

INTERLOCAL AGREEMENT

LOWER BRAZOS RIVER FLOOD PROTECTION PLAN STUDY—PHASE 2

This Interlocal Agreement for the Lower Brazos River Flood Protection Plan Study – PHASE 2 (“Agreement”) is made and entered into pursuant to the provisions of Chapter 791 of the Texas Government Code (the Interlocal Cooperation Act) as of the date last executed below (“Effective Date”) by and between the Brazos River Authority (“BRA”), a river authority of the State of Texas, and the City of Sugar Land (“CITY, as PARTICIPANT”), a municipality of the State of Texas (collectively, the “Parties).

RECITALS

WHEREAS, the BRA, on behalf of Participant and other participants, applied to the Texas Water Development Board (“TWDB”) for a planning grant (“Grant”) to develop a flood protection plan for the lower Brazos River (“Study”) affecting the city limits of the City, which Study is now in Phase 2; and

WHEREAS, the BRA entered into a Contract and Agreement with the TWDB dated October 13, 2015, which was amended on April 27, 2016 and further amended pursuant to Amendment No. 2 dated March 21, 2017 for purposes of Phase 2 of the Study (collectively, the “TWDB Agreement”); and

WHEREAS, the City was added as a Participant pursuant to Amendment No. 2; and

WHEREAS, Amendment No. 2 granted to the Participants a non-exclusive, unrestricted, unlimited, irrevocable, world-wide, royalty-free license to use the Contractor Works and Subcontractor Works as defined in the TWDB Agreement; and

WHEREAS, pursuant to the TWDB Agreement the BRA administers the Study on behalf of the Participants; and

WHEREAS, the Grant requires the commitment of matching funds to pay for the local share of the total Study costs; and

WHEREAS, the Participant agrees to pay its share of such matching funds as further set forth in this Agreement; and

WHEREAS, the BRA entered into a Professional Services Agreement with Halff Associates, Inc. (“Engineer”) effective November 4, 2014, as amended by Amendment No. One to Professional Services Agreement dated May 16, 2016, to provide engineering services in connection with Phases 1 and 2 of the Study; and

WHEREAS, Phase 1 and Phase 2 of the Study have begun and must be completed by October 30, 2017;

NOW, THEREFORE, for the mutual consideration and covenants set forth below, BRA and Participant agree as follows:

Section I. Payment

1.1 Participant's share of matching funds under the Grant shall not exceed a total of thirty thousand dollars (\$30,000).

1.2 Participant agrees to compensate and reimburse BRA for the Participant's share of matching funds up to the not to exceed total of thirty thousand dollars (\$30,000), subject to the provisions of this Agreement.

1.3 On or before September 30, 2017, the City shall pay \$14,727.38 to the BRA. The BRA shall provide an invoice for that amount, with documentation of expenses, upon BRA's execution of this Agreement. BRA shall bill Participant for Participant's remaining share of the matching funds on a monthly basis. By the 15th of each month, the BRA will submit an invoice to Participant for reimbursement for expenses incurred by BRA in the previous month. BRA must receive full payment for the invoice from Participant on or before the 15th day of the month following the invoice date. Invoices shall include documentation of all expenses.

1.4 Expenses paid utilizing Participant's share of matching funds shall not include any costs associated with in-kind services provided by BRA.

1.5 Each party paying for the performance of services under this Agreement is paying from those services from current revenues available to the paying party.

The City's city council has appropriated \$14,727.38 to make the fiscal year 2017 payment. If the City's city council does not appropriate funds to make the payments in fiscal year 2018 and there are no proceeds available for payment from the sale of bonds or other debt instruments, then this Agreement automatically terminates.

Section II. Flood Protection Plan

2.1 Upon completion of the Study, BRA shall provide Participant a copy of the final Lower Brazos River Flood Protection Plan report. Pursuant to Amendment No. 2, the Participant is granted a non-exclusive, unrestricted, unlimited, perpetual, irrevocable, world-wide, royalty-free license to use the Contractor Work and Subcontractor Works, as defined in the TWDB Agreement.

Section III. Liability

3.1 BRA and Participant agree and acknowledge that BRA shall not be liable for and makes no representations, express, implied or otherwise as to the quality, completeness, or usefulness of the Study and/or the work associated with

performing the Study. The Participant agrees, understands, and accepts that the results of the Study may or may not be beneficial to the Participant.

Section. IV. Records

4.1 BRA shall maintain records of all costs associated with the Study in accordance with BRA's record retention policies and shall make such records available to Participant upon request.

Section. V. Miscellaneous Provisions

5.1 Entire Agreement. The terms and provisions of this Agreement contain the entire Agreement between the Parties with respect to the matters addressed above.

5.2 Severability. The provisions of this Agreement are severable, and if for any reason any one or more of the provisions contained in this Agreement shall be deemed to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability shall not affect any other provisions of this Agreement and this Agreement shall remain in effect and be construed as if the invalid, illegal, or unenforceable provision had never been contained in the Agreement.

5.3 Amendments. No modification, addition, deletion, revision or other change to this Agreement shall be effective unless such change is reduced to writing and executed by both Parties.

5.4 Assignability: This Agreement shall bind the Parties and their legal successors, but shall otherwise not be assignable by the Parties without prior written consent of the other Party, which consent shall not be unreasonably withheld. All of the respective obligations of each of the Parties shall bind that Party and shall apply to and bind any successors or assigns of that Party.

5.5 Governing Law. This Agreement shall be governed by the Constitution and laws of the State of Texas, except as to matters exclusively controlled by the Constitution and Statutes of the United States of America.

5.6 Venue. Venue for any action arising hereunder shall be in McLennan County, Texas.

5.7 Third Party Beneficiaries. Except as expressly provided herein, nothing in this Agreement, express or implied, is intended to confer upon any person, other than the Parties, any rights, benefits, or remedies under or by reason of this Agreement.

5.8 Relationship of Parties. Neither the execution nor the delivery of this Agreement shall create or constitute a partnership, joint venture, or any other form of business organization or arrangement between the Parties, except for the contractual arrangements specifically set forth in this Agreement. Except as is expressly agreed to

in writing in this Agreement, no Party (or any of its agents, officers or employees) has any power to assume or create any obligation on behalf of the other Party.

5.9 Notices. All notices, communications, invoices, bills and reports required under the Agreement shall be personally delivered or mailed to the respective parties by certified mail, return receipt requested at the addresses shown below, unless and until either party is otherwise notified in writing by the other party of a change in address. Mailed notices shall be deemed communicated as of five (5) days after mailing regular mail.

If intended for BRA, to:

4600 Cobbs Drive
Waco, Texas 76710

If intended for Participant, to:

Attn: Christopher Steubing, PE, CFM
Asst. City Manager
P.O. Box 110
Sugar Land, Texas 77479

5.10 Further Assurances. The Parties agree to do all acts and things and to execute and deliver such further written instruments as may be from time to time reasonably required to carry out the purposes and the provisions of this Agreement.

5.11 Interpretation and Reliance. No presumption will apply in favor of either Party in the interpretation of this Agreement or in the resolution of any ambiguity of any provisions thereof.

5.12 Term. The term of this Agreement shall commence on the Effective Date and shall continue until the completion of the Study contemplated in Section II., above.

5.13 Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall constitute an original.

5.14 Authority to Contract. By their signatures below, the individuals signing represent and warrant that they have the authority to bind and otherwise compromise the interests of the party they represent and that this Agreement has been authorized by their respective governing body as required under TEX. GOV'T CODE § 791.011.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed, intending to be bound thereby.

BRAZOS RIVER AUTHORITY

By: _____
PHILLIP FORD

CITY OF SUGAR LAND

By: _____

Title: **GENERAL MANAGER/CEO**

Title: _____

Date: _____

Date: _____