



WHEREAS, the Parties wish to enter into this Agreement to commit to sharing design engineering and construction costs associated with certain dam rehabilitation options to be recommended upon completion of the Analysis and to be agreed to by both the District and the City; and

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, obligations and benefits in this Agreement, the Parties agree as follows:

## AGREEMENT

### Section 1. Recitals

The presentations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are incorporated into this Agreement.

### Section 2. Purpose

The purpose of this Agreement is to outline the funding contributions for costs of up to two million dollars and no/100 (\$2,000,000), for engineering fees and construction expenses incurred by the Fort Bend County Drainage District Chief Engineer or his or her designee, for the design and construction of Rehab Project ("Project Costs").

### Section 3. City's Rights and Obligations

A. The City's sole financial obligation under this Agreement is to advance the funding to the District to facilitate early completion of the Rehab Project and pay the District a portion of the Project Costs as specified in this section:

1. The City agrees to pay an amount equal to fifty percent (50%) of the total actual Project Costs up to a maximum financial obligation of one million dollars and no/100 (\$1,000,000), (the "City Contribution").

2. The City agrees to advance an amount to fund costs, as determined by the District, for services related to engineering design with fifteen (15) days of a receipt for request of funds for such engineering design costs from the District.

3. Prior to the District's award of the construction contract for the Rehab Project, the District will forward the City a request for the remaining amount of the City Contribution less its payment for costs for services related to engineering design advanced to the District pursuant to the preceding subsection.

B. The City shall have the right to approve applications for development of properties that affect the drainage area contributing to inflow into Kitty Hollow Lake located within its municipal boundaries upon the City's review of such applications meeting the City's requirements for approval, without further approval from the District.

C. The City shall have the right to participate in the evaluation of the alternatives to reach a mutually acceptable scope of work for the Rehab Project.

D. During the work on the Rehab Project, the City shall have the right to review all documents, maps, plats, records, photographs, reports and drawings affecting the construction and to inspect the work in progress, provided however, that in conducting such inspections, the City shall not interfere with the work in progress. Any deficiencies noted by the City shall be brought to the attention of District and the deficiencies shall be promptly addressed by District.

E. The City shall have the right to participate in the final inspection of the Rehab Project. At that time, any deficiencies noted by the City shall be addressed by District within fifteen (15) days of notification.

#### Section 4. District's Rights and Obligations

A. The District shall provide the recommendations for rehabilitation alternatives to the City for review upon completion of the Analysis. The District and the City shall jointly participate in the evaluation of the alternatives to reach a mutually acceptable scope of work for the Rehab Project.

B. The District is responsible for (1) procuring and overseeing performance of services necessary for the completion of the design and (2) overseeing the construction and completion of the Rehab Project in accordance with the applicable state and federal laws.

C. Prior to entering a contract for engineering design of the Rehab Project, the District will forward to the City a request for advance payment of portion of the City Contribution for such design costs based on the proposal and scope of work of the selected vendor.

D. Prior to the District's award of the construction contract for the Rehab Project, the District will forward to the City a request for request for an amount equal to the City Contribution less its prior payment for costs for services related to engineering design advanced to District pursuant to the preceding subsection

E. The District shall submit reports to the City describing in sufficient detail the progress of the Rehab Project. These reports shall be submitted to the City at increments agreed to between the Parties as appropriate for the various phases of the Rehab Project. Reports received by the District from contractors detailing the progress of the Rehab Project shall suffice for the requirements of this section, so long as the District has reviewed such reports and confirmed accuracy of the contractor's report.

F. Upon completion of the Rehab Project, but no later than sixty (60) days after, the District will furnish the City with a full accounting of the funds expended on

the Rehab Project. If, after completion of Rehab Project, there are funds remaining and/or savings requiring an amount less than the City Contribution to complete the Rehab Project, the District shall return such funds to the City within thirty (30) days of the City's acceptance of full accounting required above.

Section 5. Liability; venue

The District and the City are entitled to the immunities and defenses of the Texas Tort Claims Act. Venue for any litigation relating to this Agreement shall be in Fort Bend County, Texas.

Section 6. Maintenance

The District will retain ownership of and maintenance responsibilities for the Kitty Hollow Lake Dam facility upon completion of the Rehab Project.

Section 7. Insurance

The District agrees that it will require its construction contractor's insurance policies name District as well as City 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 Automatic Liability Insurance, including owned, non-owned and hired vehicles used for the Rehab Project, with bodily injury and property damage with a combined limit of not less than \$1,000,000 each occurrence.

D. The District may require insurance in excess of the amount of coverage set out above, as it deems necessary, in such cases the City shall remain an additional insured. District will provide the City with proof of insurance within 30 days of District's award of the contract for the Rehab Project construction.

Section 8. 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.

Section 9. 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.

Section 10. Notices

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

District: Fort Bend County Drainage District  
Attn: County Judge  
401 Jackson Street, 1<sup>st</sup> Floor  
Richmond, Texas 77469

With a copy to: Fort Bend County Drainage District  
Attn: Chief Engineer  
301 Jackson Street  
Richmond, Texas 77469

City: City of Missouri City, Texas  
Attn: City Manager  
1522 Texas Parkway  
Missouri City, Texas 77489

Section 11. Current Revenue

Each Party understands and agrees that each Party paying for the performance of governmental functions or services under this Agreement must make those payments from current revenues available to that Party.

Section 12. Severability

If any one or more of the provisions contained in this Agreement shall be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

Section 13. 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.

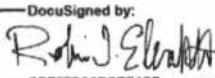
Section 14. Execution

This Agreement has been executed by the District and the City 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 September 30, 2022 or until the Rehab Project is complete and the obligations under Sections 3 and 4 of this Agreement are fulfilled, whichever is sooner.

FORT BEND COUNTY

CITY OF MISSOURI CITY

  
\_\_\_\_\_  
KP George, County Judge

DocuSigned by:  
  
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Robin J. Elackatt, Mayor

Date: 8-9-2022

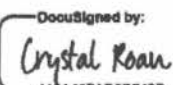
Date: 7/18/2022

ATTEST:

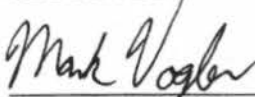
  
\_\_\_\_\_  
Laura Richard, County Clerk



ATTEST:

DocuSigned by:  
  
\_\_\_\_\_  
Crystal Roan, City Secretary

APPROVED:

  
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Mark Vogler, P.E., Chief Engineer