

To: Harris County Commissioners Court
Russell A Poppe
Through: Russell A. Poppe, P.E., Executive Director, Harris County Flood Control District
Prepared By: Matthew K. Zeve, P.E., Deputy Executive Director, Harris County Flood Control District

Subject: Interlocal Agreement with Harris County

..end

Project ID (If applicable): n/a

Purpose and Request:

..title

Authorization to execute an interlocal agreement with Harris County to provide a public recreational area on HCFCF Tract K100-00-00-23-026.0 along HCFCF Unit K139-00-00. (Cypress Creek Watershed, Agreement No. 1412, Precinct 4).

..end

Background and Discussion:

This interlocal agreement will allow Harris County to design, construct and maintain multi-use trails on HCFCF Property along Unit K139-00-00.

Fiscal Impact:

There is no cost associated with this court item.

Fiscal Summary			
Expenditures	FY 20-21	FY 21-22 Projected	Future Years Projected [3 additional years]
Service Impacted:			
Existing Budget	\$0	\$0	\$0
Additional Appropriation Requested	\$0	\$0	\$0
Total Expenditures	\$0	\$0	\$0
Funding Sources	\$0	\$0	\$0
Existing Department Budget	\$0	\$0	\$0
Please Identify Funding Source (General Fund, PIC, Special Revenue, Grant, Etc.)	\$0	\$0	\$0
HCFCF Operations & Maintenance*	\$0	\$0	\$0
Total Sources	\$0	\$0	\$0

Alternatives:

If this interlocal agreement is not executed, the County will not be able to construct the proposed trail.

Alignment with Strategic Objective:

SO3.2 - Leveraging District's funds with federal, state, and local partnerships funds continue to be an important vehicle to enable many popular multi-use and quality-of-life initiatives with various sponsors.

Attachments: Agreement

**INTERLOCAL AGREEMENT
PUBLIC RECREATIONAL AREA**

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

THIS AGREEMENT, made and entered into pursuant to the Interlocal Cooperation Act, TEX. GOV'T CODE ANN., Chapter 791, by and between **Harris County**, a body corporate and politic under the laws of the State of Texas, hereinafter referred to as the "County" 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."

WITNESSETH, that

WHEREAS, the District owns a tract of land, hereinafter referred to as the "Premises," located along Harris County Flood Control District Unit K139-00-00, said Premises being further described in instrument recorded at Clerk's File No. RP-2020-56580, Film Code No. 20200056580, Harris County Deed Records known as HCFCD Unit Tract K100-00-00-23-026.0; and

WHEREAS, the County is desirous of making available to the public, for recreational purposes and to maintain the Public Recreational Area, hereinafter referred to as the "Recreational Area", on said Premises; and

WHEREAS, both parties have agreed to the map/layout of the proposed alignment of the Recreational Area as shown in Exhibit "A" attached to this Agreement for descriptive purposes only.

WHEREAS, the District is willing to permit the County to use said Premises for such purpose provided the County complies with the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, agreements and benefits to both parties, it is agreed as follows:

I.

Construction Drawings

After the approval of this Agreement by the Commissioners Court of Harris County, the County will furnish to the District, for the District's written approval, construction drawings for the multi-use trails and other recreation related amenities on said Premises. After the approval of the construction drawings by an authorized representative of the District, an authorized representative of the District will so notify the County that the District allows the County's use of the Premises for the purpose of constructing and maintaining the Recreational Area.

With prior written consent of an authorized representative of the District, the County may make minor changes to the construction drawings necessary or desirable during the construction of the Recreational Area and any related amenities by submitting a general plan or drawing of the proposed change to the authorized representative.

II.

Construction

Only after receipt of the notice of the approval of the construction drawings and any changes thereto from the District, the County, at the County's sole expense, shall commence to construct and maintain the Recreational Area, and shall proceed diligently until completed in a good and workmanlike manner and in substantial accordance with the construction drawings, which have been approved in advance by the District for such purposes. If any conflict arises between the provisions of the construction drawings and the provisions of this Agreement, this Agreement shall be controlling and binding upon the parties hereto.

III.

No Intent to Dedicate

Notwithstanding any provision herein that may be construed to the contrary, the parties contemplate that the use of the Premises shall be temporary in nature as described herein, and it is not the County's nor the District's intent to designate any part of the Premises as a park or a recreation area for the purposes of TEX. PARKS & WILD. CODE ANN. § 26.001, as amended, nor to dedicate any part of the Premises as a park for the purposes of Chapter 317, Texas Local Government Code, as amended.

IV.

Compliance with the Law

The County shall comply with all requirements of the Americans With Disabilities Act, the Texas Architectural Barriers Act, and all other valid laws, statutes, ordinances, regulations, and other requirements, now or hereafter in force, of all federal, state, and local governmental bodies and agencies which are applicable to the Premises and the Recreational Area. The County shall be responsible for all permits required for the construction of the Recreational Area and all consents required to be obtained from any applicable governmental agency. The County shall furthermore comply with all applicable bidding laws.

V.

Maintenance and Repair

The County shall maintain in good repair and in safe condition the Premises and the Recreational Area and all improvements thereon, including but not limited to, repair of the pavement thereon and maintenance of all other improvements and appurtenances associated with multi-use trails and other recreation related amenities which were included in the construction drawings. The County shall keep the Premises and the Recreational Area mowed and trimmed. The County shall remove trash, paper, debris, and accumulated silt from the Premises and from the Recreational Area and from improvements or appurtenances within the Premises or associated with the Recreational Area at such time intervals so as to keep the areas safe and clean. All maintenance required as hereinabove set forth shall be the sole responsibility of the County.

The District shall have no duty to maintain or repair amenities, improvements, appurtenances or facilities placed on the Premises by the County or to otherwise expend funds pursuant to this Agreement. The District has no obligation to repair damage or erosion on an HCFCD Unit to protect the County's recreational features. In the event damage from any cause creates a threat to public safety within the Premises or the Recreational Area, the County shall take reasonable actions to immediately warn the public of the dangerous condition and to remedy the danger within a reasonable time. The District reserves the right, but not the obligation, to maintain the Premises

as, in its sole discretion, is necessary or convenient for flood control and drainage purposes, but the County shall control the Premises and the Recreational Area and all associated improvements to keep them safe and free from premises defects during the term of this Agreement.

VI.

Trail Alteration and Inspection

The County will not undertake any alteration to the Recreational Area, any existing improvements thereto, or begin any new construction without first securing written approval from an authorized representative of the District by submitting to the authorized representative a general plan or drawing of the proposed alteration, or, as determined by the authorized representative, detailed construction drawings.

During the term of this Agreement, the Director or his designee may inspect the Recreational Area to determine whether the County is maintaining the Recreational Area and any related amenities and performing its other obligations pursuant to this Agreement.

VII.

Trees and No Waste

The County shall not cause or permit any waste upon the hereinabove described Recreational Area and Premises. Further, the County shall not cut or damage any tree or trees on the District's Property with a diameter breast-high ("dbh") greater than three (3) inches at a level approximately four and one-half (4½) feet from its base, without the prior written consent of the Director.

VIII.

No Fee or Charge for Use

The Premises shall be open to the use of the general public. No fee or charge shall be imposed for the use thereof.

IX.

Term

The term of this Agreement shall extend for a term of twenty-five (25) years commencing on the date of its execution. Either the District (through its governing body or its Executive Director) or the County may terminate this Agreement prior to the expiration of said term(s), without cause, upon thirty (30) days prior written notice to the other party hereto.

X.

Notices

All notices shall be given to the District by registered or certified mail, postage paid, return receipt requested, addressed to **Harris County Flood Control District, Attention: Director of Harris County Flood Control District, 9900 Northwest Freeway, Houston, Texas 77092**, or to such other address as the District may designate in writing from time to time. All notices shall be given to the County by registered or certified mail, postage prepaid, return receipt requested, addressed to **Harris County Engineering Division, Attention: 1001 Preston, 5th Floor, Houston, Texas 77002**. Each notice shall be considered exercised and completed upon deposit of the notice in the United States mail as aforesaid.

XI.

Limitation and Disclaimer of Warranty

The County's right to the use and enjoyment of the Recreational Area for the purposes herein stated is non-exclusive, and is expressly limited to the District's right, title, and interest, if any, in and to the Premises, and the District makes no warranty or representation as to its right, title, or interest, if any, in and to said Premises. If, and in the event that, additional rights, title, and interest in and to the Premises are needed for any construction, maintenance, or operation of the Recreational Area, the acquisition of such rights, title, and interest shall be at the sole expense and obligation of the County.

The District makes no representation as to the suitability of the soils or the stability of the channel bank for the County's intended purposes. The County has carefully inspected the Premises and accepts and enters them as-is, where-is, and with all faults. The County understands and agrees that the District has no obligation to make any repairs, alterations, or additions to the Premises now or in the future.

XII.

The District's Rights Paramount

The District has advised the County and the County is aware that the Premises were acquired for flood control and drainage purposes. The District presently uses portions of the Premises upon which the Recreational Area will be located for mowing and maintenance of HCFCD Unit(s), and the District contemplates future use of the Premises for widening of the drainage facility and for other flood control and drainage improvements as the need for the same may arise and funds may be available. The District hereby expressly reserves to itself, its officers, employees, agents, and contractors, the right to enter upon said Premises and Recreational Area at any time for any purpose necessary or convenient in connection with drainage and flood control work, to flood said Premises and Recreational Area, and to make such other use of said Premises and Recreational Area as may be necessary or desirable in connection with drainage and flood control, and the County shall have no claim for damages of any character on account thereof against the District, or any officer, employee, agent, or contractor thereof. The District shall have no responsibility to replace or repair any portion of the Recreational Area that is damaged in the course of such flood control activities. The County understands and agrees that the paramount use of the Premises is for drainage and flood control purposes and that if the Recreational Area or one or more of the County associated improvements or appurtenances interferes with the maintenance or use of the Premises for drainage and flood control purposes, or impedes the flow of water in, along, or to the channel, or directly or indirectly causes damage to a flood control feature, then the Recreational Area or such associated improvement or appurtenance shall be promptly removed or altered, and any damaged flood control feature repaired or replaced, to the satisfaction of the Director, without the aid or assistance of the District or the District's equipment, personnel, or materials. The District further reserves the right to remove portions of the Recreational Area or associated improvements or appurtenances from time to time as the Director determines necessary or convenient to accommodate channel improvement. Should the Director make such a determination, the District's Representative shall so notify the County prior to such removal; provided, however, if immediate action is necessary, in the determination of the Director, notice will be given as soon as practicable.

XIII.

Indemnification by Contractor, Insurance, and Bidding Laws Requirements

The County will cause to be inserted in the construction contract for the Recreational Area an agreement that the contractor will indemnify, protect, covenant not to sue, release, and save and hold harmless the County and the 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 Recreational Area or any associated improvements, or on account of any act of omission by the contractor.

The County shall furthermore require that the construction contractor's insurance policies name the Harris County Flood Control District as an insured. Such insurance policies shall include not less than the minimum coverages as stated in the current "Harris County General Conditions for Roads, Bridges and Related Work." The County shall deliver a copy of each such policy to the Director prior to construction. Not later than thirty (30) days after the expiration date of each policy, the County shall furnish a copy of a renewal insurance policy to the Director.

XIV.

Covenant Not To Sue and Release

THE COUNTY COVENANTS NOT TO SUE AND AGREES TO RELEASE THE DISTRICT AND ITS AGENTS, OFFICERS, CONTRACTORS, SERVANTS, EMPLOYEES, REPRESENTATIVES, LICENSEES, AND INVITEES (HEREINAFTER IN THIS ARTICLE, THE "DISTRICT") 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 COUNTY, ITS EMPLOYEES, AGENTS, SERVANTS, REPRESENTATIVES, LICENSEES, OR INVITEES IN SECURING, EXERCISING, OR IN ANY MANNER PERFORMING THE TERMS AND CONDITIONS OF THIS AGREEMENT. IT IS THE EXPRESS INTENT OF THE PARTIES TO THIS AGREEMENT THAT THE COVENANT NOT TO SUE AND TO RELEASE PROVIDED FOR IN THIS ARTICLE IS EXTENDED BY THE COUNTY TO ALSO RELEASE THE DISTRICT FROM THE CONSEQUENCES OF THE DISTRICT'S OWN NEGLIGENCE. 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 THE DISTRICT, WHETHER OR NOT SUCH DEFECT OR CONDITION WAS KNOWN OR SHOULD HAVE BEEN KNOWN BY THE DISTRICT. THE COVENANT NOT TO SUE AND TO RELEASE PROVIDED HEREIN SHALL NOT BE CONSTRUED IN ANY WAY TO LIMIT INSURANCE COVERAGES PROVIDED BY THE COUNTY OR BY A THIRD PARTY FOR THE DISTRICT 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 COUNTY AND ITS PERMITTED SUCCESSORS AND ASSIGNS.

XV

Not Joint Enterprise, Employee, Nor Agent

This Agreement is not intended to and shall not create a joint enterprise between the County and the District. It is understood and agreed that the District and the District's personnel shall not be considered employees, agents, partners, joint venturers, or servants of the County. It is also understood and agreed that the County's personnel shall not be considered employees, agents, partners, joint venturers, or servants of the District. 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. 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.

XVI.

Failure to Perform Obligations

In the event the County fails to perform any of its obligations herein, the District's sole remedy shall be to terminate this Agreement. In the event the District fails to perform any of its obligations herein, the County's sole remedy shall be to terminate this Agreement.

XVII.

No Allocation of Funds

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 County 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.

XVIII.

Entire Agreement

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 and effect excepting a subsequent modification in writing, signed by all parties hereto.

XIX.

Titles and Provisions

Titles are for convenient reference only and shall not be used to interpret or limit the meaning of any provision of this Agreement.

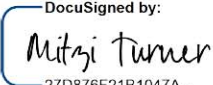
The use of the neuter, male, or female singular pronoun to refer to the District or the County shall be deemed a proper reference, even though the District or the County may be a male individual, a female individual, a partnership, a corporation, a limited liability company, governmental entity, or any other entity or group of two or more individuals or entities.

EXECUTED on _____.

APPROVED AS TO FORM:

CHRISTIAN D. MENEFE
Harris County Attorney

HARRIS COUNTY FLOOD CONTROL
DISTRICT

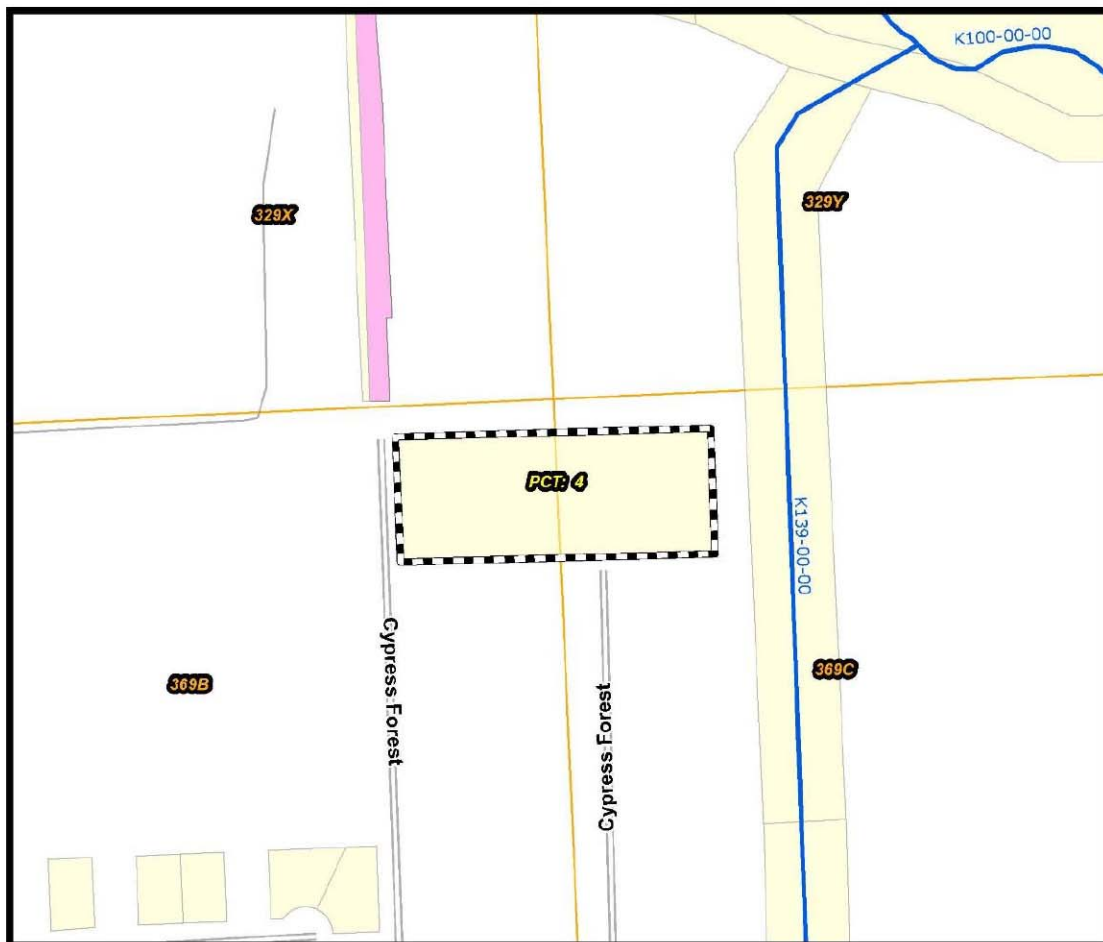
DocuSigned by:

27D876F21B1047A...
By: _____
MITZI TURNER
Assistant County Attorney






By: _____
LINA HIDALGO
County Judge

Harris County

By: _____
LINA HIDALGO
County Judge

Harris County Flood Control District
Public Recreation Agreement
Harris County
14234 W. Cypress Forest Drive
Houston, Texas 77070

**R.O.W.**

-  Harris County
-  City of Houston
-  H.C.F.C.D.
-  Public
-  State of Texas

Agreement Area = 



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
Tom S. Ramsey, P.E.	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 HARRIS COUNTY
 UNIT K100-00-00, TRACT 23-026.0, PRECINCT 4**

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
	Judge Lina Hidalgo	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
AYES:	Comm. Rodney Ellis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
NAYS:	Comm. Adrian Garcia	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ABSTENTIONS:	Comm. Tom S. Ramsey, P.E.	<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 District owns a tract of land, hereinafter referred to as the "Premises," located along Harris County Flood Control District Unit K139-00-00, said Premises being further described in instrument recorded at Clerk's File No. RP-2020-56580, Film Code No. 2020056580, Harris County Deed Records known as HCFCD Unit Tract K100-00-00-23-026.0; and

WHEREAS, the County is desirous of making available to the public, for recreational purposes and to maintain the Public Recreational Area, hereinafter referred to as the "Recreational Area", on said Premises; and

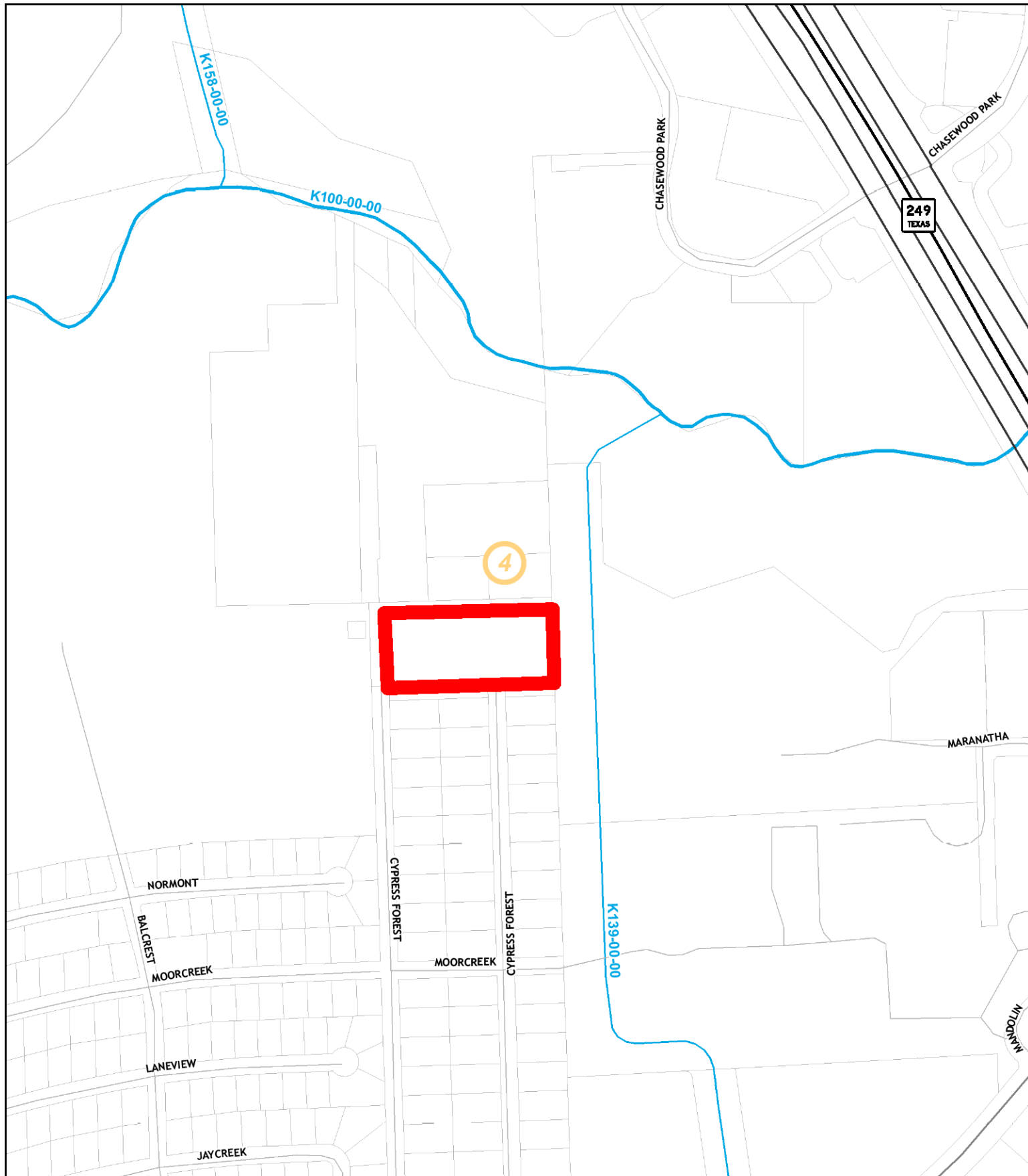
WHEREAS, both parties have agreed to the map/layout of the proposed alignment of the Recreational Area as shown in Exhibit "A" attached to this Agreement for descriptive purposes only.

WHEREAS, the District is willing to permit the County to use said Premises for such purpose provided the County complies with the terms of this Agreement.

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 Harris County and the Harris County Flood Control District, an Interlocal Agreement by and between Harris County and the Harris County Flood Control District, whereby Harris County may construct and maintain a Public Recreational Area on the Premises owned by the District, said agreement being incorporated herein by reference for all purposes as though fully set forth verbatim herein.



Unit No. K100-00-00
Watershed: Cypress Creek
Precinct: 4

Pct No

- 1
- 2
- 3
- 4

