

STATE OF TEXAS

COUNTY OF FORT BEND

INTERLOCAL AGREEMENT FOR REMOVAL AND CLEARING SERVICES FOR UPPER OYSTER CREEK

RECITALS

WHEREAS, the Upper Oyster Creek watershed is located in Fort Bend County, originating in the headwaters of Jones and Flewellen Creeks, near Fulshear, Texas; and

WHEREAS, this Agreement will assist with the protection and improvement of existing drainage conditions along the Upper Oyster Creek system; and

NOW, THEREFORE, for and in consideration of the mutual promises, obligations, and benefits herein set forth, the District and GCWA hereby agree as follows:

SECTION 1. PROJECT SCOPE OF WORK

SECTION 2. PROJECT FUNDING

A. District

1. District agrees to pay GCWA fifty percent of the Project costs, not to exceed two hundred thousand dollars and no/100 (\$200,000.00).
2. GCWA understands and agrees, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation District shall have available shall in no case exceed two hundred thousand dollars and no/100 (\$200,000.00).
3. GCWA understands and agrees that the total amount GCWA shall become entitled to and the total maximum sum that District may become liable to pay to GCWA shall not under any conditions, circumstances, or interpretations thereof exceed two hundred thousand dollars and no/100 (\$200,000.00).
4. District shall forward the amount due, as described in this Section, to GCWA on or before the fifteenth (15th) day after GCWA selects the independent contractor for Project services.
5. District further states that that the payments provided for by this Agreement fairly compensates the District and GCWA for the services performed under this Agreement.

B. GCWA

1. GCWA agrees to pay 50% of the Project costs, not to exceed two hundred thousand dollars and no/100 (\$200,000.00).
2. District understands and agrees, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation GCWA shall have available shall in no case exceed two hundred thousand dollars and no/100 (\$200,000.00).
3. District understands and agrees that the total amount GCWA shall become entitled to and the total maximum sum that District may become liable to pay to GCWA shall not under any conditions, circumstances, or interpretations thereof exceed two hundred thousand dollars and no/100 (\$200,000.00).
4. If, after completion of the Project (or any prior termination of this Agreement), there are any funds remaining and/or savings from the Project, GCWA shall return the District's unused funds (fifty percent (50%) of the unused Project funds) to the District, within thirty (30) days of completion of Project (or any prior termination of this Agreement).
5. GCWA further states that the payments provided for by this Agreement fairly compensates the District and GCWA for the services performed under this Agreement.

SECTION 3. OBLIGATIONS OF GCWA

A. GCWA agrees that during the term of this Agreement GCWA shall:

1. Be responsible for selecting and contracting with a qualified contractor for Project services.
2. Comply with the applicable local, state and federal laws related to the award of a contract for the Project services.
3. Manage the Project and oversee the work of the selected Project contractor.
4. During the analysis of existing conditions and development of Project scope, provide District the opportunity to review the proposed scope of work with the selected Project contractor. Any deficiencies noted by District shall be brought to GCWA's attention and shall be promptly addressed by GCWA and the selected Project contractor.
5. Submit reports to the District, if requested by the District, describing Project progress.
6. Furnish to District a full accounting of the funds expended on the Project in a form reasonably acceptable to the District.

SECTION 4. TERM

The time for performance of this Agreement shall begin on the date of execution of the final party and end no later than December 31, 2017.

SECTION 5. MODIFICATIONS AND WAIVERS

The parties may not amend this Agreement, except by a written agreement executed by all Parties.

SECTION 6. TERMINATION

A. Termination for Convenience

1. Either party may terminate this Agreement at any time upon thirty (30) days written notice to the other party.

B. Termination for Default

1. Either party may terminate the whole or any part of this Agreement for cause if either party materially breaches any of the covenants or terms and conditions set forth in this Agreement or fails to perform any of the other provisions of this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in any of these circumstances does not cure such breach or failure to the other party's reasonable satisfaction within a period of ten (10) calendar days after receipt of notice from the other party specifying such breach or failure.
2. If, after termination, it is determined for any reason whatsoever that the party accused of the breach was not in default, or that the default was excusable, the rights and

obligations of the parties shall be the same as if the termination had been issued for the convenience in accordance with Section 1. above.

C. Termination under this Section

1. If District terminates this Agreement as provided in this Section 6, no fees of any type, other than fees due and payable at the Termination Date, including the District's 50% share of any amounts owed by GCWA to the independent contractor(s), may be retained by GCWA for payments to the independent contractor(s).

SECTION 7. LIABILITY

GCWA and the District are each governmental entities entitled to the immunities and defenses available to governmental units under state and federal law, except as may be waived by the Texas Tort Claims Act, Chapter 101 of the Texas Civil Practice and Remedies Code, or other applicable law, and each may take all such actions as necessary to avail each of the maximum protection legally available in order to minimize or eliminate any potential loss or liability with respect to the Project. No party hereto waives or relinquishes any immunity or defense on behalf of itself, its officers, employees or agents as a result of its execution of this Agreement and performance of the covenants contained herein.

SECTION 8. INDEMNITY AND HOLD HARMLESS

TO THE EXTENT PERMITTED BY LAW, GCWA AND THE DISTRICT EACH SHALL HOLD HARMLESS THE OTHER PARTY AND THE OTHER PARTY'S DIRECTORS, OFFICERS, AND EMPLOYEES AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, INJURIES AND DAMAGES INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY AND PROPERTY DAMAGE TO THE EXTENT CAUSED BY ANY OF ITS OWN INTENTIONAL ACTS OR OMISSIONS OR FROM THE NEGLIGENT ACTS OR OMISSIONS OF ITS OWN OFFICERS OR EMPLOYEES ARISING OUT OF OR DUE TO THE PERFORMANCE, FAILURE TO PERFORM, OR BREACH OF THIS AGREEMENT.

SECTION 9. INSURANCE REQUIREMENTS

- A. Each party agrees to provide such insurance, if any, that the party deems appropriate for this Agreement.
- B. GCWA shall require that the contractor contemplated by this Agreement furnish District with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to District. The contractor shall provide certified copies of insurance endorsements and/or policies if requested by District. The contractor shall maintain such insurance coverage from the time the contractor commences work until the work is completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of the work. The contractor shall obtain such insurance written on an Occurrence form (or a Claims Made form for Professional Liability insurance) from such companies having Bests rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:

1. Workers' Compensation insurance. Substitutes to genuine Workers' Compensation Insurance will not be allowed. Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.
 2. Commercial General Liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.
 3. Business Automobile Liability insurance with a combined Bodily Injury/Property Damage limit of not less than \$1,000,000 each accident. The policy shall cover liability arising from the operation of licensed vehicles by policyholder.
 4. Professional Liability may be made on a Claims Made form with insurance with limits not less than \$1,000,000.
- C. County, District, and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation and Professional Liability. All Liability policies including Workers' Compensation written on behalf of the contractor excluding Professional Liability, shall contain a waiver of subrogation in favor of Fort Bend County, District, and members of the Fort Bend County Commissioners Court.
- D. If required coverage is written on a claims-made basis, the contractor shall warrant that any retroactive date applicable to coverage under the policy precedes the effective date of the contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time that any work under this Agreement is completed.

SECTION 10. NOTICES

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

If to District:	Fort Bend County Drainage District ATTN: Mark Vogler, P.E. P.O. Box 1028 1124 Blume Road Rosenberg, Texas 77471
With a copy to:	Fort Bend County Attn: County Judge 301 Jackson Street, Suite 719 Richmond, Texas 77469
If to GCWA:	Gulf Coast Water Authority ATTN: Ivan Langford, General Manager 3630 FM 1765 Texas City, Texas 77591

With copy to: Scott Bounds
 2727 Allen Parkway, Suite 600
 Houston, Texas 77019

SECTION 11. INSPECTION OF BOOKS AND RECORDS

GCWA will ensure that District, or any duly authorized agent of District, is allowed to inspect and examine the books and records of GCWA for the purpose of verifying the amount of work performed under this Agreement. The District's right to inspect survives the termination of this Agreement for a period of four years.

SECTION 12. CONFIDENTIAL AND PROPRIETARY INFORMATION

- A. The parties acknowledge that it and its employees or agents or contractors may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to the other party. Any and all information of any form obtained by the parties or its employees or agents from a party in the performance of this Agreement shall be deemed to be confidential information, ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by a party shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by the other party) publicly known or is contained in a publicly available document; (b) is rightfully in the disclosing party's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; or (c) is independently developed by employees or agents of the disclosing party who can be shown to have had no access to the Confidential Information.
- B. Each party ensures that it will hold Confidential Information in strict confidence, using at least the same degree of care that it uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of services to the parties hereunder, and to advise each of its employees agents, and contractors of their obligations to keep Confidential Information confidential. Each party ensures that it shall use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, each party ensures that it shall advise the other party immediately in the event the party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and, to the extent permitted by law, the party will at its expense cooperate with the other party in seeking injunctive or other equitable relief in the name of the other party or against any such person. Each party agrees that, except as directed by other party, the party will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Agreement or at the other party's request, the party will

promptly turn over to the other party all documents, papers, and other matter in its possession which embody Confidential Information, except to the extent that state law requires such party to maintain a copy of such information for its records.

- C. Each party acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to the other party that is inadequately compensable in damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Each party acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of the other party and are reasonable in scope and content.
- D. Notwithstanding the foregoing, if a party is required by law or governmental order to disclose Confidential Information, it shall give discloser prompt written notice of such requirement, if practicable, prior to such disclosure. In particular, each party acknowledges that the other party is a governmental entity subject to Chapter 552 of the Texas Government Code, also known as the Public Information Act (the "Act"). If a third party requests information under the Act from a party that the party has received from the other party, or that the party has produced based upon such information received from the other party, then the party will promptly notify the other party of the information request in accordance with Section 552.305 of the Act. If no protective order or other remedy is obtained precluding the production of the information to the requestor, or if discloser authorizes production of the information to the requestor in writing, then the party will furnish only that portion of the requested information that its counsel advises it is legally required to disclose. The terms and conditions of the Agreement are not proprietary or confidential information.

SECTION 13. INDEPENDENT CONTRACTOR

The relationship of the parties is that of independent contractors. Neither party shall be deemed to be the agent, partner, nor fiduciary of the other, and neither is authorized to take any action binding upon the other. The officers and employees of one party shall not be deemed or construed to the officers or employees of the other party for any purposes whatsoever.

SECTION 14. COMPLIANCE WITH LAWS

GCWA shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required by District, GCWA shall furnish District with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

SECTION 15. APPLICABLE LAW

The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive GCWA's or the District's sovereign immunity.

SECTION 16. ASSIGNMENT

No party hereto shall make, in whole or in part, any assignment of this Agreement or any obligation hereunder without the prior written consent of the other parties.

SECTION 17. NO THIRD PARTY BENEFICIARIES

The parties do not intend that any specific third party obtain a right by virtue of the execution or performance of this Agreement. Any purported assignment of rights or delegation of performance in violation of this Section is void.

SECTION 18. SEVERABILITY

If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

SECTION 19. PUBLICITY

Contact with citizens of Fort Bend County, media outlets, or governmental agencies by either party shall be permitted with the express written permission of the other party, except where required to do so by law.

SECTION 20. CAPTIONS

The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.

SECTION 21. EXECUTION

This Agreement has been executed by District, GCWA upon and by the authority of their respective governing bodies. This Agreement shall become effective on the date of execution by the final party.

SECTION 22. AVAILABILITY OF FUNDS

All expenditures made by each party in fulfilling its obligations hereunder shall be paid only from current revenues legally available to the party. Each party agrees that it shall make

payments for this Agreement from current revenues available to the party and that it will not budget or expend funds for other governmental services unless it has current revenues available to make payments for this Agreement.

FORT BEND COUNTY DRAINAGE DISTRICT

GCWA

Robert E. Hebert, County Judge



Authorized Agent Signature

Date: _____

Ivan Langford

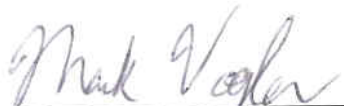
Authorized Agent-Printed Name

Date: March 16, 2017

ATTEST:

Laura Richard, County Clerk

Reviewed by:



Mark Vogler, Chief Engineer