

DEVELOPMENT PARTICIPATION AGREEMENT FOR STORM SEWER OUTFALL IMPROVEMENTS

This Development Participation Agreement for Storm Sewer Outfall Improvements (Agreement) is made and entered into pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, by and between the City of Sugar Land, Texas) (City) and Fort Bend County Levee Improvement District No. 2 (District).

RECITALS:

The City and the District desire to perform drainage improvements to certain of their storm sewer outfalls located along Ditches "B", "B-1", "C", "C-1" and "E" within the City and the boundaries of the District. The Engineer has prepared plans and specifications for the City's and the District's drainage improvements. The District will solicit bids for the District's and City's storm sewer outfalls and related work and enter into a construction contract for the work. This Agreement outlines the City's and District's agreement with respect to the portion of the work related to the City's storm sewer outfalls, including the City's payment to the District for such work. The Interlocal Cooperation Act, Chapter 791, Tex. Gov't Code, authorizes local governmental entities such as the City and the District to enter into interlocal agreements for governmental functions and services as set forth in the Act. The City and the District find that entering into this Agreement will serve a public purpose of both the City and the District.

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

I. **DEFINITIONS**

Actual Cost means the actual cost of the City Work, as completed in compliance with the Contract Documents.

Agreement means this Development Participation Agreement for Storm Sewer Outfall Improvements made and entered into pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code.

Bid means the bid for the Project.

Change Order has the meaning as specified in Section 252.048, Tex. Loc. Gov't Code.

City means the City of Sugar Land, Texas.

City Estimated Cost means \$227,711.00, which represents the Engineer's estimate for construction of the City Outfalls and associated costs, as shown in the Engineer's Estimate of Probable Construction Costs for City of Sugar Land Base Bid Items shown in Exhibit A.

City Outfalls means the City's storm sewer outfalls located along Ditches "B", "B-1", "C", "C-1" and "E", as shown in the map attached as Exhibit B.

City Work means the construction work associated with the City Outfalls to be performed according to the terms of this Agreement.

Contract Documents has the meaning as specified in the Bid.

District means Fort Bend County Levee Improvement District No. 2.

Engineer means Costello, Inc.

Plans and Specifications means the Engineer's plans and specifications pertaining to the City Outfalls approved by the City.

Project means the Interior Ditch Rehabilitation-Ditches B", "B-1", "C", "C-1" and "E" for Fort Bend County Levee Improvement District No. 2, Fort Bend County, Texas," CIP Job No. 1997-097-120, which includes the City Outfalls.

II. DISTRICT OBLIGATIONS

- A. *Procurement.* The District will advertise for bids for construction of the Project in compliance with Water Code 49.273. The District must establish a separate section with the Bid that allows for separate alternate Bid items for the City Work, which must include the City of Sugar Land Base Bid Items shown in Exhibit A and the City of Sugar Land Supplemental Items shown in Exhibit A. The Bid must include the Plans and Specifications. Before advertising for Bids, the District will submit the proposed Bid documents to the City for the City's review and approval. After Bid responses are received, the District will review them and select the lowest responsible Bidder. The City may participate in the selection process and provide input to be considered by the District; provided, however, that the City has final authority on whether the alternate Bid Items for the City Work will be included in the construction contract for the Project.
- B. *Construction Contract.* The District will enter into a construction contract for, manage, and pay for the construction of the Project with the understanding the City will reimburse the District for the City Work pursuant to this Agreement. The City Work must be constructed in a good and workmanlike manner in full compliance with the construction contract, Contract Documents, Plans and Specifications, City's Design Standards, ordinances and regulations, and applicable laws. The District must require the construction contractor to maintain the following minimum insurance coverage and limits:

- (1) Worker's Compensation in the amount required by law, which must include the All States Endorsement; Comprehensive General Liability Insurance including contractual liability insurance, \$1,000,000 per occurrence, \$2,000,000 aggregate (defense excluded from face amount of policy); and
- (2) 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.

The City must be added as an additional insured on the construction contractor's insurance policies, excluding Worker's Compensation and Employer's Liability. The construction contractor will provide the City with proof of the insurance required by this paragraph. The District shall require the construction contractor to make application for, and secure from, any and all federal, state, and local governmental authorities having jurisdiction thereof all permits, licenses and other authorizations required for the purposes of the Project. The District will not create or place any lien (statutory, constitutional or contractual), pledge, security interest, encumbrance or charge on or against the City Outfalls. The District is solely and exclusively responsible for compensating its construction contractor for the Project.

The District shall incorporate into its Contract Documents, a defense, indemnification, and hold harmless provision in substantially the following form:

THE CONTRACTOR SHALL, AND SHALL CAUSE ITS CONSTRUCTION CONTRACTOR TO, INDEMNIFY, HOLD HARMLESS, AND DEFEND THE CITY AND ITS OFFICERS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF EVERY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, EXPERT FEES AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY, OR FOR BREACH OF CONTRACT, ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE FOR THE CITY WORK, REGARDLESS OF WHETHER SUCH INJURIES, DEATH, DAMAGES OR BREACH ARE CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF THE CITY, ANY OTHER PARTY INDEMNIFIED HEREUNDER, OR THE DISTRICT.

THE CONTRACTOR ASSUMES FULL RESPONSIBILITY FOR THE WORK TO BE PERFORMED HEREUNDER, AND RELEASES, RELINQUISHES AND DISCHARGES CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, FROM ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION OF EVERY KIND AND CHARACTER, INCLUDING THE COST OF DEFENSE THEREFORE, FOR ANY INJURY TO OR DEATH OF ANY PERSONS AND ANY LOSS OF OR DAMAGE TO ANY PROPERTY THAT IS CAUSED BY, ALLEGED TO BE CAUSED BY, ARISING OUT OF, OR IN CONNECTION WITH THE CITY WORK OR THE

DISTRICT'S WORK TO BE PERFORMED HEREUNDER. THIS RELEASE SHALL APPLY WHETHER OR NOT THE CLAIMS, DEMANDS, AND CAUSES OR ACTION ARE COVERED IN WHOLE OR IN PART BY INSURANCE AND REGARDLESS OF WHETHER OR NOT THE CLAIMS, DEMANDS, AND CAUSES OF ACTION WERE CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF THE CITY OR ANY OTHER PARTY RELEASED HEREUNDER.

- C. *Change Orders.* The District must submit a proposed Change Order pertaining to the City Work to the City's Public Work Director for the City's approval. The City will approve or deny in writing such Change Orders in a manner so as not to delay the Project.
- D. *Inspection and Reports.* The City's employees and agents shall have the right to inspect the construction as it progresses. During construction of the Project, the City may review the documents, maps, plats, records, photographs, reports, and drawings pertaining to the Project and may inspect the City Work that is in progress, provided that it does not interfere with the overall work on the Project. Upon the City's request, the District will provide written documentation regarding the construction of the City Work. Copies of construction progress reports pertaining to the City Work must be submitted to the City's Public Works Director describing in sufficient detail the progress of the City Work. These reports shall be submitted to the City when construction of the City Work is 50% complete, 75% complete, and 100% complete. The City will notify the District of any items that do not comply with this Agreement. The City's employees will participate in the final inspection of the City Work. Within ten days of the final inspection the City will provide the District with a written punch list of items not constructed in compliance with the Contract Documents, which the District will cause the construction contractor to complete in compliance with the Contract Documents.
- E. *Meetings.* The City may attend District meetings held to discuss the construction progress including meetings with the Engineer and the construction contractor.
- F. *Completion of Project.* Upon final completion of the Project, but no later than 90 days after final completion, the District will furnish the City with a full accounting of the funds expended on the City Work and a set of record drawings showing the City Work, as constructed.
- G. *Affidavit of Bills Paid.* Upon final completion of construction of the Project, the District will provide the City with a notarized affidavit from the construction contractor in a form acceptable to the City stating that all bills for labor, materials and incidentals pertaining to the City Work have been paid in full and that any claims from manufacturers, materialmen, and subcontractors have been released.
- H. *Applicable Laws.* The District will comply with all of the City's ordinances and regulations that apply to the approval and construction of the City Work and any other requirements the City would be required to follow if the City were awarding the contract

for the construction of the City Work, including the performance and payment bond requirements of Section 252.044, Tex. Local Gov't Code, as amended, the payment of prevailing wage rates under Chapter 2258, Tex. Gov't Code (Davis Bacon Wage Rates); any construction retainage requirements, the reporting requirements for Texas Worker's Compensation Coverage under Section 406.096, Tex. Labor Code and 28 TAC Sec.110.110. The performance and payment bonds must be in the total amount of the construction contract price for the Project. The City must be a joint obligee, up to the extent of the City's interest in the Project, on the performance bond.

III. **CITY OBLIGATIONS**

- A. *Funding and Payment.* The City agrees to pay to the District the Actual Cost of the City Work. The City will pay the District the Actual Cost based on the construction contractor's monthly pay applications that include City Work that are (i) received by the District from the construction contractor, (ii) reviewed by the District, (iii) determined by the District to meet the requirements of the construction contract and this Agreement, and (iv) submitted to the City for its review and approval as to the City Work after (i) through (iii) are completed. The City will pay the District within 10 business days of receiving from the District a monthly pay application, as provided in this paragraph.
- B. *Authorization.* The City authorizes the District and the District's construction contractor to perform the City Work as part of the Project.

IV. **TERM AND TERMINATION**

- A. *Term.* This Agreement begins on the later date of the parties' signatures on this Agreement and ends when the District receives payment from the City for the City Work.
- B. *Termination.* Either party may terminate this Agreement for default. The non-defaulting party will notify the defaulting party of the default in writing specifying the default. If the defaulting party fails to cure the default within 30 days from the date of the notice to cure, the non-defaulting party may terminate this Agreement by written notice to specifying the date of termination. Upon termination of this Agreement for default, LID 2 must:

- (1) Preserve and protect property related to the City Outfalls at the site;
- (2) Not allow materials, equipment or supplies for City Work located at the site of the Project to be removed;
- (3) Cause safety measures to be performed to protect work already performed for the City Work;
- (4) Cause the City Work to stop; and
- (5) Within 30 days of the date of termination, invoice the City for any outstanding sums the District has expended in association with items (1) through (4)

above.

V.
NOTICES

All notices given or required herein shall be given in writing and shall be given either by hand delivery or by depositing such notice in the United States first-class mail, postage prepaid, by certified or registered mail, return receipt requested, enclosed in an envelope addressed to the party to be notified at the following address, or at such other address as any such party shall from time to time designate in writing:

If to City: City of Sugar Land
 P.O. Box 110
 Sugar Land, Texas 77487
 Attention: City Manager
 abogard@sugarlandtx.gov

w/ copy to: City of Sugar Land
 111 Gillingham Ln.
 Sugar Land, Texas 77478 Attention:
 Director of Public Works
 rvalenzuela@sugarlandtx.gov

If to District: Fort Bend County Levee
 Improvement District No. 2
 c/o Michael E. Stone
 Mike Stone Associates, Inc.
 P.O. Box 546
 Richmond, Texas 77406

VI.
MISCELLANEOUS

A. *Governmental Immunity.* Both parties are political subdivisions of the State of Texas and enjoy governmental immunity. By entering into this Agreement, neither party consents to suit, waives its governmental immunity, or waives the limitations as to damages under the Texas Tort Claims Act. Nothing in this Agreement shall be construed or deemed to waive, modify or amend any legal defense available at law or in equity to the City, the District, or their officers or employees, nor to create any legal rights or claims on behalf of any third party.

B. *Assignment.* This Agreement is not assignable.

C. *Current Funds.* All services required pursuant to this Agreement for which the City must pay will be paid from current bond funds or current revenues available to the City.

D. *Remedies Cumulative.* The rights and remedies provided in this Agreement or otherwise under applicable laws are cumulative and the exercise of any particular right or remedy does not preclude the exercise of any other right or remedy.

E. *Not Co-Partners.* Nothing contained in this Agreement is intended or should be construed as in any manner creating or establishing a relationship of co-partners between City and the District, or as creating or establishing the relationship by either party as agent, representative, or employee of the other party for any purpose, or in any manner, whatsoever. The parties further agree that neither party is an agent, servant, or employee of the other party nor each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

F. *No Third Party Benefit.* The parties to this Agreement do not intend by this Agreement that any specific third party may obtain a right by virtue of the execution or performance of this Agreement.

G. *Dispute Resolution Procedures.* The City and the District desire an expeditious means to resolve any disputes that may arise between them regarding this Agreement. If either party disputes any matter relating to this Agreement, the parties agree to try in good faith, before bringing any legal action, to settle the dispute by submitting the matter to mediation before a third party who will be selected by agreement of the parties. The City and the District will each pay one-half of the mediator's fees.

H. *Law Governing and Venue.* This Agreement is governed by the laws of the State of Texas and a lawsuit may only be prosecuted on this Agreement in a court of competent jurisdiction located in or having jurisdiction in Fort Bend County, Texas.

I. *Attorney's Fees.* Should either party to this Agreement bring suit against the other party for any matter relating to this Agreement, neither party will seek or be entitled to an award of attorney's fees or other costs relating to the suit.

J. *Severability.* 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.

K. *Exhibits.* The following Exhibits are attached to and incorporated into this Agreement:

Exhibit A--City Estimated Cost

Exhibit B--Map of City Outfalls

L. *Entire Agreement.* This Agreement represents the entire agreement between the City and the District and supersedes all prior negotiations, representations, or contracts, either written or oral. This Agreement may be amended only by written instrument signed by both parties.

CITY OF SUGAR LAND

By: Allen Bogard, City Manager

Date: _____

ATTEST:

Glenda Gundermann, City Secretary

Approved as to Form:

**FORT BEND COUNTY LEVEE
IMPROVEMENT DISTRICT NO. 2**


Name: Andre McDonald

Title: President, Board of Directors

Date: 4/24/18

ATTEST:



Name: ~~Glen R. Gill~~ Bryan Chapline
Title: ~~Secretary~~, Board of Directors
Vice President

EXHIBIT A
City Estimated Cost

INTERIOR DITCH REHABILITATION - DITCHES "B", "B-1", "C", "C-1" & "E"
FORT BEND COUNTY LEVEE IMPROVEMENT DISTRICT NO. 2

ENGINEER'S ESTIMATE OF PROBABLE CONSTRUCTION COSTS FOR CITY OF SUGAR LAND ITEMS

16-Feb-18

Item No.	Description of Item	Quantity	Unit	Unit Price	Extended Total
<u>CITY OF SUGAR LAND BASE BID ITEMS</u>					
1	Remove & Replace Existing 18-inch CMP Storm Sewer Outfall, Including Band Couplers, & Concrete Apron	1	EA	\$6,600.00	\$6,600.00
2	Remove & Replace Existing 24-inch CMP Storm Sewer Outfall, Including Band Couplers, & Concrete Apron	2	EA	\$7,200.00	\$14,400.00
3	Remove & Replace Existing 30-inch CMP Storm Sewer Outfall, Including Band Couplers, & Concrete Apron	5	EA	\$7,900.00	\$39,500.00
4	Remove & Replace Existing 36-inch CMP Storm Sewer Outfall, Including Band Couplers, & Concrete Apron	5	EA	\$8,600.00	\$43,000.00
5	Remove & Replace Existing 42-inch CMP Storm Sewer Outfall, Including Band Couplers, & Concrete Apron	1	EA	\$12,400.00	\$12,400.00
6	Remove & Replace Existing 54-inch CMP Storm Sewer Outfall, Including Band Couplers, & Concrete Apron	1	EA	\$17,100.00	\$17,100.00
7	Remove & Replace Existing 60-inch CMP Storm Sewer Outfall, Including Band Couplers, & Concrete Apron	3	EA	\$20,500.00	\$61,500.00
SUBTOTAL CITY OF SUGAR LAND BASE BID ITEMS					\$194,500.00
Performance and Payment Bonds for City of Sugar Land Items				1.5%	\$2,917.50
Contingencies - Supplemental Items				10.0%	\$19,450.00
SUBTOTAL OF CONSTRUCTION COSTS					\$216,867.50
Administration Fee				5.0%	\$10,843.38
TOTAL CITY OF SUGAR LAND CONSTRUCTION COSTS					\$227,710.88

EXHIBIT B
Map of City Outfalls



* OUTFALLS TO BE REHABILITATED
BY LID2 FOR COSL



THIS DOCUMENT IS RETURNED TO THE PURPOSE OF INTERNAL REVIEW UNDER THE AUTHORITY OF CREDIT P. FRANK P.T. 6637 ON 01/29/98 IT IS NOT TO BE USED FOR CONSTRUCTION PURPOSES	SHEET 70	OF 48 SHEETS	JOB NO. 1997-007-120 2/15/2018
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F.B.C. L.I.D. NO.2
INTERIOR DITCH REHABILITATION
DITCH "B", "B-1", "C-1" AND "E".
CoSL STORM SEWER OUTFALLS
DEVELOPMENT PARTICIPATION
AGREEMENT

Engineering and Surveying
9990 Richmond Avenue, Suite 450 N
Houston, Texas 77042
(713) 783-7788 (713) 783-3580, Fax
TBPE FIRM REG. No. 280
TBPLS FIRM REG. No. 100486



NO.	REVISION	DATE	BY	DESIGNED BY: _____
				DESIGN CHECKED BY: _____
				DRAWN BY: _____
				CADD CHECKED BY: _____
				SURVEY CHECKED BY: _____
				SCALE BY: _____
				DATE: _____
				SCALE REVISION BY: _____