

THE STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

INTERLOCAL AGREEMENT FOR CITY-MANAGED PUBLIC INFRASTRUCTURE PROJECT
(Village of Pleak, Texas)

This Agreement is made and entered into pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, by and between the Village of Pleak, a municipal corporation and General Law city of the State of Texas, principally situated in Fort Bend County, acting by and through its City Council, (“Village”), and Fort Bend County, a political subdivision of the State of Texas, acting by and through its Commissioners Court, (“County”). The Village and the County may each individually be referred to as a “Party” and collectively as the “Parties”.

RECITALS

WHEREAS, on June 7, 2022, the County authorized \$2,555,000.00 in American Rescue Plan Act funding to be dedicated to the Village for the design and construction of a water plant for the Village (the “Project”); and

WHEREAS, the Project contemplated in this Agreement will promote the health, safety and welfare of the area citizens, and such Project is desired by the Village and the County; and

WHEREAS, the Commissioners Court of Fort Bend County finds that the Project contemplated in this Agreement serves a County purpose; and

WHEREAS, the Village and the County agree to participate in this Project according to the terms of this Agreement; and

WHEREAS, the governing bodies of the Village and County have authorized this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants, agreements and benefits to both Parties, it is agreed as follows:

1. **Purpose.** The purpose of this Agreement is to outline the obligations related to the Village’s acceptance of the American Rescue Plan Act (“ARPA”) funds granted by the County for the Project.
2. **Recitals.** The representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are incorporated into this Agreement.

3. County's Rights and Obligations.

- A. During the work on the Project, the County shall have the right to review all related documents, maps, plats, records, photographs, reports and drawings, and to inspect the work in progress, provided however, that in conducting such inspections, County shall not interfere with the work in progress. Any deficiencies brought to the attention of Village by the County shall be promptly addressed by the Village.
- B. The County shall have the right to participate in the final inspection of the Project. At that time, any deficiencies noted by County shall be promptly addressed by Village.
- C. The County's sole obligation under this Agreement is to provide funding up to \$2,555,000.00 for costs incurred associated with the Project.
- D. County shall not be obligated to pay any amount funds in excess of the \$2,555,000.00 appropriated for the Project, whether from ARPA funds or any other sources of funding.
- E. County will use its best efforts to assist Village with timely compliance of the requirements and obligations related to the use of federal funds under ARPA as described in Exhibits "A" and "B" attached hereto.

4. Village's Rights and Obligations.

- A. The Village is responsible for procuring the goods and services and managing the installation necessary to complete the Project and in compliance with the applicable state and federal laws.
- B. The Village understands and acknowledges this Agreement is funded with federal funds from the American Rescue Plan Act (ARPA). As a condition of receiving ARPA funds, the Village represents that it is and shall remain in compliance with all federal and or state terms as stated in Exhibit A attached hereto and incorporated herein for all purposes. The Village also agrees to only use the funds as allowed by 31 CFR Part 35 attached as Exhibit B hereto and incorporated herein for all purposes. The terms and limitations stated in the aforementioned flow down to all third party contractors and their subcontracts at every tier that exceed the simplified acquisition threshold, unless a particular award term or condition specifically indicates otherwise. The Village shall require that these clauses shall be included in each covered transaction at any tier.
- C. The Village shall submit reports to the County describing in sufficient detail the

progress of the Project. These reports shall be submitted to County at increments agreed to between the Parties as appropriate for the various phases of the Project. Reports received by the Village from contractors detailing the progress of the Project shall suffice for the requirements of this section, so long as the Village has reviewed such reports and confirmed accuracy of the contractor's report.

5. **Payment Terms.**

- A. County shall make payments to Village from the appropriated funds on an incremental basis as provided herein. Village shall submit two (2) original copies of invoices to County on a monthly basis, as applicable, showing amounts due for the Project. Village's invoices shall include all necessary information including a detailed scope of work and the cost for such work. Village may submit such invoices to Enginvoices@fbctx.gov. County will review the invoices provided and approve them within 30 calendar days with such modifications as are consistent with this Agreement and forward the same to the County Auditor for processing. County shall pay each such approved invoice within thirty (30) calendar days.
- B. Upon completion of the Project, but no later than sixty (60) days after, the Village will furnish the County with a full accounting of the funds expended on the Project. The County Auditor may review the Village's records regarding the Project.
- C. Within thirty (30) days of the County's acceptance of the full accounting referenced above, the County shall pay to the Village any unpaid amounts due for work performed and completed on the Project.
- D. Notwithstanding the foregoing, all payments made by County under this section for costs incurred and associated with the Project shall not exceed the total aggregate value of \$2,555,000.00.

6. **Liability.** The Village and County are entitled to the immunities and defenses of the Texas Tort Claims Act. Nothing in the Agreement shall be construed to waive either party's sovereign immunity.

7. **Maintenance.** The Village shall be solely responsible for the maintenance for the Project. County's grant of ARPA funds shall in no way create an obligation to maintain the Project.

8. **Limit of Appropriation.**

- A. Prior to the execution of this Agreement, the Village has been advised by the County, and the Village clearly understands and agrees, such understanding and agreement being of the absolute essence to this Agreement, that the County shall have available the total maximum amount of \$2,555,000.00, specifically allocated to fully discharge any and all liabilities that may be incurred by the County for the

Project. In no event shall the amount paid by County under this Agreement exceed said maximum amount.

- B. The Village does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum funding that the Village may become entitled to hereunder and the total maximum amount that the County will reimburse the Village hereunder will not under any condition, circumstance or interpretation hereof exceed \$2,555,000.00.
 - C. Each party paying for the performance of its obligations under this Agreement shall make those payments from current revenues available to that party.
9. **Insurance Requirements.** Village agrees that it will require its Contractors' insurance policies to name County as well as Village as additional insureds on all policies except for Workers' Compensation and Professional Liability. Any such insurance policies shall include at least the following minimum coverage:
- A. Worker's Compensation in the amount required by law. The policy shall include the All States Endorsement.
 - B. Comprehensive General Liability Insurance including contractual liability insurance, \$1,000,000 per occurrence, \$2,000,000 aggregate (defense costs excluded from face amount of policy).
 - C. Comprehensive Automobile Liability Insurance, including owned, non-owned and hired vehicles used for the Project, with bodily injury and property damage with a combined limit of not less than \$1,000,000 each occurrence.
 - D. Village may require insurance in excess of the amount of coverage set out above, as it deems necessary. In such cases, County shall remain an additional insured. Village will provide County with proof of insurance within thirty (30) days of Village's execution of a construction agreement with its Contractor(s).
10. **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 party.
11. **Audit Rights.** The County shall have the right to audit the books and records of the Village related to the Project costs upon thirty (30) days written notice to the Village. The Village's cooperation shall include, but not be limited to, access to all the Village's books, records, contracts, spreadsheets, statements, correspondence, and documents, in whatever form, that are applicable to the costs of the Project. The County's right to audit shall survive any termination of the Agreement for a period of four (4) years.

12. **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.

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

County: Fort Bend County
Attention: County Judge
401 Jackson Street, 1st Floor
Richmond, Texas 77469

With a copy to: Fort Bend County Engineering Department
Attention: County Engineer
301 Jackson Street
Richmond, Texas 77469

Village: Village of Pleak
Attention: Mayor
6621 FM 2218
Richmond, Texas 77469

14. **Entire Agreement.** 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 a subsequent modification in writing is signed by all Parties hereto. 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.

15. **Execution.** This Agreement has been executed by the Village and the County upon and by the authority of their respective governing bodies. This Agreement shall become effective on the date executed by the final party, and remain in effect until the Project is complete and the obligations under Sections 3 and 4 of this Agreement are fulfilled.

{Execution Page Follows}

FORT BEND COUNTY, TEXAS

VILLAGE OF PLEAK, TEXAS

KP George, County Judge

Larry Bittner

Larry Bittner, Mayor

Date

MAYOR

Title

ATTEST:

3/16/2023

Date

Laura Richard, County Clerk

APPROVED:

J. Stacy Slawinski

J. Stacy Slawinski, P.E., County Engineer

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$ _____ to accomplish and pay the obligation of Fort Bend County, Texas under this Agreement.

Robert E. Sturdivant,
County Auditor