

STATE OF TEXAS §
 § **KNOW ALL PERSONS BY THESE PRESENTS:**
COUNTY OF FORT BEND §

**INTERLOCAL AGREEMENT BETWEEN LEVEE IMPROVEMENT DISTRICT NO. 14
AND FORT BEND COUNTY DRAINAGE DISTRICT
FOR THE USE OF TRACTORS FOR EMERGENCY REPAIR WORK**

This Interlocal Agreement (“Agreement”) is made and entered into by and between Fort Bend County Drainage District, a body corporate and a political subdivision of the State of Texas, (the “Drainage District”) and the Fort Bend County Levee Improvement District No. 14 of Fort Bend County, Texas, a body politic and corporate and a political subdivision of the State of Texas “LID”) (each a “Party” and together, the “Parties”).

RECITALS

WHEREAS, Chapter 791 of the Texas Government Code, the Interlocal Cooperation Act, authorizes local governments to contract with each other to provide governmental functions or services; and

WHEREAS both LID and Drainage District are responsible for providing flood protection services for residents within its boundaries; and

WHEREAS the LID requires the use of high horse-powered tractors to assist with emergency flood control management; and

WHEREAS, Drainage District is in possession of high horse-powered tractors and wishes to grant LID permission to utilize those tractors when needed; and

WHEREAS the Parties to this Agreement both find that this Agreement serves a public purpose for each entity;

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

AGREEMENT

SECTION 1. CONSIDERATION.

1.01 Each party agrees that it is performing its obligations under this agreement in consideration of the agreement of the other party to perform such party’s obligations.

SECTION 2. PERMITTED USE.

- 2.01 Tractors may be used to operate water pumps used in the removal of rainfall runoff within the geographic boundaries of the LID.
- 2.02 LID may request for use of Tractor(s) in writing to the Drainage District Director.
- 2.03 Verbal requests are sufficient when circumstances warrant; however, all verbal requests must be followed with a written request within three (3) days of the initial verbal communication.
- 2.04 If all Tractors are currently in use by the Drainage District, a Tractor will be provided as soon as one becomes reasonably available.
- 2.05 LID may utilize the Tractors for a period of up to 30 calendar days.
- 2.06 Use Period under this Agreement shall begin on the date Tractor(s) is acquired by LID from the Drainage District property until the date of return to the Drainage District property.

SECTION 3. OPERATIONS AND MAINTENANCE OF TRACTOR(S).

- 3.01 Tractor(s) title will remain with Drainage District at all times.
- 3.02 LID agrees it will not use or permit the use of Tractor(s) under this Agreement in a negligent or improper manner; for any personal use; in violation of any law; so as to void any insurance covering the Tractor(s); as a public or private livery; or to become subject to any lien, charge, or encumbrance.
- 3.03 LID personnel will be responsible for securing Tractors from Drainage District and returning Tractors to Drainage District.
- 3.04 Prior to Use, Drainage District Personnel will make note of Tractor(s) mileage. Drainage District Personnel will complete a visual inspection of the Tractor(s) and make note of any damage or outstanding issues.
- 3.05 IT IS UNDERSTOOD AND AGREED THAT DRAINAGE DISTRICT HAS NOT MADE AND IS NOT NOW MAKING, AND DRAINAGE DISTRICT SPECIFICALLY AND EXPRESSLY DISCLAIMS AND LID VOLUNTARILY AND WITH KNOWLEDGE WAIVES, ANY WARRANTIES, REPRESENTATIONS, OR GUARANTIES OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT, OR FUTURE, WITH RESPECT TO THE CONDITION OF THE TRACTOR(S). DRAINAGE DISTRICT SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE TO LID NOR TO ANYONE ELSE OF ANY KIND AND HOWSOEVER CAUSED, WHETHER CAUSED BY ANY TRACTOR(S); THE REPAIR, MAINTENANCE, OR EQUIPMENT OF ANY TRACTOR(S); THE FAILURE OF ANY TRACTOR(S); OR THE INTERRUPTION OF SERVICE OR USE OF ANY TRACTOR(S) UNDER THIS AGREEMENT.
- 3.06 Upon return, LID agrees that Drainage District Personnel will conduct a second visual inspection, make a note of current mileage, and conduct a maintenance inspection of Tractor(s), noting in writing any damage or outstanding issues.
- 3.07 LID, at its sole expense, shall be responsible for all maintenance, condition and upkeep, service, materials, and repairs in connection with the use and operation of the Tractor(s) during the Use Period including but not limited to gasoline, oil, batteries, repairs, tires, tubes, and towing necessary for the proper use and operation of each Tractor.
- 3.08 LID is responsible for ensuring the Tractor(s) is in safe operating condition at all times during the Use Period.

- 3.09 Any maintenance or repair work conducted by LID must be done according to the manufacturer's recommendations and with prior written approval from the Drainage District. LID will not make any changes or adaptations to any Tractor component without prior written approval of the Drainage District. The Drainage District may either provide LID with written approval or advise the LID that the Drainage District will provide or secure the service and bill the LID for the actual cost. LID shall pay the amounts invoiced by the Drainage District within 30 days of the receipt of an invoice.
- 3.10 LID may not return any repaired Tractor into service without prior inspection and approval by Drainage District personnel.

SECTION 4. OPERATORS/DRIVERS.

- 4.01 LID will ensure that all drivers and/or operators are in possession of a currently valid Texas state-issued driver's license and are familiar with the operation of a high horse-powered tractor.
- 4.02 Drainage District retains the right to prohibit any person from operating Tractor(s) for any reason.

SECTION 5. ACCIDENT, INCIDENT and DAMAGE REPORTS.

- 5.01 In the event of any accident or incident which results in property damage or personal injury due to the use of any of the acquired Tractor(s) during the course of this Agreement, LID must provide notice and an accompanying incident report to Drainage District of any accidents or damage that may occur to Tractors while in LID's possession which shall be sent to Drainage District within 24 hours of the reportable event. The LID will provide any follow-up requests from the Drainage District in a timely manner.
- 5.02 LID shall be responsible for all costs associated with any damage to the Tractors incurred during the permitted Use Period.

SECTION 6. RISK OF LOSS.

- 6.01 During a Use Period, LID shall bear all risks of damage or loss of Tractor(s) or any portions of damage or loss not covered by insurance. All replacements, repairs, or substitution of parts or equipment of Tractor(s) shall be at the sole cost and expense of LID and shall be accessions to said Tractor. LID shall during a Use Period, and at LID's sole expense, keep the Tractor(s) in good working order, condition, and repair excluding reasonable wear and tear.

SECTION 7. TERM.

- 7.01 The term of this Agreement shall begin on the date of execution by the Drainage District and shall remain in effect for one year. Thereafter, the Agreement shall renew for one year terms, not to exceed a period of five (5) years, unless otherwise terminated as hereinafter provided.

SECTION 8. MODIFICATIONS AND WAIVERS.

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

SECTION 9. TERMINATION.

9.01 Termination for Convenience. Drainage District may terminate this Agreement at any time upon thirty (30) days written notice.

9.02 Termination for Default. 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. 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 convenience in accordance with section 9.01 above.

SECTION 10. LIABILITY.

10.01 The Parties 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 use of Tractor(s). 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 11. INDEMNITY AND HOLD HARMLESS.

11.01 TO THE EXTENT PERMITTED BY LAW, THE PARTIES 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 12. INSURANCE REQUIREMENTS.

- 12.01 Prior to commencement of this Agreement, LID shall furnish County 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 County. LID shall provide certified copies of insurance endorsements and/or policies if requested by County. LID shall maintain such insurance coverage throughout the effective period of this Agreement and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to the effective termination date of this Agreement.
- 12.01.1 LID shall obtain such insurance written on an Occurrence form from such companies having Best 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:
- 12.01.1.1 Workers Compensation in accordance with the laws of the State of Texas. Substitutes to genuine Workers' Compensation Insurance will not be allowed.
- 12.01.1.2 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.
- 12.01.1.3 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.
- 12.01.1.4 Business Automobile Liability coverage applying to owned, non-owned and hired automobiles with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage combined.
- 12.01.2 County and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation. All Liability policies written on behalf of LID shall contain a waiver of subrogation in favor of County and members of Commissioners Court.
- 12.01.3 If required coverage is written on a claims-made basis, LID warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the Agreement 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 the work under this Agreement is completed.
- 12.01.4 LID shall not utilize tractors under this Agreement until it has obtained the insurance required herein and certificates of such insurance have been filed with and approved by Fort Bend County.
- 12.01.5 No cancellation of or changes to the certificates, or the policies, may be made without thirty (30) days prior, written notification to Fort Bend County.

12.01.6 Approval of the insurance by Fort Bend County shall not relieve or decrease the liability of the LID.

SECTION 13. NOTICES.

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

If to the Drainage 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
401 Jackson Street, 1st Floor
Richmond, Texas 77469

If to LID: Fort Bend County Levee Improvement District No. 14
ATTN: Sujeeth Draksharam, President
600 Travis St, Suite 2350
Houston, Texas 77002

SECTION 14. INDEPENDENT CONTRACTOR.

14.01 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 be the officers or employees of the other Party for any purposes whatsoever.

SECTION 15. COMPLIANCE WITH LAWS.

15.01 The LID 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, the LID shall furnish the Drainage District with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

SECTION 16. APPLICABLE LAW.

16.01 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 either Party's sovereign immunity.

SECTION 17. ASSIGNMENT.

17.01 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 Party.

SECTION 18. NO THIRD PARTY BENEFICIARIES.

18.01 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 19. SEVERABILITY.

19.01 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 20. EXECUTION.

20.01 This Agreement has been executed by the Parties 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 21. AVAILABILITY OF FUNDS.

21.01 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.

SECTION 22. ENTIRE AGREEMENT.

22.01 This Agreement contains the entire agreement between the Parties relating to the rights granted and the obligations assumed. Any modifications concerning this instrument shall be of no force or effect, unless it is made in writing and is approved and executed by the authorized representatives of the Parties. This Agreement represents the entire agreement between the Parties.

{Execution Page Follows}

IN WITNESS WHEREOF, the parties hereto have signed or have caused their respective names to be signed to multiple counterparts to be effective on the __day of _____, 2019.

FORT BEND COUNTY DRAINAGE DISTRICT

KP George, County Judge

Date: _____

ATTEST:

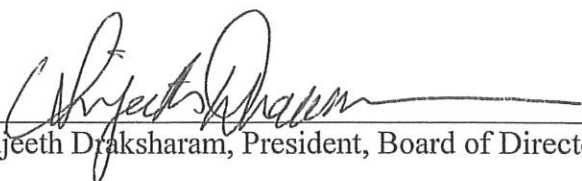
Laura Richard, County Clerk

Reviewed by:



Mark Vogler, Chief Engineer
Fort Bend County Drainage District

**FORT BEND COUNTY LEVEE
IMPROVEMENT DISTRICT**



Sujeeth Draksharam, President, Board of Directors

Date: 5/28/2019

ATTEST:



Rasheed Khalid, Secretary, Board of Directors

Shaizad Charriwala 5/28/19