

**INTERLOCAL AGREEMENT FOR CONTRIBUTION OF FUNDS FOR
SIDEWALK CONSTRUCTION – EAST SIDE OF WESTHEIMER
PARKWAY (BETWEEN PARKWAY OAKS LANE AND COFFEE BEND)**

This Interlocal Agreement (this "Agreement") is made and entered into pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, by and between Fort Bend County, Texas, a body corporate and politic, acting by and through its Commissioners Court (the "County"), and Harris-Fort Bend Counties MUD No. 1, a body corporate and politic under the laws of the State of Texas, acting by and through its Board of Directors (the "District"). The County and the District may be referred to herein individually as a "Party" or collectively as the "Parties".

RECITALS:

WHEREAS, pursuant to Chapters 49 and 54 of the Texas Water Code, the District has the authority to finance, develop and maintain recreational facilities, including sidewalks, both inside and outside the boundaries of the District; and

WHEREAS, the County's authority to construct and maintain public roads and sidewalks appurtenant to such roads; and

WHEREAS, the Parties desire to participate in the construction of a five (5) foot wide sidewalk along the east side of Westheimer Parkway between Parkway Oaks Lane and Coffee Bend of approximately 480 linear feet as shown on Exhibit A attached hereto and incorporated herein for all purposes (the "Project"); and

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

WHEREAS, the District and the County believe it is in their respective best interest to enter into this Agreement to facilitate certain government functions to the citizens of the County and the District, and agree to participate in this Project according to the terms of this Agreement; and

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

NOW, THEREFORE, for and in consideration of the mutual covenants, agreements and benefits of both Parties, the receipt and sufficiency of which is hereby acknowledged, it is agreed as follows:

AGREEMENT

Section 1. Incorporation of Recitals

The above recitals are true and correct and incorporated herein by this reference.

Section 2. Purpose

The purpose of this Agreement is to outline the funding obligations related to the construction of a sidewalk along the east side of Westheimer Parkway located wholly within the boundaries of the County, and wholly within the boundaries of the District.

Section 3. District Responsibilities

3.01 The District will provide or cause to be provided engineering services and related support services necessary to prepare the plans, specifications and estimates for construction of the Project (the "PS&E"), and pay all actual costs and expenses associated with the creation of the PS&E (the "PS&E Costs").

3.02 The District's engineer (the "District Engineer") will submit the PS&E to the County for review and approval, such approval not to be unreasonably withheld, conditioned or delayed.

3.03 Upon completion of the PS&E and approval of the PS&E by the County, the District shall:

- (i) At the recommendation of the District Engineer, advertise for and receive bids for construction of the Project, in a manner similar to other District projects; and

- (ii) Provide an invoice to the County for fifty percent (50%) of the PS&E Costs (the "County Funding Share of PS&E Costs").

3.04 Upon receipt of bids for the construction of the Project, the District shall:

- (i) Determine the lowest and best bidder and provide the bids to the County with its recommendation for award of the construction contract to such lowest and best bidder, as determined by the District Engineer; and

- (ii) Upon receipt and tabulation of bids, the District's Board of Directors (the "Board"), upon recommendation by the District Engineer, will award the lowest and best bid for the construction of the Project. The Board's determination of the lowest and best bidder will be final and conclusive. The District may reject all bids and re-advertise for bids.

3.05 Upon award of contract, the District shall:

- (i) Manage and inspect the construction of the Project in a manner similar to that of other District construction projects;

- (ii) Through its contractor, construct the Project in accordance with the PS&E approved by the County. The District Engineer may make minor change(s) to the contract that the District 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;

(iii) Provide the County any change order or other document which modifies the scope of work or price of the awarded contract for the County's prior approval; and

(iv) Pay all actual costs and expenses for construction of the Project (the "Project Construction Costs").

3.06 Upon completion of construction, the District shall:

(i) Provide an opportunity for the County to participate in a final walk-through and preparation of a punch list in regards to the construction of the Project;

(ii) No later than ninety (90) calendar days after the final payments to all vendors, the District will furnish the County with a full accounting of the Project Construction Costs (the "Full Accounting"); and

(iii) Within thirty (30) calendar days of the County's approval of the Full Accounting, such approval not to be unreasonably withheld, provide an invoice to the County for fifty percent (50%) of the Project Construction Costs (the "County Funding Share of Project Construction Costs") in accordance with the limitations set forth in Subsection 5.04.

Section 4. County Responsibilities

4.01 The County will review the PS&E or any change order prepared by the District and will notify the District Engineer of any objections or approval within thirty (30) calendar days of receipt by the County of same, such approval not to be unreasonably withheld. If the County has not approved the PS&E or change order within thirty (30) calendar days from its receipt of same, then the PS&E or change order submitted to the County will be deemed approved.

4.02 Within thirty (30) calendar days of the County's receipt of the invoice for the County Funding Share of PS&E Costs, the County shall pay such invoiced amount to the District, subject to the limitations set forth in Subsection 5.05.

4.03 The County shall provide temporary construction easements and access rights as needed to allow the District access for the Project's construction located on County property, at no cost to the District.

4.04 Upon receipt of the bids and award recommendations from the District for construction of the Project, the County will review the bids and provide consent for award of the construction contract to such lowest and best bidder within thirty (30) calendar days from receipt of the recommendation from the District, such consent not to be unreasonably withheld, conditioned or delayed. If the County does not provide a response on the construction contract award recommendation within thirty (30) calendar days from its receipt of the recommendation from the District, then the recommendation submitted to the County will be deemed approved.

4.05 The County will review the Full Accounting prepared by the District and will notify the District of any objections or approval within thirty (30) calendar days of receipt by the County of same, such approval not to be unreasonably withheld, conditioned or delayed. If the County has not approved the Full Accounting within thirty (30) calendar days from its receipt of same, then the Full Accounting submitted to the County will be deemed approved.

4.06 Within thirty (30) calendar days of the County's receipt of the invoice for the County Funding Share of Construction Costs, the County shall pay such invoiced amount to the District, subject to the limitations set forth in Subsection 5.05.

4.07 The County shall be responsible for the maintenance of the Project upon completion.

Section 5. Project Funding

5.01 The District shall pay the PS&E Costs.

5.02 The County shall reimburse the District for the County Funding Share of PS&E Costs, subject to the limitations set forth in Subsection 5.05.

5.03 The District shall pay the Project Construction Costs.

5.04 The County shall reimburse the District for the County Funding Share of Project Construction Costs; *provided, however*, that in no event shall the County be responsible for reimbursing the District for any portion of Project Construction Costs in excess of fifty percent (50%) of the total estimated Project construction costs set forth in the agreed upon PS&E, as modified by any agreed upon change order or other document which modifies the scope of work or price of the awarded contract in accordance with the agreed upon cost sharing percentage here or therein, as applicable.

5.05 Notwithstanding anything herein to the contrary, in no event shall the County be responsible for reimbursement of the District or the payment of any costs or expenses whatsoever arising from the design and/or construction of the Project in excess of \$59,905.50, such amount being one and a half (1.5) times the County's total estimated cost for the Project as shown in the cost estimate attached hereto as Exhibit B.

Section 6. Right of Access, Right to Review

6.01 During the construction, the County will have the right of access to the construction site during normal business hours. The County will also have the right, during normal business hours, to review all documents, maps, plats, records, photographs, reports or drawings affecting the Project. However, the County shall give notice by telephone to the District Engineer prior to any inspection of either the construction site or documents. In conducting such inspections, the County shall not interfere with the work in progress.

Section 7. Liability

7.01 The Parties agree that no provision of this Agreement extends the liability of either Party beyond the liability provided in the Texas Constitution and the laws of the State of Texas.

7.02 To the extent permitted by law, each Party shall be responsible for all claims and liabilities due to the activities of the Party's employees, officials, agents or subcontractors arising out of or under this Agreement and which result from any act, error, or omission, intentional tort, intellectual property infringement, or failure to pay a vendor, committed by the Party or its employees, officials, agents, consultants under contract, or any other entity over which it exercises control.

7.03 Nothing in this Agreement is construed as creating any personal liability on the part of any officer, director, employee, or agent of either Party, and the Parties expressly agree that the execution of this Agreement does not create any personal liability on the part of any officer, director, employee, or agent of either Party.

7.04 Neither the execution of this Agreement nor any other conduct of any Party relating to this Agreement shall be considered a waiver by either Party 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.

Section 8. Term and Termination

8.01 This Agreement is effective as of the date that is has been approved and executed by the Parties and shall remain in full force and effect until the completion of construction of the Project or until the District's receipt of payment from the County of all funds due and owing under the terms of this Agreement unless earlier terminated in accordance with the terms of this Agreement.

8.02 This Agreement may be terminated by: (i) the District before award of the construction contract; or (ii) at any time by mutual written consent of the Parties. Should this Agreement be terminated, the District shall be entitled to any and all funds due and owing at the time of such termination, and the County shall not be entitled to a refund or reimbursement of any funds paid to the District hereunder.

Section 9. Notices

9.01 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).

9.02 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 9:

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

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

District: Harris-Fort Bend Counties MUD No. 1
Attn: Matthew Reed
1300 Post Oak Boulevard, Suite 1400
Schwartz, Page & Harding, LLP
Houston, Texas 77056-3078
Email: mreed@sphllp.com

9.03 A Notice is effective only if the party giving or making the Notice has complied with Subsections 9.01 and 9.02 and if the addressee has received the Notice. A Notice is deemed received as follows:

(i) 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.

(ii) 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 10. Miscellaneous

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

10.02 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 this Agreement shall be construed to waive the County's or the District's sovereign immunity.

10.03 No waiver or waivers of any breach or default (or breaches or defaults) by either Party 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.

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

any such determination that any term or other provision is invalid or unlawful, the court making such determination is authorized and instructed to modify this Agreement so as to affect the original intent of the Parties as closely as possible so that the transactions and agreements contemplated herein are consummated as originally contemplated to the fullest extent possible.

10.05 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.

10.06 This Agreement may not be assigned by either Party without the prior written consent of the other Party.

10.07 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.

10.08 This Agreement shall not be construed against or in favor of either Party based on the fact that the Party did or did not author this Agreement.

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

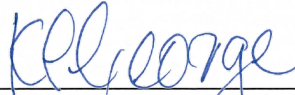
10.10 Any provision of this Agreement that, by its plain meaning, is intended to survive the expiration or earlier termination of this Agreement including, but not limited to, the indemnification and liability provisions, the maintenance provision, and the Project funding provisions, shall survive such expiration or earlier termination. If an ambiguity exists as to survival, the provision shall be deemed to survive.

10.11 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 this Agreement.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

EXECUTED this the 28 day of September, 2021

FORT BEND COUNTY



KP George, County Judge
County Judge KP George

ATTEST:

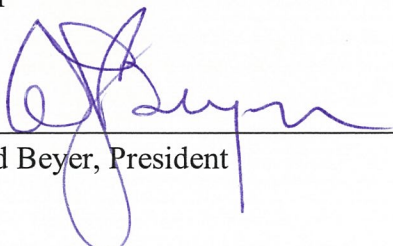


Laura Richard, County Clerk



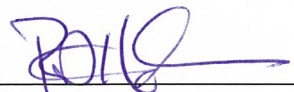
EXECUTED this the 28 day of September, 2021

HARRIS-FORT BEND COUNTIES
MUNICIPAL UTILITY DISTRICT
NO. 1



David Beyer, President

ATTEST:



Ron Lovett, Secretary

Richard Hughes, Assistant Secretary

AS PER ORIGINAL

EXHIBIT A

The Project

See attached.

EXHIBIT B
Cost Estimate

See attached.