

New 7/19/24

STATE OF TEXAS § INTERLOCAL AGREEMENT BETWEEN THE
 § ORANGE COUNTY DRAINAGE DISTRICT AND
 § ORANGE COUNTY, TEXAS, FOR THE MUTUAL
 § ENFORCEMENT OF REGULATED DEVELOPMENTS
 COUNTY OF ORANGE § WITHIN ORANGE COUNTY, TEXAS

INTERLOCAL AGREEMENT
 (CHAPTER 791, TEX. GOV'T CODE)

THIS INTERLOCAL AGREEMENT ("Agreement") is executed by and between the **Orange County Drainage District** ("District"), by and through its duly authorized General Manager, Mr. Neal Ford, and **Orange County, Texas** ("County"), by and through its duly elected County Judge, Hon. John Gothia. Hereinafter, the District and the County may be jointly referred to as the "Parties." The Parties act herein under the authority of Chapter 791 of the Texas Government Code, also known as the *Interlocal Cooperation Act*. See, TEX. GOV'T CODE § 791.001 *et seq.*

WITNESSETH

WHEREAS, the County and the District share coterminous jurisdiction of the boundaries of Orange County, Texas, and,

WHEREAS, for the protection of the health, safety, and welfare of the residents of Orange County, the County regulates industrial, commercial, governmental, and residential developments ("Regulated Developments") within Orange County, Texas, pursuant to Chapter 233 of the TEXAS LOCAL GOV'T CODE, as well as 44 CFR §60.3 and 44 CFR 59.1 and pursuant to its *Orange County Flood Damage Prevention Order* (all of which are collectively referred to as "permitting requirements, criteria, rules, and regulations"), and

WHEREAS, for the protection of the health, safety, and welfare of the residents of Orange County, and pursuant to TEXAS WATER CODE §49.211 *et seq.*, the District regulates industrial, commercial, governmental, and residential developments ("Regulated Developments") to require the detention of an increase in stormwater runoff that would otherwise occur as a result of new Regulated Developments within the District, and to require compliance with the District's *Drainage Criteria Manual and Regulations* (as amended, 12-13-2022) (all of which are collectively referred to as "permitting requirements, criteria, rules, and regulations"), and

WHEREAS, a significant portion of Orange County is very low-lying and subject to flooding from rain and storm events and the County has experienced devastating effects from numerous storm events over the years including major hurricanes; and

WHEREAS, the federal government has recognized the critical vulnerability of Orange County and the Gulf Coast to devastating flooding from such storm events and Congress authorized the construction of the Orange County Coastal Storm Risk Management Project, a separable element of the Sabine Pass to Galveston Bay Storm Risk Management Project ("CSRM Project") and as well, the Texas Legislature created the Gulf Coast Protection District ("GCPD") to serve as the

Non-Federal Sponsor to sign the Project Partnership Agreement (“PPA”) with the United States Army Corps of Engineers (“USACE”) for design and construction of the CSRM Project; and

WHEREAS, the County and the District have entered into an Interlocal Agreement with the GCPD for the District to provide Design Participation Work and serve as the Liaison Representative by and on behalf of the GCPD, including coordination with the USACE for the Project; and

WHEREAS, interior drainage is critical to Orange County and also a major consideration for the design of the Orange Element of the CSRM, and it is essential to public health and safety that the County and the District work jointly to mitigate any adverse effect to drainage from new Regulated Developments as authorized pursuant to TEXAS WATER CODE §49.211 *et seq.*

WHEREAS, the County and the District recognize that both the public interest and good government are best served by long-term, mutually cooperative relationships between the Parties in the governance and management of Regulated Developments, and

WHEREAS, this Agreement will accomplish legitimate public purposes of the Parties and permit the safe design and construction of Regulated Developments within Orange County, Texas, in such a manner that will benefit the public health, safety, and welfare of the Parties’ respective present and future citizens.

NOW, THEREFORE, pursuant to Chapter 791, TEXAS GOV’T CODE, and as otherwise authorized and permitted by the statutes, rules, and regulations of the State of Texas governing the County and the District, for and in consideration of the covenants, conditions, and undertakings hereinafter described, and the benefits to accrue to the citizens of the Parties, and subject to each and every term and condition of this Agreement, the Parties contract, covenant and agree as follows:

I.

Scope of Services

- 1.1. Notices of Regulation of Certain Developments.** Each Party shall place a notice and link to the other Party’s website informing the public that construction of Regulated Developments within Orange County, Texas, requires compliance with both the County’s and the District’s permitting requirements, criteria, rules, and regulations.
- 1.2. Mutual Notification.** Each Party will promptly notify the other of all instances in which a Party determines that the commencement of construction of a Regulated Development is not in compliance with the other Party’s permitting requirements, criteria, rules, and regulations. In this regard, where a Party notifies the other Party that it has issued a permit pertaining to a Regulated Development, the other Party is entitled to rely upon such written permit as evidence of compliance with the other Party’s permitting requirements, criteria, rules, and regulations.
- 1.3. Withholding of Permits.** Each Party agrees to deny, suspend, or withhold the issuance of a permit pertaining to a Regulated Development where the Party has received notice that a

Regulated Development fails to meet the permitting requirements, rules, and regulations promulgated by the other Party until such time as the affected Party issues notice that such a Regulated Development is in compliance with the permitting requirements, rules, and regulations of the other Party.

II.
Term and Renewal

- 2.1. **Initial Term.** This Agreement shall begin on the date last executed by the signatories below and shall be effective for a period of one (1) year.
- 2.2. **Automatic Renewal.** This Agreement shall thereafter automatically renew from year to year unless terminated in accordance with this Agreement.

III.
Termination Provision

- 3.1. **Termination.** This Agreement may be canceled or terminated at any time by the County or the District with or without cause by providing the other Party thirty (30) days written notice of such termination.

V.
Modification

- 4.1. **Written Modification.** From time to time, changes may be required in the scope of services to be performed under this Agreement. Such changes as are mutually agreed upon by and between the County and the District shall be incorporated by a written modification to this Agreement.

V.
Notices

- 5.1. **Express Notice Required.** All notices, communications, and reports required or permitted under this Agreement shall be personally delivered or mailed or emailed to the respective Parties by depositing same in the United States mail, postage prepaid, at the addresses (including email addresses) shown below, unless and until either Party is otherwise notified in writing by the other Party, at the following addresses. Mailed notices shall be deemed communicated five (5) days after mailing regular mail.

5.2. Effective Notice. Notice shall be delivered to each respective Party as set forth below:

If intended for the District, to:

Orange County Drainage District
Attn: General Manager
8088 Old Highway 90
Orange, Texas 77630
nford@ocddtx.com

If intended for Orange County, to:

Orange County, Texas
Attn: Environmental Health and Code
Compliance Department
11475 FM 1442
Orange, Texas 77630
Environmental@co.orange.tx.us

VI.

Dispute Resolution, Jurisdiction, and Venue

- 6.3. Jurisdiction and Venue for Legal Proceedings.** In the event that either Party institutes any legal proceeding, including but not limited to a lawsuit, that arises out of or relates to the rights and obligations of the Parties to this Agreement, the Parties agree that the exclusive jurisdiction and venue of such legal proceeding shall lie in Orange County, Texas, in an appropriate court having jurisdiction over such legal proceeding, and that this Agreement shall be interpreted under and in accordance with the laws of the State of Texas.

VII.

Severability

- 7.1. Provisions Severable.** If any of the terms, sections, subsections, sentences, clauses, phrases, provisions, covenants, conditions, or any other part of this Agreement are for any reason held to be invalid, void, or unenforceable, the remainder of the terms and conditions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

VIII.

Entire Agreement

- 8.1. Entire Agreement.** This Agreement embodies the complete agreement of the Parties hereto, superseding all oral or written previous and contemporaneous agreements between the parties relating to matters herein, and except as otherwise provided herein, cannot be modified without the written agreement of the Parties as set forth in Article IV.

IX.

Headings

- 9.1. Headings.** The headings of this Agreement are for the convenience of reference only and shall not affect any of the terms and conditions hereof in any manner.

X.

No Third-Party Beneficiary

- 10.1. No Other Beneficiaries.** For purposes of this Agreement, including its intended operation and effect, the Parties expressly agree and contract that:
- a. The Agreement only affects matters/disputes between the Parties to this Agreement and is in no way intended by the Parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entity may be in a contractual relationship with either or both Parties or may receive an incidental benefit on account of this Agreement; and
 - b. The terms of this Agreement are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either Party.

XI.

Governmental Immunity

- 11.1. Preservation of Statutory and Other Immunity.** Nothing in this Agreement shall be deemed to waive, modify, or amend any legal defense available at law or in equity to either Party or to create any legal rights or claims on behalf of any third party. Neither Party waives, modifies, or alters to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas.

XII.

Force Majeure

- 12.1 Excused Performance Due to Force Majeure.** The performance of the Agreement by either Party is subject to acts of God, war, government regulation, travel restrictions, disease outbreak, disaster, fire, strikes, civil disorder, curtailment of transportation, or other similar causes beyond the control of the Parties, making it inadvisable, illegal, or impossible to provide the services.

XIII.

Indemnification

- 13.1. Indemnification by the County.** The County shall, to the extent authorized under the Constitution and laws of the State of Texas, indemnify and hold the District harmless from liability resulting from the negligent acts or omissions of the County, its agents, or employees pertaining to the activities to be carried out pursuant to the obligations of this Agreement; provided, however, that the County shall not hold the District harmless from claims arising out of the gross negligence or willful malfeasance of District, its officers, agents, or employees, or any person or entity not subject to County's supervision or control.
- 13.2. Indemnification by the District.** The District shall, to the extent authorized under the Constitution and laws of the State of Texas, indemnify and hold the County harmless from


liability resulting from the negligent acts or omissions of the District, its agents, or employees pertaining to the activities to be carried out pursuant to the obligations of this Agreement; provided, however, that the District shall not hold the County harmless from claims arising out of the gross negligence or willful malfeasance of County, its officers, agents, or employees, or any person or entity not subject to the District's supervision or control.

XIV.
Counterparts and Authority

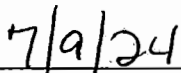
- 14.1. Multiple Counterparts.** This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall be considered fully executed when all parties have executed an identical counterpart, notwithstanding that all signatures may not appear on the same counterpart.
- 14.2. Representation of Authority to Execute Agreement.** The signatories to this Agreement each affirmatively represent that each of them is authorized to execute this Agreement on behalf of the Parties.

IN WITNESS WHEREOF, Orange County, Texas, and the Orange County Drainage District execute this Interlocal Agreement, effective the date of the latter Party's approval, by and through their authorized representatives as indicated below.

Orange County Drainage District

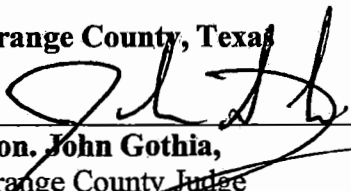


Neal Ford,
General Manager

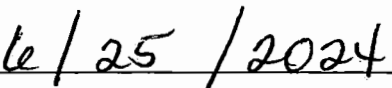


Date

Orange County, Texas




Hon. John Gothia,
Orange County Judge

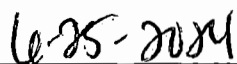


Date

ATTEST:



Brandy Robertson, Orange County Clerk
or her duly appointed deputy



Date