

**JOINT PARTICIPATION INTERLOCAL AGREEMENT**

This Joint Participation Interlocal Agreement (“Agreement”) is entered into by and between **Harris County** (“County”), **Harris County Municipal Utility District No. 81** (“District 1”), and **Cornerstones Municipal Utility District** (“District 2”), pursuant to the Interlocal Cooperation Act, Tex. Gov’t Code Ch. 791.001, *et seq.* County, District 1, and District 2 may each be referred to herein individually as a “Party” or collectively as the “Parties”.

**RECITALS**

WHEREAS, it is of mutual benefit to all Parties to construct improvements to drainage facilities in and around Cimarron Sections 2, 3, 4, and 5 Subdivisions (“Subdivision”) of which improvements include an improved channel, outfall, and storm sewer system (“Project”), as generally illustrated on Exhibit B attached hereto and incorporated herein by reference; and

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

WHEREAS, all 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 shall be responsible for obtaining all necessary permits and jurisdictional approvals for construction of the project.
- (iii) Upon completion of the PS&E the County will submit the PS&E to District 1 and District 2 for review and approval.
- (iv) Upon approval by District 1 and District 2 of the PS&E, the County will advertise for and receive bids for construction of the Project, in a manner similar to that of other County projects.
- (v) Upon receipt of bids for the construction of the Project the County shall:
  - (a) Determine the lowest and best bidder and provide the bids to District 1 and District 2 with its recommendation for award of the construction contract to such lowest and best bidder, as determined by the Harris County Commissioners Court; and

- (b) Provide an invoice to District 1 and District 2 for their cost share percentage for construction of the project in accordance with Section 2 of this agreement.
- (vi) Upon award of a contract for construction of the Project, the County will:
  - (a) Manage and inspect the construction of the Project in a manner similar to that of other County construction projects; and
  - (b) Through its contractor, construct the Project in accordance with the PS&E approved by District 1 and District 2. The County may make minor changes in the PS&E through change(s) in contract ("CIC") that the County deems to be necessary or desirable during the construction of the Project, so long as the original scope and intent of the Project is maintained.
- (vii) Upon completion of the construction of the Project, the County shall:
  - (a) Provide an opportunity for District 1 and District 2 to participate in a final walk-through and preparation of a punch list in regards to the construction of the Project; and
  - (b) Provide a statement of final accounting to District 1 and District 2 detailing all construction costs incurred and identify amount(s) to be invoiced or refunded to the District; and
  - (c) Continue to assume full responsibility for the ongoing maintenance and repairs of the Project located within the County's Right-of-Way and for Asphalt trails along HCFCF T107-00-00 channel.

**B. District 1's Responsibilities**

- (i) District 1 will review the PS&E provided by the County and provide its approval within thirty (30) days. Should District 1 desire to make changes to such PS&E, the Parties agree to meet and resolve all issues within thirty (30) days of the District 1's receipt of the PS&E in order to finalize an agreed upon PS&E for the Project. If District 1 does not provide a response on the PS&E provided by the County within thirty (30) days from its receipt of the PS&E, then the PS&E submitted to District 1 by the County will be deemed approved.
- (ii) Upon receipt of the bids and award recommendation from the County for construction of the Project, District 1 will:
  - (a) Review the bids and provide concurrence for award of the construction contract to such lowest and best bidder within thirty (30) days from receipt of the recommendation from the County. If District 1 does not provide a response on the construction contract award recommendation within thirty (30) days from its receipt of the recommendation from the County, then the recommendation submitted to District 1 will be deemed approved; and
  - (b) Remit payment to the County for the District 1 Funding Share for construction of the Project in accordance with Section 2 of this agreement.

### C. District 2's Responsibilities

- (i) District 2 will review the PS&E provided by the County and provide its approval within thirty (30) days. Should District 2 desire to make changes to such PS&E, the Parties agree to meet and resolve all issues within thirty (30) days of the District 2's receipt of the PS&E in order to finalize an agreed upon PS&E for the Project. If District 2 does not provide a response on the PS&E provided by the County within thirty (30) days from its receipt of the PS&E, then the PS&E submitted to District 2 by the County will be deemed approved.
- (ii) Upon receipt of the bids and award recommendation from the County for construction of the Project, District 2 will:
  - (a) Review the bids and provide concurrence for award of the construction contract to such lowest and best bidder within thirty (30) days from receipt of the recommendation from the County. If District 2 does not provide a response on the construction contract award recommendation within thirty (30) days from its receipt of the recommendation from the County, then the recommendation submitted to District 2 will be deemed approved; and
  - (b) Remit payment to the County for the District 2 Funding Share for construction of the Project in accordance with Section 2 of this agreement.

### **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 (50.725%) of the project cost necessary for engineering and construction of the Project, District 1 agrees to provide (47.225%) of the project cost ("District 1 Funding Share") necessary for engineering and construction of the Project, and District 2 agrees to provide (2.05%) of the project cost at a maximum amount of \$191,835.02 ("District 2 Funding Share") necessary for engineering and construction of the Project as illustrated in Exhibit A attached hereto and incorporated herein by reference.
- B. Parties agree that any Project costs, including but not limited to, Project costs or expenses in excess of District 2's Funding Share, incurred during the construction of the project or other work to be performed under this Agreement shall be funded by the County and District 1 by splitting those excess costs at a 50% share between County and District 1. District 1 has consented to funding up to the specific amount agreed upon in Exhibit A and mentioned in paragraph A. above.
- C. District 1 agrees to provide payment of District 1 Funding Share to the County within fourteen (14) business days after the first regular District 1 board meeting following receipt of the invoice.
- D. District 2 agrees to provide payment of District 2 Funding Share to the County within fourteen (14) business days after the first regular District 2 board meeting following receipt of the invoice.
- E. Parties agree that any construction costs incurred during the construction of the project or other work to be performed under this Agreement in excess of the construction contract award amount may be funded jointly by all Parties according to the agreed upon cost share percentage, provided however that notwithstanding any language in this Agreement to the contrary, the District 1 Funding Share

shall not exceed the total amount of District 1's Funding Share specified on Exhibit A without further approval by District 1, and the District 2 Funding Share shall not exceed the total amount of District 2's Funding Share specified on Exhibit A, and mentioned above in Paragraphs A and B regarding District 2's maximum funding amount, without further approval by District 2. Gas line utility relocations are a possibility for this project. Those costs will be part of this project and be part of the cost share as long as the cost of the utility relocations themselves do not exceed 50% of the project costs. District 1 will be responsible for any costs for utility relocations over 50% at that point; provided, however, that as specified above, the District 1 Funding Share shall not exceed the total amount of District 1's Funding Share specified on Exhibit A without further approval by District 1. Utility relocation costs will be accounted for after all other costs.

### **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 District 1 and District 2 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.
- C. In the event that this Agreement is terminated prior to completion of construction of the Project, the terminating Party shall provide written notice of termination to the other Parties and no Party shall have any further obligation hereunder, except that the County will provide a written accounting showing both the contributions received from District 1 and District 2 and the County's costs incurred for the Project. The County shall thereafter reimburse to District 1 and District 2 any funds advanced by each respective District, less 100% of any expenses incurred or committed by the County for the Project. Reimbursements, if any, will be made pro rata to District 1 and District 2 based upon their respective contributions.

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

- A. District 1 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 1 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, but shall be grounds for termination of this Agreement by District 1.
- C. District 2 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.
- D. District 2 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, but shall be grounds for termination of this Agreement by District 2.

## **Section 5. Miscellaneous**

- A. Non-Assignability. The County, District 1, and District 2 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 District 1 or District 2 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, District 1, or District 2 at the following addresses:

District 1: Harris County Municipal Utility District No. 81  
c/o Katie Carner  
Allen Boone Humphries Robinson LLP  
3200 Southwest Freeway, Suite 2600  
Houston, Texas 77027  
Email: [kcarner@abhr.com](mailto:kcarner@abhr.com)

George Goff  
President, Board of Directors  
805 Hidden Canyon Road  
Katy, Texas 77450

District 2: Cornerstones Municipal Utility District  
c/o Mark Brooks  
Young and Brooks  
10000 Memorial Drive, Suite 260  
Houston, Texas 77024  
Email: [mbrooks@youngandbrooks.com](mailto:mbrooks@youngandbrooks.com)

Morgan Stagg, P.E.  
President, Board of Directors  
10000 Memorial Drive, Suite 260  
Houston, Texas 77024

County: Harris County Engineering Department  
1001 Preston Avenue, 7<sup>th</sup> 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 District 1 or District 2 for any purpose. Neither District 1 or District 2, nor their 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 District 1 and District 2 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 any 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, District 1 warrants that the duties accorded to District 1 in this Agreement are within the powers and authority of District 1. By execution of this Agreement, District 2 warrants that the duties accorded to District 2 in this Agreement are within the powers and authority of District 2.

[Execution Page Follows]

**HARRIS COUNTY**

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

Lina Hidalgo  
County Judge

**HARRIS COUNTY MUNICIPAL UTILITY  
DISTRICT NO. 81**

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

George Goff.  
President

**CORNERSTONES MUNICIPAL UTILITY  
DISTRICT**

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

Morgan Stagg  
President

APPROVED AS TO FORM:  
CHRISTIAN D. MENEFE  
County Attorney

By: Philip Berzins  
Philip Berzins

Assistant County Attorney  
CAO File No.: 20GEN2547



# EXHIBIT A

## Harris County MUD No. 81, Cornerstones MUD

Precinct 3: Cimarron Secs. 2, 3, 4, & 5 Subdivision Drainage Improvements - 2018

23-Jun-21

Description	Estimated District Cost (Estimate Used In Agreement)	District Cost Based on Bids	District Cost Based on Final Pay Estimate
Total Construction Cost	\$6,175,549.00	\$ -	\$ -
Total Change in Contract (CIC) Line Items	\$ -	\$ -	\$ -
<b>Subtotal</b>	<b>\$6,175,549.00</b>	<b>\$ -</b>	<b>\$ -</b>
Contingency -10% For Potential High Bids	\$ 617,554.90	\$ -	\$ -
<b>Subtotal</b>	<b>\$ 6,793,103.90</b>	<b>\$ -</b>	<b>\$ -</b>
Contingency -10% For Potential CIC's	\$ 679,310.39	\$ -	\$ -
<b>Subtotal</b>	<b>\$ 7,472,414.29</b>	<b>\$ -</b>	<b>\$ -</b>
CMT (3%)	\$ 224,172.43	\$ -	\$ -
<b>Subtotal</b>	<b>\$ 7,696,586.72</b>	<b>\$ -</b>	<b>\$ -</b>
Construction Phase Services - 5%	\$ 384,829.34	\$ -	\$ -
<b>Subtotal</b>	<b>\$ 8,081,416.05</b>	<b>\$ -</b>	<b>\$ -</b>
Engineering Costs - Fixed Fee	\$ 1,262,949.00	\$ -	\$ -
<b>Total Engineering Fee</b>	<b>\$ 1,262,949.00</b>	<b>\$ -</b>	<b>\$ -</b>
<b>Total Project Cost</b>	<b>\$ 9,344,365.05</b>	<b>\$ -</b>	<b>\$ -</b>
Previous Payments Received	\$ -	\$ -	\$ -
<b>District 1 Funding Share - Total Due From HCMUD 81 (47.225% of the Project Costs)</b>	<b>\$ 4,412,876.84</b>	<b>\$ -</b>	<b>\$ -</b>
<b>District 2 Funding Share - Total Due From Cornerstones MUD (2.05% of the Project Costs) - capped at maximum value shown to the right</b>	<b>\$ 191,835.02</b>	<b>\$ -</b>	<b>\$ -</b>

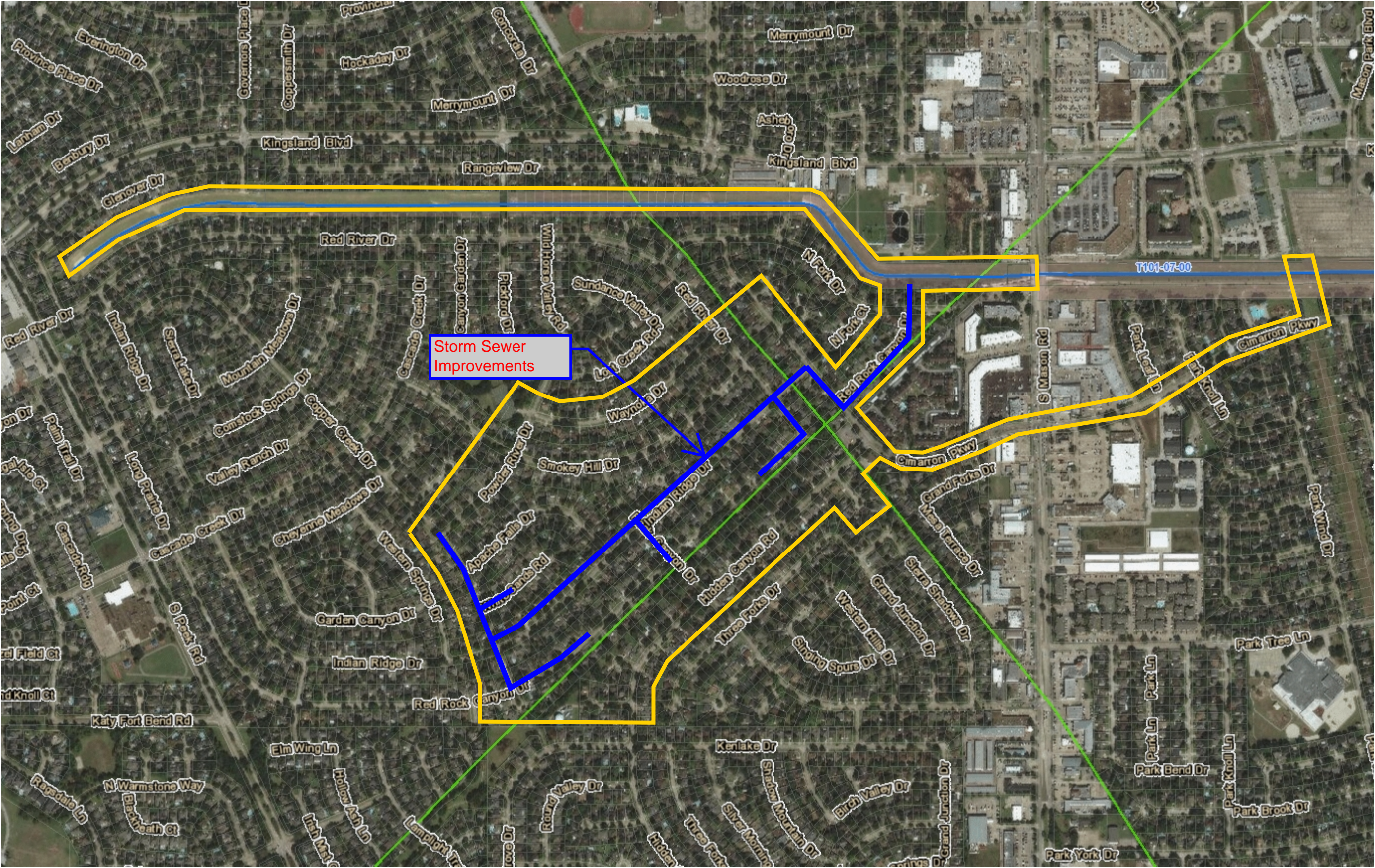


Exhibit B

Cimarron Secs 2, 3, 4, and 5 Subdivision Drainage Improvements - 2018



- Legend**
- Channels
  - ROW - HCFCD
  - EASEMENT
  - FEE
  - LICENSE AND PERMISSION
  - Parcels
  - Pipelines
  - Harris County Boundary
  - Other Counties
  - Harris County
  - World Street Map
  - Project Area Limits



0.3 0 0.14 0.3 Miles

WGS\_1984\_Web\_Mercator\_Auxiliary\_Sphere  
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1: 9,028



Notes

Notes



## 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, HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 81, AND CORNERSTONES MUNICIPAL UTILITY DISTRICT TO CONSTRUCT DRAINAGE FACILITIES IN AND AROUND CIMARRON SECTIONS 2, 3, 4, AND 5 SUBDIVISIONS AND ALL RELATED APPURTENANCES IN HARRIS COUNTY PRECINCT 3**

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, Harris County Municipal Utility District No. 81, and Cornerstones Municipal Utility District to construct drainage facilities in and around Cimarron Sections 2, 3, 4, and 5 Subdivisions and all related appurtenances in Harris County Precinct 3.
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.