

WHEREAS, the District has no objection to the City using the portion of the Property in which the District owns an easement for such purpose, with the understanding that the City will indemnify the District as hereinafter provided;

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

I.

Prior to construction of any part of the Trail, City will furnish the District, for the District's written approval, detailed construction drawings and specifications prepared by a registered professional engineer ("Drawings and Specifications") for the proposed construction, designed in accordance with a hydraulic analysis which demonstrates no adverse effect on channel flows. After the District's approval of the Drawings and Specifications, which approval will not be unreasonably withheld, the District will so notify the City. Any changes outside the General Scope of the Drawings and Specifications must be approved by the District.

II.

The City, at the City's sole expense, will construct the Trail in a good and workmanlike manner and in substantial accordance with the Drawings and Specifications, which have been prepared by the City and approved in advance by the District and City for such purpose. If any conflict arises between the provisions of the Drawings and Specifications and the provisions of this Agreement, this Agreement controls. After completion of each construction contract for the construction of the Trail or part thereof, the City will deliver record drawings of such construction to the District within ninety (90) days after completion of such construction.

III.

The City will maintain, or cause to be maintained, in good repair its Trail, including but not limited to, the repair of the pavement thereon and the maintenance of all other improvements and appurtenances associated with the Trail, including, but not limited to, slope pavement, vertical retaining walls, bridges, stairways, railings, landscaping, traffic control signs, light fixtures and electrical equipment, constructed or to be constructed along the Trail. The City will perform its construction and maintenance obligations herein to the same extent as it performs on other like or similar projects and regardless of who or what necessitated the repairs and without the aid or assistance of the District or the District's equipment, personnel and materials. The District has no obligation to maintain any portion of the Trail. The District's authorization of the City's use of the Property is conditioned on the fulfillment of the City's obligations herein. If any portion of the Property is covered, in whole or part, in an agreement between the District and the U.S. Army Corps of Engineers, Harris County or any other party, then this Agreement is subject to those other agreements, and the City will obtain the consent and approvals from said third parties prior to undertaking the construction of the Trail on said Property, and will offer Harris County, where Harris County is the said third party, the option to exercise all or part of the maintenance

responsibilities outlined herein. Upon request, District will furnish City with a copy of any such agreements then in effect which cover any portion of the Property across which a part of the Trail has been or is to be constructed, for which Drawings have been submitted to the District.

The City will mow, edge and trim the grass between the Trail and the District's right-of-way line on the sides of the bayou on which the Trail is located, and between the Trail and the top of the bank on the sides of the bayou on which the Trail is located, provided, however, if the Trail is located on a sloped side or portion of the bayou, then in that event the City will mow, edge and trim the grass along the slope between the top of the bank and the Trail, and between the Trail and the newly established cut bank below the Trail, or as otherwise provided in the Drawings and Specifications. The City will remove the trash, paper, debris and silt which collects or accumulates on the Trail and the Property at such time intervals so as to keep the Trail and Property neat and tidy at all times. In the event the City constructs railings, bridges or low water crossings in conjunction with the Trail, the City will remove any accumulated debris on said railings, bridges and low water crossings. The City will also pick up the trash and debris that collects on any improvements or appurtenances associated with the Trail. The City may install and maintain appropriate illumination and traffic control devices along the Trail. The City will comply with the requirements of the Americans With Disabilities Act, the Texas Architectural Barriers Act, and all other valid laws, ordinances, regulations and other requirements, now or hereafter in force, of all federal, state and local governmental bodies and agencies which are applicable to the Trail.

IV.

Upon completion of construction of the Trail, the City will not construct any improvements or undertake any alterations to the Trail or perform any repairs costing in excess of \$5,000, without securing the prior written approval of the Drawings and Specifications for same, by the District's Executive Director, or his designated representative. Such approval shall not be unreasonably withheld. The District has no responsibility for the safety of the users of the Trail or for injuries to persons or property that may occur on the Trail. The District has no obligation to inspect the Trail, to determine whether the same is safe, nor to give notice to the users of the Trail that the Trail is unsafe, provided that this provision will have no effect upon any duties the District may otherwise have under law in regard to any hazards caused by the District's use of the trail in connection with drainage and flood control.

V.

The Trail will be open to the use of the general public for recreational purposes. No fee or charge will be imposed for use thereof.

VI.

The District authorizes the City to use the Property in accordance with this Agreement. The City interprets Chapter 409, 1993 Tex. Gen. Laws 1711, 1712 to include the right to use the District's easement for hike and bike purposes and not to pursue rights in addition to those afforded by the

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District's easements or fee. Such decision will be based on the City's interpretation of the law and not the District's. Should the City proceed based on such interpretation it hereby acknowledges that it does so at its own risk. If any rights, title and interest in and to the Property, in addition to those owned by the District, are needed for the construction, maintenance or operation of the Trail, the acquisition of such rights, title and interest shall be at the sole expense of the City.

VII.

The District has advised City and City is aware that District acquired portions of the Property in fee and other portions of the Property in easement, for flood control and drainage use. District presently maintains the hereinabove described Property and it contemplates future use, widening or modifying channels as the need for the same may arise and funds may be available. District hereby expressly reserves to itself, its officers, employees, agents, and contractors, the right to enter upon said Property and Trail at any time for any purpose deemed by the District to be reasonably necessary for drainage and flood control, to flood said Property and Trail, to remove portions of the Trail and not permit the City to rebuild same, to make such other use of said Property and Trail as District deems reasonably necessary in connection with drainage and flood control, and City has no claim for damages of any character on account thereof against District, or any officer, employee, agent or contractor thereof. The District has no responsibility to replace or repair any portion of the Trail which is damaged in the course of such flood control activities. Likewise, if Trails or other structures appurtenant thereto, including, but not limited to, railings or low water crossings, are damaged by the District during drainage or flood control activities or due to the flow of water in the channel, the District reserves the right not to allow the City to rebuild the Trail or replace structures appurtenant thereof if to do so would impede the flow of water in the channel. If any facilities constructed or maintained by the City pursuant to this Agreement, including, but not limited to, bridges or portions of any bridges, that wash out and result in damage downstream of the bridge, the City, to the extent permitted by law, will promptly repair said damage. The District's Executive Director shall be notified in writing of any such repairs or replacements to the Trail or structures appurtenant thereto. City shall not perform such repairs or replacements to the Trail or structures appurtenant thereto until they are approved by the District in writing. Such approval shall not be unreasonably withheld.

VIII.

The District makes no representation that the Property, including, but not limited to its grade and drainage, is suitable for the City's intended purposes. The District makes no representation as to the presence or absence of depressions on the Property, the suitability of the soils or the stability of the channel bank for the City's intended purpose.

IX.

It is not the City's or the District's intent to designate any part of the Property as a recreational area for the purposes of TEX. PARKS & WILD. CODE ANN. § 26.001(Vernon 1997) or to dedicate any part of the Property as a park for the purposes of Chapter 317, Texas Local Government Code.

X.

Inasmuch as the Trail is located within the District's easement or fee, the City will require that the construction contractor's insurance policies name the District, as well as the City, as an additional insured. Such insurance policies shall include not less than the following minimum coverages:

1. Workers, Compensation in the amount required by law.
2. Comprehensive General Liability Insurance for bodily injury and property damage with a combined single limit of not less than \$1,000,000 per occurrence.
3. Comprehensive Automobile Liability Insurance, including owned and non-owned vehicles used for the construction of the Trail, with bodily injury and property damage with a combined single limit of not less than \$1,000,000 combined single limit per occurrence.

City may require insurance in excess of the amounts or coverages set out above as it deems necessary.

XI.

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

Executive Director
Harris County Flood Control District
9900 Northwest Freeway
Houston, Texas 77092

516-58-1004

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

City of Houston
Public Works and Engineering
P. O. Box 1562
1801 Main Street, 8th Floor
Houston, Texas 77002
Attn: Deputy Director
Engineering, Construction & Real Estate Group

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Notice will be considered given and completed upon deposit of the notice in a United States Postal Service receptacle.

XII. TERMINATE

Notwithstanding anything herein to the contrary, the City is not required to expend funds other than current funds under this Agreement. If the City fails to perform any obligation which would otherwise be required hereunder, due to the unavailability of funds, the sole remedy of the District is to terminate this Agreement upon ten (10) days prior written notice to the City.

XIII.

The City will cause to be inserted in the construction contract for the Trail a requirement that the contractor will save and hold harmless the City and the District and all their representatives from all suits, actions or claims of any character brought on account of any injuries or damages sustained by any person or property in consequence of any neglect in safeguarding the work or through the use of unacceptable materials in the construction of the Trail or any associated improvements or on account of any act of omission by the contractor provided, however that the liability of the contractor under such indemnification does not exceed \$1,000,000 per occurrence.

XIV.

THE CITY, ITS PREDECESSORS, SUCCESSORS AND ASSIGNS (THE FOREGOING ARE COLLECTIVELY REFERRED TO IN THIS ARTICLE AS "CITY") HEREBY RELEASE, RELINQUISH AND DISCHARGE THE DISTRICT, ITS PREDECESSORS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES AND ITS FORMER, PRESENT AND FUTURE AGENTS, EMPLOYEES AND OFFICERS (THE FOREGOING ARE COLLECTIVELY REFERRED TO IN THIS ARTICLE AS "DISTRICT") FROM ANY LIABILITY, CAUSES OF ACTION, LOSSES, CLAIMS, FINES OR DEMANDS AS A RESULT OF ANY INJURY, INCLUDING DEATH OR DAMAGE TO PERSONS OR PROPERTY, WHERE SUCH DAMAGE IS SUSTAINED IN CONNECTION WITH THE CONSTRUCTION, RECONSTRUCTION, REPAIR, OCCUPANCY OR USE OF THE TRAIL OR PROPERTY. THE CITY'S OBLIGATION TO RELEASE, RELINQUISH AND

DISCHARGE THE DISTRICT EXPRESSLY EXTENDS TO THE ACTUAL OR ALLEGED JOINT, CONCURRENT, OR SOLE NEGLIGENCE, OR OTHER FAULT OF THE DISTRICT, AND IS NOT DIMINISHED IN ANY WAY BY THE DISTRICT'S APPROVAL OF THE DRAWINGS AND SPECIFICATIONS, INSPECTION OF THE TRAIL OR THE REPAIR OR MAINTENANCE OF THE DISTRICT'S DRAINAGE FACILITIES.

CITY COVENANTS AND REPRESENTS THAT IN NO WAY SHALL THE DISTRICT BE RESPONSIBLE OR LIABLE FOR ANY ATTORNEYS' FEES (FOR ATTORNEYS RETAINED AS OUTSIDE COUNSEL BY AND FOR THE DISTRICT), COURT COSTS, AND OTHER EXPENSES OF ANY LAWSUIT RELATED TO INVERSE CONDEMNATION, IN CONNECTION WITH THE USE BY THE CITY OF DISTRICT'S REAL PROPERTY. AS BETWEEN THE CITY AND THE DISTRICT, THE CITY SHALL BE SOLELY AND FULLY RESPONSIBLE AND LIABLE FOR ANY AND ALL DAMAGES AND DEFENSE COSTS RELATED TO INVERSE CONDEMNATION IN CONNECTION WITH CITY'S USE OF THE PROPERTY. THE CITY'S OBLIGATIONS UNDER THIS PARAGRAPH EXPRESSLY EXTEND TO THE ACTUAL OR ALLEGED JOINT, CONCURRENT, OR SOLE NEGLIGENCE, OR OTHER FAULT OF THE DISTRICT.

IN ADDITION, IN THE EVENT THE CITY'S USE OF THE DISTRICT'S REAL PROPERTY CAUSES THE DISTRICT'S TITLE TO ANY PORTION OF SUCH PROPERTY TO REVERT TO THE GRANTOR, OR GRANTOR'S HEIRS, SUCCESSORS OR ASSIGNS, THE CITY WILL REACQUIRE, IN THE NAME OF THE DISTRICT, SUBJECT TO THE RIGHT OF THE CITY TO USE SUCH PROPERTY FOR A HIKE AND BIKE TRAIL AND APPURTENANCES THERETO, THE SAME PROPERTY INTEREST THE DISTRICT HAD OWNED PRIOR TO THE REVERSION OF THE TITLE.

PROVIDED, HOWEVER, THE CITY'S OBLIGATION TO THE DISTRICT ARISING UNDER THIS PARAGRAPH XIV IS LIMITED TO A \$200,000 FUND CURRENTLY AVAILABLE FOR SUCH PURPOSES, PLUS SUCH ADDITIONAL AMOUNTS AS THE CITY MAY CHOOSE TO APPROPRIATE TO SUCH FUND. SHOULD THE CITY PAY ANY PART OF SUCH FUND TO THE DISTRICT, ITS FUTURE LIABILITY IS LIMITED TO THE AMOUNT REMAINING IN THE FUND PLUS ANY FURTHER AMOUNTS THAT THE CITY APPROPRIATES IN FUTURE FISCAL YEARS. WITHIN THIRTY (30) DAYS AFTER ADOPTION BY THE CITY OF ITS BUDGET FOR EACH FISCAL YEAR AFTER THE FISCAL YEAR IN WHICH THIS AGREEMENT BECOMES EFFECTIVE, THE CITY SHALL NOTIFY THE DISTRICT WHETHER IT HAS APPROPRIATED SUCH FUNDS AS NECESSARY TO REPLENISH THE BALANCE OF THE FUND TO AN AMOUNT EQUAL TO \$200,000. IF THE CITY DOES NOT APPROVE AN APPROPRIATION IN ANY FISCAL YEAR DURING WHICH THIS AGREEMENT IS IN EFFECT IN SUCH AN AMOUNT NECESSARY TO SO REPLENISH THE FUND, DISTRICT MAY TERMINATE THIS AGREEMENT PROVIDED THAT

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THE CITY'S OBLIGATIONS UNDER THIS SECTION SHALL REMAIN EFFECTIVE TO THE EXTENT OF FUNDS REMAINING IN THE FUND AT SUCH TIME. IT IS THE INTENT OF THE PARTIES THAT SUCH FUND SHALL NEVER BE GREATER THAN \$200,000 DURING THE TERM OF THIS AGREEMENT. SUCH FUNDS SHALL BE AVAILABLE FROM THE EFFECTIVE DATE OF THIS AGREEMENT UNTIL FOUR YEARS FOLLOWING THE DATE INITIAL CONSTRUCTION CEASES ON THE LAST HIKE AND BIKE TRAIL TO BE COMPLETED.

XV.

This instrument contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any modifications concerning this instrument are of no force and effect excepting a subsequent modification in writing, signed by both parties hereto.

IN TESTIMONY OF WHICH, this Agreement has been executed in duplicate counterparts, each to have the force and effect of an original as follows:

- (a) It has been executed on behalf of the District on the 11th day of November, 1997, by the County Judge of Harris County, Texas, pursuant to an Order of the Commissioners Court of Harris County, Texas, authorizing such execution; and
- (b) It has been executed on behalf of the City on the 10th day of December, 1997, by its Mayor, and attested by its City Secretary, pursuant to ordinance of the City Council of the City of Houston authorizing such execution.

CITY OF HOUSTON ("City")

HARRIS COUNTY FLOOD CONTROL DISTRICT ("District:)

Mayor

By: Robert Eckels
Robert Eckels
County Judge

City Secretary

APPROVED AS TO FORM
MICHAEL P. FLEMING
County Attorney

By: Paul Taparuskas
Paul Taparuskas
Assistant County Attorney

COUNTERSIGNED:

Lloyd E. Halley
Jerry Miller
City Controller

DATE COUNTERSIGNED: 12/31/97

APPROVED:

H. O. ...
Director of Public Works and
Engineering

APPROVED AS TO FORM:

Sharon K. Mason
Assistant City Attorney
L.D. File No.

516-58-1008

ORDER AUTHORIZING THE COUNTY JUDGE TO EXECUTE
AN INTERLOCAL AGREEMENT BETWEEN THE
CITY OF HOUSTON AND
HARRIS COUNTY FLOOD CONTROL DISTRICT

516-58-1009

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

On this, the 11th day of November, 1997, the Commissioners Court of Harris County, Texas, sitting as the governing body of the Harris County Flood Control District, upon the motion of Commissioner Lee, seconded by Commissioner Cuevas, duly put and carried,

IT IS ORDERED that County Judge Robert Eckels be, and he is hereby, authorized to execute for and on behalf of the Harris County Flood Control District, an Interlocal Agreement between Harris County Flood Control District and the City of Houston for the use of certain Harris County Flood Control District Property, for public hike and bike trails, including but not limited to trails along Hunting, Halls, White Oak, Brays and Greens Bayous, said Agreement being incorporated herein by reference and made a part hereof for all intents and purposes as though fully set forth herein word for word.

FILED FOR RECORD

3:17 pm
JAN 21 1998

Beverly B. Hoffman
County Clerk, Harris County, Texas

Presented to Commissioners' Court

NOV 11 1997

APPROVE _____
Recorded Vol _____ Page _____

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, REPAIR, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS HEREBY AND INDISTINGUISHABLY ORDERED REPEALED.
THE STATE OF TEXAS
COUNTY OF HARRIS
I hereby certify that this instrument was FILED in File Number _____
Said on the date and at the time stamped herein by me, and was
DULY RECORDED, in the Official Public Records of Real Property of
Harris County, Texas on _____

JAN 21 1998



Beverly B. Hoffman
COUNTY CLERK
HARRIS COUNTY TEXAS