

INTERLOCAL AGREEMENT

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This Agreement is made and entered into pursuant to Texas Government Code Ann. 791.001, et seq. (the Interlocal Cooperation Act), by and between **Harris County Municipal Utility District No. 290**, hereinafter referred to as “MUD 290”, and the **Harris County Flood Control District**, a body corporate and politic under the laws of the State of Texas, hereinafter referred to as “HCFCF,” each a “Party” to this Agreement, and collectively referred to herein as the “Parties.”

WITNESSETH:

WHEREAS, MUD 290 in coordination with Harris County Municipal Utility District No. 278 and Trail of the Lakes Municipal Utility District, collectively referred to herein as (“MUDs”), which are located in an area of Northeast Harris County about 25 miles from downtown Houston, desire to address area flooding concerns by making channel repairs (“Project”) to Williams Gully, known as HCFCF Unit P130-02-00; and

WHEREAS, the MUDs entered into a Cost Sharing Agreement for Maintenance and Repair of Williams Gully Weirs and Channel in August 2005 and appointed MUD 290 as the lead entity, which is attached hereto as Exhibit A; and

WHEREAS, MUD 290 desires to work with HCFCF to design and construct the Project; and

WHEREAS, MUD 290 estimates the cost of the Project, which includes erosion repair work, slope paving, sediment removal, and rip rap installation designed to protect the integrity of the weirs, at \$1,405,421.00 (“Total Estimated Project Cost”), which cost will be split between the MUDs and HCFCF; and

WHEREAS, HCFCF, whose mission is to provide flood damage reduction projects that work, with appropriate regard for community and natural values, desires to contribute \$702,710.50 (“HCFCF Contribution”) toward the Project, which is located on property owned by HCFCF; and

WHEREAS, the MUDs will contribute a combined total \$702,710.50 toward the Project (“MUDs Contribution”); and

WHEREAS, MUD 290 will design the Project and HCFCF will publicly bid and manage the construction contract for the Project; and MUD 290 will maintain the Project pursuant to Exhibit A once the Project is complete; and

WHEREAS, it is to the mutual benefit of MUD 290 and HCFCF to enter into this Agreement for the use and benefit of the public.

NOW, THEREFORE, in consideration of the mutual covenants, agreements, and benefits to the Parties, the Parties agree as follows:

I.

Within ninety (90) days of approval of this Agreement by Harris County Commissioners Court, MUD 290 will pay HCFCD \$702,710.50 for the MUDs Contribution to the design and construction of the Project. HCFCD will contribute the other half of the cost of design and construction, \$702,710.50.

II.

MUD 290 will design the Project in compliance with HCFCD standards and HCFCD will review and approve the design plans for the Project. HCFCD will award the construction contract for the Project in accordance with competitive bidding laws applicable to HCFCD. HCFCD's determination of the lowest responsible bidder for the Project shall be final. HCFCD owns either in fee simple or as a drainage easement the portion of Williams Gully where the Project will be constructed as shown on attached Exhibit B.

III.

HCFCD may make changes and amendments to the drawings and specifications within the design intent of the Project as HCFCD deems necessary or desirable during construction and shall notify MUD 290 of all such changes and amendments within thirty (30) calendar days after making such a change or amendment. In the event the changes or amendments result in a change in cost of the Project, HCFCD shall obtain MUD 290 approval prior to proceeding with the change. If the approved change results in a cost increase greater than the Total Estimated Project Cost, HCFCD, with approval by Harris County Commissioners Court, will amend this Agreement for HCFCD to pay 50% of the cost increase. The MUDs will be responsible to pay the remaining 50% of the cost increase.

The Total Estimated Project Cost includes Project-related engineering fees and geotechnical report costs incurred and paid directly by MUD 290 ("MUD 290 Direct Project Costs"). Upon completion of the Project, MUD 290 shall submit an invoice to HCFCD detailing such MUD 290 Direct Project Costs, and 50% of such costs shall be credited to the MUDs Contribution and HCFCD, upon review and approval of the MUD 290 Direct Project Costs, shall be responsible for the remaining 50% of the MUD 290 Direct Project Costs. For instance, if the MUD 290 Direct Project Costs are \$50,000, then \$25,000 of such costs would be credited against the MUDs Contribution and the remaining \$25,000 would be added to the HCFCD Contribution. In the event the total actual Project costs (including any MUD 290 Direct Project Costs) are less than the Total Estimated Project Cost, each Party shall be responsible for paying 50% of the actual Project costs and MUD 290 shall be entitled to receive a refund of any unused portion of the MUDs Contribution. HCFCD, with approval from Harris County Commissioners Court, agrees to amend this Agreement and request additional funds if HCFCD's 50 percent share of the MUD 290 Direct Project costs cause the total owed by HCFCD to exceed HCFCD's maximum sum approved herein.

IV.

MUD 290 shall have access at all reasonable times to the Project construction site and to all relevant drawings, specifications, contract documents, and records in order to verify that the Project is constructed in compliance with this Agreement. Provided, however, that in conducting such investigations and/or inspections, MUD 290 shall not interfere with the work in progress.

V.

MUD 290 has been advised by the District and MUD 290 clearly understands and agrees, such understanding and agreement being of the absolute essence to this Agreement, that the District shall have available the total maximum sum of \$702,710.50 specifically allocated to fully discharge any and all liabilities that may be incurred by HCFCD pursuant to the terms of this Agreement and certified as available by the County Auditor.

VI.

MUD 290 or HCFCD may terminate this Agreement, without cause, upon 30 days' notice to the other Party until such time as HCFCD awards the construction contract for the Project, in which case any unused funds provided by the Parties shall be returned in a timely manner. If MUD 290 terminates this Agreement after construction of the Project has begun, MUD 290 will not be refunded any of the MUDs Contribution. MUD 290 is responsible to pay HCFCD the MUDs Contribution and if a party to Exhibit A fails to make its contribution, it is the responsibility of MUD 290 to pay HCFCD the full MUDs Contribution.

VII.

Upon completion of the construction of the Project, HCFCD shall provide MUD 290 with record drawings of the Project.

VIII.

HCFCD will cause to be inserted in the construction contract for the Project an agreement that its contractor will indemnify, defend, protect, covenant not to sue, release, and save and hold harmless HCFCD and the MUDs 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 of omission by the contractor.

VIX.

MUD 290 will obtain for HCFCD any rights-of-entry and temporary construction easements needed to construct the Project.

X.

The Parties agree 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.

XI.

All notices and communications under this Agreement shall be mailed by certified mail, return receipt requested, or delivered to the District at the following address:

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

All notices and communications under this Agreement shall be mailed by certified mail, return receipt requested, or delivered to MUD 290 at the following addresses:

Harris County Municipal Utility District No. 290
3200 Southwest Freeway, Suite 2600
Houston, TX 77027
Attention: Michelle Dueitt, Board President

With copies to:

Harris County Municipal Utility District No. 278
3200 Southwest Freeway, Suite 2600
Houston, TX 77027
Attention Shantai Warren, Board President

Trail of the Lakes Municipal Utility District
c/o Radcliffe Bobbitt Adams Polley PLLC
2929 Allen Parkway, Suite 3450
Houston, TX 77019
Attention Jo A. Smith, Board President

XII.

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.

XIII.

Each and every agreement contained in this Agreement is, and shall be construed as, a separate and independent agreement. If any provision of this Agreement should be held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby.

XIV.

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.

EXECUTED on _____.

APPROVED AS TO FORM:

CHRISTIAN D. MENEFEE
Harris County Attorney

**HARRIS COUNTY FLOOD CONTROL
DISTRICT**

By: 
LAURA FIORENTINO CAHILL
Senior Assistant County Attorney

By: _____
LINA HIDALGO,
County Judge

ATTEST:

**HARRIS COUNTY MUNICIPAL UTILITY
DISTRICT NO. 290**

By: 
Carey Kesner
Board Secretary

By: 
~~Michelle Duett, III~~ Josh Stibrich
~~Board President~~ Vice President

Exhibit A

COST SHARING AGREEMENT FOR MAINTENANCE AND REPAIR OF WILLIAMS GULLY WEIRS AND CHANNEL BY AND AMONG HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 278, HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 290 AND TRAIL OF THE LAKES MUNICIPAL UTILITY DISTRICT

This Cost Sharing Agreement for Maintenance of Williams Gully Weirs and Channel is entered into as of this 29th day of August, 2005 by and among Harris County Municipal Utility District No. 278 ("MUD 278"), Harris County Municipal Utility District No. 290 ("MUD 290"), and Trail of the Lakes Municipal Utility District ("TOTL") (collectively "the Districts"), all political subdivisions of the State of Texas, created and operating under the provisions of Article XVI, Section 59 of the Texas Constitution and Chapters 49 and 54 of the Texas Water Code, as amended.

WHEREAS, the Districts lie within the portion of the Greens Bayou watershed known as Williams Gully, also known as the drainage channel designated by Harris County Flood Control District ("HCFCD") as Unit P130-02-00; and

WHEREAS, the Districts entered into that certain Cost Sharing Agreement for Construction of Williams Gully Weirs, to provide for the terms by which each district would finance design and construction costs of the two weir system constructed in Williams Gully, which project has since been constructed; and

WHEREAS, the Districts agree that the proper maintenance and repair of the weirs and channel is necessary to ensure their proper function and therefore desire to enter into this Agreement to provide the terms by which each of them will share the costs of same;

AGREEMENT

NOW THEREFORE, for and in consideration of the mutual promises, obligations and benefits contained in this agreement, the parties hereby contract and agree as follows:

Section 1: Maintenance and Repair of Weirs. The Districts agree that MUD 290 shall provide primary oversight of the weirs. The Districts further agree that MUD 290 shall hire one or more professional consultants to provide maintenance of the weirs as needed (the "Consultant"). MUD 290 shall use its best efforts to ensure that the Consultant maintains the weirs in such a way as to preserve their primary purpose of providing detention and proper drainage. MUD 290 shall require the Consultant to inspect the Facilities (i) quarterly; (ii) after any rainfall event of two or more inches in the surrounding area; and (iii) as required by local, state or federal regulations,

including, without limitation, the Harris County Flood Control District and the Texas Commission on Environmental Quality. Costs for maintenance of the Facilities shall be shared among the Districts according to Section 3.

The Districts hereby authorize MUD 290 to require the Consultant to perform any necessary maintenance and repairs of under \$15,000 without further approval by the Districts. For maintenance and repairs over \$15,000, the Consultant will provide a written proposal to MUD 290, with a copy to each District at the address provided in Section 4, fully describing the work to be performed and reasons therefore, as well as the estimated cost of such work. Each District shall have 30 days to comment in writing to MUD 290 on such expenditure and MUD 290 shall consider all comments received. If no comments are received within the 30-day period, MUD 290 shall assume full agreement of the Districts and all Districts shall be liable for the pro rata share of maintenance and repair costs according to Section 3. After the 30-day period, MUD 290 shall direct the Consultant to commence with the work and upon its completion shall invoice the Districts according to Sections 3 and 4.

Section 2: Maintenance and Repair of Williams Gully Channel. Each District is responsible to maintain and repair its portion of the Williams Gully drainage channel as indicated on the attached Exhibit A.

Section 3: Allocation of Costs, Billing and Payment for Maintenance and Repair of Weirs. Each District shall be responsible for its pro rata share of maintenance and repair costs for the weirs as follows:

MUD 278	10.4%
MUD 290	71.2%
<u>TOTL</u>	<u>18.4%</u>
Total	100%

The Consultant will provide monthly invoices to MUD 290, which shall provide a copy to each District at the addresses given below, providing a detailed statement of the work performed pursuant to this Contract. The Districts agree to pay their pro rata shares to MUD 290 within 30 days of receipt of each invoice.

Section 4: Addresses. The following addresses shall be used for the purpose of providing notification regarding maintenance and repair of the weirs.

To MUD 278:
c/o Schwartz, Page & Harding, L.L.P.
1300 Post Oak Blvd., Suite 1400
Houston, Texas 77056
Attn: Martha T. Bersch

Phone: (713) 623-4531

Fax: (713) 623-6143

To MUD 290:

c/o Allen Boone Humphries Robinson LLP

3200 Southwest Freeway, Suite 2600

Houston, Texas 77027

Attn: Lynne Humphries

Phone: (713) 860-6406

Fax: (713) 860-6606

To TOTL:

c/o Vinson & Elkins L.L.P.

2300 First City Tower

1001 Fannin

Houston, Texas 77002-6760

Attn: Jennifer LeGrand

Phone: (713) 758-2372

Fax: (713) 615-5391

The Districts agree to provide written notice of any change to the information in this Section 4 to the other Districts at the addresses provided in paragraph (b) above.

[Execution pages follow.]

HARRIS COUNTY MUNICIPAL UTILITY
DISTRICT NO. 278:

ATTEST:



President, Board of Directors



Secretary, Board of Directors



HARRIS COUNTY MUNICIPAL UTILITY
DISTRICT NO. 290:

ATTEST:



President, Board of Directors



Secretary, Board of Directors



TRAIL OF THE LAKES MUNICIPAL UTILITY
DISTRICT:

ATTEST:



President, Board of Directors



Secretary, Board of Directors



EXHIBIT B



Exhibit B

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 MUNICIPAL UTILITY DISTRICT NO. 290**

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
AYES:	Judge Lina Hidalgo	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
NAYS:	Comm. Rodney Ellis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ABSTENTIONS:	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:

WHEREAS, MUD 290 in coordination with Harris County Municipal Utility District No. 278 and Trail of the Lakes Municipal Utility District, collectively referred to herein as ("MUDs"), which are located in an area of Northeast Harris County about 25 miles from downtown Houston, desire to address area flooding concerns by making channel repairs ("Project") to Williams Gully, known as HCFCD Unit P130-02-00; and

WHEREAS, the MUDs entered into a Cost Sharing Agreement for Maintenance and Repair of Williams Gully Weirs and Channel in August 2005 and appointed MUD 290 as the lead entity, which is attached hereto as Exhibit A; and

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WHEREAS, HCFCD, whose mission is to provide flood damage reduction projects that work, with appropriate regard for community and natural values, desires to contribute \$702,710.50 ("HCFCD Contribution") toward the Project, which is located on property owned by HCFCD; and

WHEREAS, the MUDs will contribute a combined total \$702,710.50 toward the Project ("MUDs Contribution"); and

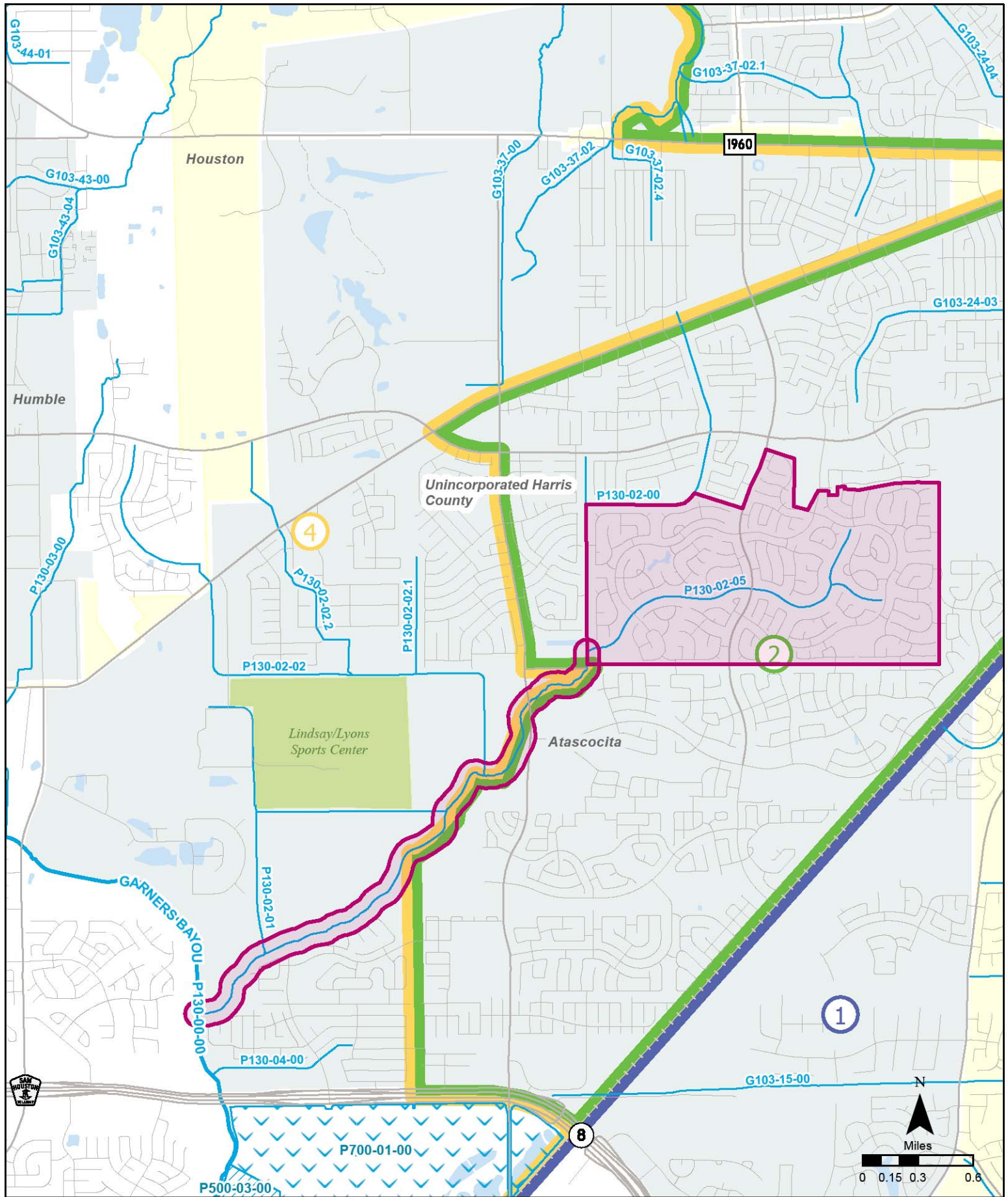
WHEREAS, MUD 290 will design the Project and HCFCD will publicly bid and manage the construction contract for the Project; and MUD 290 will maintain the Project pursuant to Exhibit A once the Project is complete; and

WHEREAS, it is to the mutual benefit of MUD 290 and HCFCD to enter into this Agreement for the use and benefit of the public.

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 the Harris County Flood Control District, an Interlocal Agreement by and through the Harris County Flood Control District and the Harris County Municipal Utility District No. 290, said Agreement being incorporated herein by reference for all purposes as though fully set forth verbatim herein.



Project ID: P130-02-00-X018

Watershed: Greens Bayou

Precinct: 2,4