenance and District's performance to be rendered hereunder. District represents that District and its personnel are fully qualified to perform the Maintenance and provide the deliverables described in this Agreement.
- C. District agrees to keep confidential the contents of all its discussions with County officials. District agrees to keep confidential the contents of all County records and all other information obtained

during District's performance of Maintenance under this Agreement. District shall not release any confidential information unless the County, in writing, authorizes District to release specific information to any third parties.

- D. District shall not access any information it is not authorized to receive, nor shall District copy, recreate, or use any proprietary information or Documents obtained in connection with this Agreement other than for the performance of this Agreement.
- E. District warrants and represents that it is not in breach of any other contract, obligation or covenant that would affect District's ability to perform hereunder and, as a result of entering into this Agreement, will not breach any such contract, obligation, or covenant.
- F. District warrants and represents that it is registered with the Texas Secretary of State to transact business in Texas, and is current on all state and local fees and taxes, including but not limited to Franchise Account Status of "in good standing" with the Texas Comptroller of Public Accounts.
- G. District warrants and represents that neither it, nor any of its principals or other affiliated entities, owe any debts to Harris County, including, but not limited to delinquent taxes, court judgments, tickets, tolls, fees, or fines. Taxes are deemed delinquent on the date certain as specified by the Harris County Tax Office. For the purposes of this Agreement, a court judgment is not required for delinquent taxes to be considered a debt.
- H. Conflict of Interest: District warrants and represents to the County that it does not have nor shall it knowingly acquire any interest that would conflict in any manner with the performance of its obligations under this Agreement. Furthermore, District warrants that no company or person, other than a bona fide employee, has been employed to solicit or secure this Agreement with County, and that District has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this provision, the County shall have the right to terminate the Agreement without liability.
- I. No Federal Exclusion: District warrants and represents that it is not debarred, suspended, or otherwise excluded from or ineligible for participation in any Federal programs, including but not limited to the following: Department of Health and Human Services (DHHS), Office of Inspector General (OIG) - List of Excluded Individuals & Entities (LEIE); U.S. General Services Administration (GSA) – Excluded Parties List System (EPLS); All States (50) Health & Human Services Commission Medicaid OIG Sanction List; Government Terrorist Watch List (OFAC / Patriot Act); Department of Commerce, Bureau of Industry and Security, Denied Persons List; and Department of Homeland Security, Immigration and Customs Enforcement (ICE) Most Wanted. District must immediately notify the County of any such exclusion or suspension. District warrants and represents that it is in good standing with all State and Federal agencies that have a contracting or regulatory relationship with the County. District warrants and represents that no person who has an ownership or controlling interest in District's business or who is an agent or managing employee of District has been convicted of a criminal offense related to involvement in any federal program.
- J. Whistleblower Protection Act: District understands and agrees that this Agreement and employees working on this Agreement will be subject to the whistleblower rights and remedies in the pilot program on contractor employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and FAR 3.908. District shall inform its employees in writing, in the predominant language of the

workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712, as described in section 3.908 of the Federal Acquisition Regulation. District shall insert the substance of this clause; paragraph M (“Whistleblower Protection Act”), in all subcontracts providing services under this Agreement.

V. Restrictions on Transfer of Ownership and/or Maintenance Obligations

District understands and agrees that CDBG funds will be used to construct the Project. As a result, District shall ensure, prior to the transfer of ownership and/or Maintenance obligations, that the Project Facilities shall either be:

- (a) Used to meet one of the national objectives in 24 C.F.R. §570.208 until five years after completion of the Project; or
- (b) Transferred to the City of Houston, Sunbelt Fresh Water Supply District, or another entity approved by the County, so long as the facilities are to be used under the same restrictions ; or
- (c) Used differently only if District provides affected citizens reasonable notice of, and opportunity to comment on, any proposed change, and either:
 - (1) The new use of such property qualifies as meeting one of the national objectives in 24 C.F.R. §570.208; or
 - (2) The new use does not meet one of the national objectives set out in 24 C.F.R. §570.208. In such event, District may retain and utilize the property and shall pay to the County an amount equal to the current market value of the property, less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to, the property. No payment shall be required of the District if the changed use occurs more than five years after completion of the Project; or
- (d) Disposed of in a manner, which results in the amount of the then-current fair market value of the property, less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvements to, the property being reimbursed to the County. Such reimbursement shall not be required if disposed of more than five years after completion of the Project.

VI. Terms of Payment and Accounting

- A. The District must remit the Leverage Funds to County within sixty (60) calendar days after execution of this Agreement. The Leverage Funds may be used by County to pay for the construction costs of the Project only, including, but not limited to, all grant ineligible costs.
- B. Upon completion of the construction of the Project, the County will perform or cause to be performed, a final accounting of all actual construction costs of the Project (“Actual Project Cost”). If the final accounting shows that Actual Project Cost exceeds the Grant Funds but does not exceed the Leverage Funds,, County shall refund to District any unused portion of the Leverage Funds (“District Refund”), except that the County will deduct the amount by which the Actual Project Cost exceeds the Grant Funds, including any grant ineligible costs, from the District Refund.

VII. Limit of Appropriations

The District understands and agrees, said understanding and agreement also being the absolute essence of this Agreement, that the County is not appropriating any funds under this Agreement.

VIII. Term and Termination

This Agreement shall commence upon final execution and remain in full force and effect as long as the District continues its operation and Maintenance of the Project Facilities. The County may terminate this Agreement at any time prior to the awarding of the contract for construction of the Project, or as otherwise allowed under this Agreement, by written notice to the District in which case County will return to District the funds, if any, paid by District to County pursuant to the terms of this Agreement.

IX. Notice

All notices required to be given under this Agreement ("Notice") will be mailed or delivered to the Parties at the following addresses:

COUNTY: Harris County Technical Services Division
1111 Fannin Street, 12th Floor
Houston, Texas 77002
Attention: Susan M. Santos, P.E.
Email: susan.santos@harriscountytexas.gov

DISTRICT: Airline Improvement District
P.O. Box 38460
Houston, Texas 77238-8460
Attention: Teri Koerth, Executive Director
Email: tkoerth@airlinedistrict.org

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.

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

X. Assignment

The County and the District bind themselves and their successors, executor, 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, which will not be unreasonably withheld.

XI. Counterparts and Electronic Signature

Pursuant to the requirements of the Uniform Electronic Transactions Act in Chapter 322 of the Texas Business and Commerce Code and the Federal Electronic Signatures in Global and National Commerce Act (beginning at 15 U.S.C. Section 7001), the Parties have agreed that the transactions under this Agreement may be conducted by electronic means. Pursuant to these statutes, this Agreement may not be denied legal effect or enforceability solely because it is in electronic form or because it contains an

electronic signature. This Agreement may be executed in duplicate counterparts and with electronic or facsimile signatures with the same effect as if the signatures were on the same document. Each multiple original of this document shall be deemed an original, but all multiple copies together shall constitute one and the same instrument.

XII. Liability of the Parties

To the extent allowed by law, each Party shall be responsible for all claims and liability due to the activities of the Party's employees, officials, agent or subcontractors arising out of or under this Agreement and which result from any act, error, or omission; intentional tort; intellectual property infringement; or failure to pay a vendor; committed by the Party or its employees, officials, agents, consultant under contract, or another entity over which it exercises control.

XIII. Miscellaneous

- A. 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.
- B. No Third Party Beneficiaries. The County is not obligated or liable to any party other than 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 increase the rights of any third party, or the duties or responsibilities of County with respect to any third party.
- C. Waiver of Breach. A waiver by either Party of a breach or violation of any provision of the Agreement shall not be deemed or construed to be a waiver of any subsequent breach.
- D. 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.

- E. 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.
- F. 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.
- G. 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 authorize 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.
- H. Recitals. The recitals set forth in this Agreement are, by this reference, incorporated into and deemed a part of this Agreement.
- I. 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.
- J. 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.
- K. 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.
- L. 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.
- M. 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]

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 City of Houston, Texas, on _____, 2023 with all member present except _____

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

ORDER AUTHORIZING THE INTERLOCAL AGREEMENT WITH HARRIS COUNTY AND AIRLINE IMPROVEMENT DISTRICT FOR THE CONSTRUCTION OF WATER DISTRIBUTION AND SANITARY SEWER SYSTEM ALONG WEST BERTRAND STREET AND WEST MIERIANNE STREET IN THE NORTH SHEPHERD MANOR SUBDIVISION, LOCATED IN HARRIS COUNTY PRECINCT 2

Commissioner _____ introduced and moved that Commissioners Court adopt the order. Commissioner _____ seconded the motion for the adoption of the order. The motion carrying with it the adoption of the order prevailed by the following vote:

	Yes	No	Abstain
Judge Hidalgo	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Commissioner Rodney Ellis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Commissioner Adrian Garcia	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Commissioner Tom S. Ramsey, P.E.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Commissioner Lesley Briones	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The meeting chair announced that the motion had duly and lawfully carried, and this order was duly and lawfully adopted. The order adopted follows:

IT IS ORDERED that:

1. The Harris County Judge is authorized to execute the attached Interlocal Agreement with Harris County and Airline Improvement District for the purpose of constructing the West Bertrand and West Mierianne Streets Water Distribution and Sanitary Sewer System, including construction of water distribution and sanitary sewer lines and abandonment of water wells and on-site sewage facilities in the North Shepherd Manor Subdivision, located in Harris County Precinct 2. The attached Agreement may be executed with an electronic or facsimile signature.
2. The Harris County Engineering Department and all other Harris County officials and employees are authorized to do any and all things necessary or convenient to accomplish the purpose of this Order.