

THE STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

INTERLOCAL AGREEMENT FOR DELIVERY OF DONATED TREES

This Interlocal Agreement (the "Agreement"), is made and entered into pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code (the "Act"), by and between Fort Bend County, Texas (the "County"), a body corporate and politic, acting by and through its Commissioners Court and Fort Bend County Municipal Utility District No. 23, a body politic and corporate and political subdivision of the State of Texas organized under the provisions of Article XVI, Section 59 of the Texas Constitution and Chapters 49 and 54 of the Texas Water Code, as amended (the "District"), acting by and through its Board of Directors. The County and the District may be referred to collectively herein as the "Parties."

RECITALS:

WHEREAS, the District has been created and organized for the purposes, among others, of providing recreational facilities, and has the authority pursuant to Subchapter N, Chapter 49 of the Texas Water Code, to develop and maintain landscaping, parkways, greenbelts, sidewalks, trails, and public right-of-way beautification projects and recreational equipment and facilities for the people in the District, and as such is lawfully permitted to enter into an Interlocal Agreement; and

WHEREAS, the County is a local government as defined by the Act with authority to maintain public right of way, and as such is lawfully permitted to enter into an Interlocal Agreement; and

WHEREAS, the District requested the delivery of certain oak trees which were donated to the County for public use ("Trees"), in an effort to provide landscaping enhancements on District Property; and

WHEREAS, the District desires that the County delivers up to one hundred (100) Trees upon the terms and conditions herein; and

WHEREAS, the County and the District believe it is in their best interests to enter into this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the Parties agree as follows:

SECTION 1

PURPOSE

The purpose of this Agreement is to outline the obligations related to the delivery and maintenance of donated Trees to the District.

SECTION 2

OBLIGATIONS

2.1 Upon request of the District, the County will deliver one hundred (100) Trees to the District at locations excavated by the District prior to delivery of the Trees. The Trees shall be delivered with their roots contained in a burlap "ball" and the District will plant such Trees at its discretion. Once the Trees are delivered by the County, ownership of the Trees shall pass to the District.

2.2 The County will not be responsible for any costs to maintain the Trees. Maintenance shall be the sole responsibility of the District, including but not limited to the costs to trim, prune, irrigate, replace, relocate and modify, as needed.

SECTION 3

TERM

This Agreement shall be in effect from the date of execution of the last party hereto and shall continue in full force and effect until completion of the delivery of the Trees.

SECTION 4

INSURANCE AND LIABILITY

4.1 Liability Insurance. At all times, the District will provide and keep in force liability insurance covering the District for liability for property damage and personal injury. This insurance is to be carried by one or more insurance companies duly authorized or admitted to transact business in Texas. The insurance provided under this section must be in the amount of not less than \$100,000.00 for property damage and not less than \$100,000.00 for one person and \$300,000.00 for one accident for personal injury. This insurance will protect the District against liability to any employees or servants of the District, and to any other person or persons whose property damage or personal injury arises out of or in connection with the occupation, use, or condition of the Trees. The District shall include the County and the members of Commissioners Court as an additional insured on insurance on properties on which the Trees are located.

4.2 Each party is solely responsible for the actions and omissions of its employees and officers. No party hereto waives or relinquishes any immunity or defense on behalf of itself, its trustees, its officers, employees, and agents as a result

of the execution of this Agreement and the performance of the covenants contained herein.

SECTION 5

NOTICES

5.1 Each party giving any notice or making any request, demand, or other communication (each, a "Notice") pursuant to this Agreement shall do so in writing and shall use one of the following methods of delivery, each of which, for purposes of this Agreement, is a writing: personal delivery, registered or certified mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid).

5.2 Each party giving a Notice shall address the Notice to the receiving party at the address listed below or to another address designated by a party in a Notice pursuant to this Section:

County: Fort Bend County
Attn: County Judge
401 Jackson Street
Richmond, Texas 77469
Email: FBC.Judge@fortbendcountytexas.gov

With a copy to: Fort Bend County Road & Bridge
Attn: Road Commissioner
301 Jackson Street
Richmond, Texas 77469

District: Fort Bend County Municipal Utility District No. 23
c/o Allen Boone Humphries Robinson, LLP
Attn: Merry Heyne
3200 Southwest Freeway, Suite 2600
Houston, Texas 77027

5.3 A Notice is effective only if the party giving or making the Notice has complied with subsections 5.1 and 5.2 and if the addressee has received the Notice. Email notice is for convenience only; a Notice is deemed received only as follows:

5.3.1 If the Notice is delivered in person, or sent by registered or certified mail or a nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt.

5.3.2 If the addressee rejects or otherwise refuses to accept the Notice, or if the Notice cannot be delivered because of a change in address for which no Notice was given, then upon the rejection, refusal, or inability to deliver.

SECTION 6 MISCELLANEOUS

6.1 The Parties may not amend or waive this Agreement, except by a written agreement executed by both Parties.

6.2 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 the either party's sovereign immunity.

6.3 If a court finds or rules that any part of this Agreement is invalid or unlawful, the remainder of the Agreement continues to be binding on the Parties.

6.4 This Agreement supersedes any and all other agreements, either oral or in writing between the Parties hereto with respect to the subject matter hereof, and no other agreement, statement, or promise relating to the subject matter of this Agreement which is not contained herein shall be valid or binding.

6.5 This Agreement cannot be assigned by either party.

6.6 This Agreement does not confer any enforceable rights or remedies upon any person other than the Parties. No provision of this Agreement constitutes consent to suit.

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

[EXECUTION PAGES FOLLOW.]

EXECUTED on this the ____ day of _____, 2020.

FORT BEND COUNTY

KP George, County Judge

ATTEST:

Laura Richard, County Clerk

EXECUTED on this the 27th day of February, 2020.

Fort Bend County Municipal Utility District No. 23

/s/ William Thomas

Board President

ATTEST:

/s/ Ellen Hughes

Board Secretary