

HARRIS COUNTY

OFFICE OF THE COUNTY ENGINEER

1001 Preston, Suite 500
Houston, Texas 77002
(713) 755-5370

May 27, 2021

Honorable County Judge
& Commissioners

SUBJECT: Interlocal Agreement – Northwest Harris County MUD No. 9

Recommendation for authorization to execute an Interlocal agreement with Northwest Harris County Municipal Utility District No. 9 to correct the encroachment of the berms (approximately 1,000' east of Jones Road on Cypress North Houston Road) during roadway construction and construct the berm adjacent to the road to add additional stormwater detention capacity and all related appurtenances, for Cypress North Houston Road, UPIN 15104MF0CD01, Precinct 4.

Sincerely,

A handwritten signature in black ink that reads "John R. Blount" with a stylized flourish at the end.

John R. Blount, P.E.
County Engineer

Attachment

cc: Commissioner R. Jack Cagle
Cheryl Guenther
Pamela Rocchi
Freddie Jebousek
Dennis Johnston
Kiley Holbrook

JOINT PARTICIPATION INTERLOCAL AGREEMENT

This Joint Participation Interlocal Agreement (“Agreement”) is entered into by and between **Harris County** (“County”) and **Northwest Harris County Municipal Utility District No. 9** (“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 correct the encroachment of the berms (approximately 1,000 ft. east of Jones Rd on Cypress North Houston) during roadway construction and construct the berm adjacent to the road to add an additional .23 ac-ft (“Project”) as generally illustrated on 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, engineering services and related support services necessary to prepare plans, specifications, and estimates (“PS&E”) for the construction of the Project.
- (ii) The County will not proceed with any modification of District facilities or work on District property without approval of PS&E from the District’s engineer.
- (iii) The County shall be responsible for obtaining all necessary permits and jurisdictional approvals for construction of the Project.
- (iv) Upon award of a contract for construction of the Project, the County will manage and inspect the construction of the Project in a manner similar to that of other County construction projects;
- (v) During the Term of this Agreement, the control, construction, operation, maintenance, repair, oversight and supervision of the Project shall be at the discretion of the County, subject to consultation from time to time and at any time with the District. The County will ensure that the Project is constructed in accordance with the PS&E which have been approved by the District.

- (vi) The County will provide calculations to the District evidencing the capacity in the District's detention facility to be utilized by the County for the District's review and approval. The County will not take any action to utilize any additional capacity in the District's detention pond without the prior approval of the District.

B. District's Responsibilities

- (i) The District hereby agrees to provide access to the County to correct the encroachment of the berms.
- (ii) District will review the PS&E provided by the County and provide its comments or approval within ten (10) business days. Should the District desire to make changes to such PS&E, the Parties agree to meet and resolve all issues in order to finalize an agreed upon PS&E for the Project. If the District does not provide a response on the PS&E provided by the County within ten (10) business days from its receipt of the PS&E, then the PS&E submitted to the District by the County will be deemed approved.
- (iii) District will review the additional capacity provided by the County and provide its comments or approval within ten (10) business days. Should the District desire to make changes to such additional capacity, the Parties agree to meet and resolve all issues in order to finalize an agreed upon additional capacity for the Project. If the District does not provide a response on the additional capacity provided by the County within ten (10) business days from its receipt of the additional capacity, then the additional capacity submitted to the District by the County will be deemed approved.
- (iv) It is expressly understood that the District is not granting the County a lease, franchise, or other interest in the Property, notwithstanding any contrary inference contained herein or elsewhere.
- (v) Upon completion of the construction of the Project, the District shall continue to assume full responsibility for the ongoing maintenance and repairs of the Project.

Section 2. Funding of the Project

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.

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 construction of the Project or the County's receipt of all payments due from the District under this Agreement, whichever occurs later ("Term").
- B. This Agreement may be terminated by the County before award of the construction contract and at any time by mutual written consent of the Parties, or as otherwise provided under this Agreement.

Section 4. 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: Northwest Harris County Municipal Utility District No. 9
Smith, Murdaugh, Little & Bonham, L.L.P.
2727 Allen Parkway, Suite 1100
Houston, Texas 77019

With a copy to: Koehn & Associates Engineers, Inc.
c/o Ronald Koehn
2500 Central Pkwy # Z
Houston, Texas 77092
Email: rkoehn@koehnengineers.com

County: Harris County Engineering Department
1001 Preston Avenue, 7th Floor
Houston, Texas 77002-1893
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 or the District'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 District or 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 and the County warrant that their respective duties provided herein are within their respective powers and authority.

HARRIS COUNTY

By: _____
Lina Hidalgo
County Judge

**NORTHWEST HARRIS COUNTY MUNICIPAL
UTILITY DISTRICT NO. 9**

By: G. Ronald Mitchell
G. Ronald Mitchell
President

APPROVED AS TO FORM:

ATTEST

CHRISTIAN D. MENEFEE
County Attorney

By: Coy Z. Baskin, Jr.
Secretary

By: Philip Berzins
Philip Berzins
Assistant County Attorney
CAO File No.: 21GEN0962



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 NORTHWEST HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 9 TO CORRECT THE ENCROACHMENT OF THE BERMS (APPROXIMATELY 1,000 FT. EAST OF JONES RD ON CYPRESS NORTH HOUSTON) DURING ROADWAY CONSTRUCTION AND CONSTRUCT THE BERM ADJACENT TO THE ROAD TO ADD AN ADDITIONAL .23 AC-FT 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. 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:

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 Northwest Harris County Municipal Utility District No. 9 to correct the encroachment of the berms (approximately 1,000 ft. east of Jones Rd on Cypress North Houston) during roadway construction and construct the berm adjacent to the road to add an additional .23 ac-ft 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.