

EXHIBIT E

**WATER
SUPPLY CONTRACT BETWEEN
THE CITY OF HOUSTON, TEXAS AND
THE COMMONS WATER SUPPLY, INC.**

THIS WATER SUPPLY CONTRACT ("Contract") is made by and between the CITY OF HOUSTON ("Houston"), and THE COMMONS WATER SUPPLY, INC. ("CWS").

WITNESSETH:

Recitals

Houston is a municipal corporation and home-rule city, principally located in Harris County, Texas. Houston owns a water distribution system and desires to sell water to District.

Houston has authority to enter into this contract pursuant to its Home Rule Charter and Section 552.021 of the Texas Local Government Code.

CWS, a Texas corporation, is a for-profit investor-owned utility and is the holder of Certificate of Convenience and Necessity Number 12781 issued by the Texas Commission on Environmental Quality (the "TCEQ") to provide continuous and adequate water utility service to certain property (the "Service Area") located in Harris County, Texas (the "CWS CCN"); and

CWS has authority to enter into this contract pursuant to its Agreement of Limited Partnership.

All of the land located within the boundaries of Harris County Municipal Utility District No. 415 (the "District"), a political subdivision of the State of Texas organized and operating under the provisions of Article XVI, Section 59 of the Texas Constitution and Chapters 49 and 54 of the Texas Water Code, is located within the Service Area; and

Houston and the District have entered into a Utility Agreement (the "Utility Agreement") under the terms of which they have agreed, among other things, that: (i) Houston will become the retail water provider to the land within the District assuming it meets certain terms and conditions contained therein, and (ii) the District will acquire, for the benefit of and for ultimate

conveyance to Houston, the water facilities needed to serve lands being developed within the boundaries of the District.

Houston desires to purchase, on an interim basis, treated water from CWS for distribution and use for domestic and commercial purposes within the District to fulfill its obligations under the Utility Agreement.

The parties to this Contract have determined that all obligations to expend money arising out of this Contract can be fully satisfied out of monies on hand and available for expenditure for the purposes stated herein. Such charges are operating expenses of CWS's water system and shall be paid out of revenues of Houston's water and wastewater system only.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and agreements herein contained, the parties hereto do mutually agree as follows:

ARTICLE I.

Definitions

Unless the context requires otherwise, the following terms as used in this Contract shall have meanings as follows:

"Houston System" means all facilities up to the Point of Delivery necessary to enable it to receive water to serve the District from the CWS System, including without limitation, inter-connection lines, storage facilities, meter vaults, casings, air gap and other backflow prevention controls, valves and flow control devices as may reasonably be required by CWS.

"CWS System" means CWS's existing treated water system up to the Point of Delivery, including groundwater plants, transmission and distribution mains, storage facilities, valves and flow control devices necessary to provide water to Houston to serve the District. For purposes of providing water to Houston to serve the District pursuant to this Contract, such system shall meet all applicable TCEQ rules but shall not be required to meet any of Houston's more stringent requirements.

"Ordinances" means the Code of Ordinances of Houston, as amended from time to time.

"Point of Delivery" means the output flanges of the taps on CWS's water lines that will provide water to Houston to serve the District under the provisions of this Contract, at the point mutually agreed upon by CWS and Houston.

"Point of Measurement" means the location of the meters at which the Houston's consumption of water is measured, such location to be mutually agreed upon by Houston and CWS.

"Utility Official" means the Director of the Department of Public Works and Engineering of Houston or his or her designee, and any other person (or that person's designee) who may hereafter exercise the functions of the said Utility Official under the Ordinances.

"Water" means treated ground water from CWS's domestic waterworks system.

ARTICLE II.

Construction of Facilities

2.01--Construction by Houston of Certain Facilities.

Houston agrees to construct, or cause to be constructed by the District, all facilities necessary to enable it to receive water from CWS at the Point of Delivery, including without limitation, interconnection lines, meter vaults, casings, airgap or other backflow prevention controls, valves, and flow control devices as required by the CWS.

2.02--Tap and Meter.

Houston shall construct, or cause to be constructed by the District, at its sole cost, a tap on the CWS water main at the Point of Delivery and set the water meter at the Point of Measurement under the approval and inspection of CWS. Houston also agrees to provide telephone and electric connections, a telephone line and electricity source accessible at the Point of Measurement and allow CWS to connect remote meter reading equipment to such telephone lines.

Houston shall notify CWS before the chlorination of the Houston System and Houston shall chlorinate the Houston System in accordance with requirements at least as stringent as those approved by CWS before the connection is made.

ARTICLE III.

Sale and Delivery of Water

3.01--Delivery of Water.

Subject to the terms and conditions of this Contract, CWS agrees to sell and deliver (or cause to be delivered) water sufficient to serve 100 equivalent single family connections ("ESFCs") to the Point of Delivery on a wholesale basis for use by Houston to serve the District, and Houston agrees to take such water at the Point of Delivery. Delivery of treated water by Houston to the District from the CWS System will not require the release of CWS CCN. CWS shall have no obligation to provide Houston with water to serve more than 100 ESFCs. CWS shall not supply treated water within the District after Houston commences treated water service in the District from Houston water supply facilities and this Contract is terminated pursuant to the terms and conditions of Section 4.01 herein.

Water delivered to Houston to serve the District will be included in Houston's Groundwater Reduction Plan under the rules of the Harris-Galveston Coastal Subsidence District.

3.02--Billing and Payment.

All Water delivered to Houston to serve the District shall be metered, and CWS shall read the meter and bill Houston on a monthly basis. Billing shall not begin until commencement of delivery of water to Point of Delivery. Houston shall be obligated to pay CWS only for the quantity of water delivered to Houston to serve the District under this Contract during such month. Monthly payments shall be calculated in accordance with the formula given in Chapter 47, Article II, Subsection 47-61(f) of the Ordinances for contract treated water customers. At the end of each billing period, CWS shall send a statement of charges to Houston showing water used at the meter and the appropriate monthly charges.

Payment of such statements shall be due and payable to CWS c/o Hudson & Co., PO. Box 2735, Humble, Texas, 77347, on or before the thirtieth (30th) day after receipt of such statement. If CWS changes the location at which payment is to be made, CWS shall notify Houston in writing at the address shown in Section 7.08 hereof.

Houston covenants and agrees to assess user charges or taxes to its customers that will produce revenues sufficient to discharge its obligations under this Contract. Houston shall provide funding for the water out of revenues of Houston's water and wastewater system only.

3.03--Failure to Pay when Due.

Should Houston fail to tender payment of any amount when due, interest thereon shall accrue at the rate of ten percent (10%) per annum from the date when due until paid. In the event Houston fails to timely tender payment of any amount within the thirty (30) day period established in Section 3.02 hereof, and such failure continues for thirty (30) days after the notice to Houston of such default, CWS may suspend delivery of water, but the exercise of such right shall be in addition to any other remedy available to CWS.

ARTICLE IV.

Term and Related Provisions

4.01—Term and Related Provisions.

At such time as the District has reached 100 ESFCs and Houston is delivering treated water to the area within the District from Houston's water supply facilities, Houston shall disconnect from the CWS System and this Contract shall terminate, unless an emergency water supply agreement has been mutually agreed to between Houston and CWS. Within 30 days of Houston's delivery of treated water to the area within the District from the Houston's water supply facilities in compliance with the Utility Agreement, CWS shall file with the TCEQ any necessary documents to request the release of the CWS CCN for that portion of the CWS CCN covering the District. CWS will deliver to Houston a waiver of the CWS CCN for the area within the District effective upon the delivery of treated water to the District by Houston.

In the event Houston fails to supply treated water to the District from its water supply facilities within 90 days of the delivery of written notice of default by the District under the terms and conditions of the Utility Agreement, this Contract shall be automatically terminated, the CWS CCN shall not be released, CWS shall become the permanent retail provider of treated water within the District, and any parts of the Houston System that connect to and provide service to the District from the CWS System shall be the property of the District.

ARTICLE V.

Performance by the Parties

5.01--Force Majeure.

In the event either party is rendered unable, wholly or in part, by Force Majeure, to carry out any of its obligations under this Contract, it is agreed that upon such party's giving notice and full particulars of such Force Majeure in writing to the other party as soon as possible after the occurrence of the Force Majeure, the obligations of the party giving such notice, to the extent it is affected by Force Majeure and to the extent that due diligence is being used to resume performance, shall be suspended for the duration of the Force Majeure. Such cause shall, as far as possible, be remedied with all reasonable dispatch.

5.02--Force Majeure Defined.

The term "Force Majeure", as used herein, shall include, but not be limited to, acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, war, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, arrests and restraints of government and people, explosions, breakage or damage to machinery, pipelines or canals, and any other inabilities of either party, whether similar to those enumerated or otherwise, and not within the control of the party claiming such inability, which by the exercise of due diligence and care such party could not have avoided.

5.03--Construction and Maintenance of Certain Facilities between the Point of Delivery and Point of Measurement.

With respect to all water handling facilities located between the Points of Delivery and the Points of Measurement, the locations of such points to be mutually agreed upon between Houston and CWS, CWS and Houston specifically agree:

- (1) That all such facilities, other than the measurement equipment itself, shall be and remain the property of the Houston;
- (2) That Houston shall take all responsible steps to maintain such facilities and to prevent leaks or discharges from such facilities and shall not suffer, permit, cause or allow any water to be taken or used from such facilities, except through the measuring equipment;

- (3) That Houston shall repair any such leak or discharge at once upon receiving notice thereof and pay CWS the cost of any water lost by reason of such a leak or discharge;
- (4) That Houston shall correct or repair any damage caused by any such leak or discharge.

5.04--Delivery Limitations

Houston is not guaranteed any specific quantity or pressure of water whenever CWS's water supply is limited or when CWS's equipment may become inoperative because of unforeseen breakdown or scheduled maintenance and repairs. CWS is in no case to be held to any liability for failure to furnish any specific amount or pressure of water. Houston agrees to restrict its peak usage in the District to no more than 44,100 gallons of water per day and 2,700 of water per hour unless CWS authorizes a higher rate.

CWS may reduce the supply of water only in accordance with the laws of the State of Texas, particularly Section 11.039(a) of the Texas Water Code.

5.05 Operation of Houston's System

Houston agrees to correct any practices or operating conditions of the Houston System that may damage CWS System, including but not limited to, pressure variations that have the potential to damage the CWS System or cause the CWS System to operate outside TCEQ regulations. Houston shall promptly reimburse CWS the cost for repairs or replacements necessary to repair such damage.

ARTICLE VI.

Measuring Equipment

6.01--In General.

At Houston's own cost and expense, Houston shall furnish and install at the Point of Measurement measuring equipment properly sized and able to measure the quantity of water delivered within the accuracy tolerance specified in Section 6.04. The measuring equipment must be approved jointly by the CWS and the Utility Official prior to delivery of water, and shall become the property of CWS after installation. Houston may not alter, modify, tamper with or connect with such equipment.

6.02--Access.

During any reasonable hours, Houston and CWS shall have access to the measuring equipment. Houston shall have access to CWS's records pertinent to determining the measurement and quantity of water actually delivered, but CWS will read the meter for the purpose of billing.

6.03--Maintenance and Testing of Meter.

CWS shall maintain the measuring equipment within the accuracy tolerance specified in Section 6.04 by periodic tests. CWS shall conduct such tests at least once every twelve (12) months and shall notify Houston at least forty-eight (48) hours in advance of the time and location at which tests are to be made. If Houston requests an additional test within twelve (12) months, CWS shall charge Houston an amount equal to CWS's cost to perform such test, unless the test reveals that the equipment registers more than one hundred and two (102%) percent for a given flow rate. In addition, Houston shall have the right to independently check, at its own cost, said measuring equipment at any time upon forty-eight (48) hours notification to the CWS and opportunity for CWS to witness such tests.

6.04--Billing Adjustments for Inaccurate Meters.

Should the test of the measuring equipment in question show that the equipment registers either more than one hundred two percent (102%) or less than ninety-five percent (95%) of the water delivered for a given flow rate of flow, the total quantity of water delivered to Houston to serve the District will be deemed to be the average daily consumption as measured by the measuring equipment when in working order, and CWS shall calibrate the meter to the manufacturer's specifications (in the case of Venturi meters) or the AWWA specifications (for all other types of meters) for the given rate of flow, or replace the meter with accurate measuring equipment that is tested by CWS before it is placed in service.

Any billing adjustment under this Section shall be for a period extending back to the time when the inaccuracy began, if such time is ascertainable; and if such time is not ascertainable, for a period extending back to the last test of the measuring equipment or one hundred twenty (120) days, whichever is shorter.

As used in this paragraph, the expression "given rate of flow" means one of the following selected by the Utility Official for each calibration or test:

- 1) the total quantity of water delivered during the preceding period (usually a calendar month) as reflected by the totalizer, converted to gallons per minute;
- 2) high, low, and intermediate rates of flow in the flow range, as reflected by the flow recording devices;
- 3) the applicable minimum monthly quantity converted to gallons per minute; or
- 4) AWWA-specified test flow rates for that size and type of meter.

6.05--Disputes as to Testing

In the event of dispute between Houston and CWS as to the accuracy of the testing equipment used by CWS to conduct the accuracy test, an independent check may be mutually agreed upon between CWS and the Utility Official to be conducted by an independent measuring equipment company suitable to both CWS and the Utility Official. The cost of such test will be at Houston's sole expense.

The Utility Official may accept the test result of the independent measuring equipment company, but is not required to do.

6.06--Check Meters

Houston may install, at its own cost and expense, such check meters as it deems appropriate in its pipe line, but Houston shall have the right of ingress and egress to such check meters during all reasonable hours; provided, however, that billing computations shall be on the basis of the results of the measuring equipment set forth above.

ARTICLE VII.

Miscellaneous Provisions

7.01--Quality of Water.

CWS shall provide contract treated Water meeting all applicable Texas and Federal regulations regarding water quality, including the Safe Drinking Water Act.

EXCEPT AS PROVIDED IN THIS SECTION 7.01, CWS MAKES NO WARRANTY EXPRESSED OR IMPLIED, REGARDING THE QUALITY OR DELIVERY PRESSURE OF THE WATER, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

HOUSTON HEREBY RELEASES AND DISCHARGES CWS FROM ANY AND ALL FINES, DEMANDS, JUDGEMENTS, LIABILITIES OR CLAIMS ARISING BY REASON OF OR IN CONNECTION WITH THE DELIVERY OF WATER WHICH MEETS THE REQUIREMENTS OF THIS SECTION 7.01.

7.02--Ingress and Egress.

During the term of this Contract, CWS shall have the right of ingress and egress in, upon under and over any and all land, easements and rights-of-way of Houston's on which CWS, with Houston's consent, constructs facilities to deliver water to Houston to serve the District.

7.03--Assignments.

This Contract shall bind and benefit the respective parties and their legal successors, but shall not otherwise be assignable, in whole or in part, by either party without first obtaining written consent of the other. "Assignment" as used herein means assignment in law or otherwise.

7.04--Subject to Laws and Regulations.

This Contract shall be subject to all present and future valid laws, orders, rules and regulations of the United States of America, the State of Texas, any regulatory body having jurisdiction, and the Charter and Ordinances of the City of Houston, Texas. For purposes of providing water to Houston to serve the District pursuant to this Contract, the CWS System shall meet all applicable TCEQ rules but shall not be required to meet any of Houston's more stringent requirements.

7.05--No Additional Waiver Implied.

The failure of either party hereto to insist, in any or more instances upon performance of any of the terms, covenants or conditions of this Contract, shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant or condition by the other party hereto, but the obligation of such other party with respect to such future performance shall continue in full force and effect.

7.06--Inspections.

Houston agrees that CWS may conduct inspections from time to time to determine that no conditions exist in Houston's System and connections to its customers' premises which would or might adversely affect CWS's System.

7.07--Merger.

This instrument contains all the agreements made between the parties.

7.08--Notices.

Until CWS is otherwise notified in writing by Houston, the address of Houston is and shall remain as follows:

City of Houston
Utility Official of Public Works and Engineering Department
P.O. Box 1560
Houston, Texas 77251-1560

Until Houston is otherwise notified in writing by CWS, the address of CWS is and shall remain as follows:

The Commons Water Supply, Inc.
c/o The Signorelli Company
235 I-45 North
Conroe, TX 77304

All written notices, statements and payments required or permitted to be given under this Contract from one party to the other shall be deemed given by the deposit in a United States Postal Service mailbox or receptacle of certified or registered mail, with proper postage affixed thereto, addressed to the respective other party at the address set forth above or at such other address as the parties respectively shall designate by written notice.

7.09--Authorship.

The parties agree that this Contract shall not be construed in favor of or against either party on the basis that the party did or did not author this Contract.

7.10--Parties in Interest.

This Contract shall be for the sole and exclusive benefit of the parties hereto and shall not be construed to confer any rights upon any third party. CWS shall never be subject to any liability in damages to any customer of Houston for any failure to perform under this Contract.

7.11--Sale of Water Outside Boundaries.

In entering into this Contract the parties contemplate that CWS will provide the water to Houston principally to inhabitants of the District. Therefore, the parties agree that subject to the quantity limitations of Section 5.04 Houston may reconvey water delivered hereunder outside the

District's boundaries only if such reconveyance is approved in writing by CWS. Houston will require any wholesale purchaser to comply with the terms of this contract, including Section 7.04.

7.12--Captions.

The captions appearing at the first of each numbered section in this Contract are inserted and including solely for convenience and shall never be considered or given any effect in construing this Contract, or any provisions hereof, or in connection with the duties, obligations, or liabilities of the respective parties hereto or in ascertaining intent, if any questions of intent should arise.

7.13--Enforcement

The parties' attorneys for both Houston and CWS shall have the right to enforce all legal rights and obligations under this Contract without further authorization.

7.14--Approvals.

Unless otherwise provided for herein, any consent or approval of the parties shall be made by the governing body of each party.

7.15--Default and Remedies.

Default shall occur only in the event either party fails to adhere to its respective obligations hereunder. In such event, the non-defaulting party shall give the defaulting party written notice describing such default and the proposed date of termination. Such date may not be sooner than the 30th day following receipt of the notice. The non-defaulting party, at its sole option, may extend the proposed date of termination to a later date. If prior to the proposed date of termination the defaulting party cures the default, then the proposed termination shall not occur. If the defaulting party fails to cures such default prior to the proposed date of termination, then the non-defaulting party may terminate its performance under this Contract as of such date. This Section shall not be considered as specifying the exclusive remedy for any default, and all remedies existing at law and in equity are available to either party.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Contract in multiple copies, each of which shall be deemed to be an original, effective on the date of countersignature indicated below.

"HOUSTON"

CITY OF HOUSTON, TEXAS

By: Bill White
Mayor Arganda Ullal

"CWS"

THE COMMONS WATER
SUPPLY, INC.

By: [Signature]
Daniel K. Signorelli, President

ATTEST/SEAL:

[Signature]
City Secretary

APPROVED:

[Signature]
Director, Department of Public Works
and Engineering

APPROVED AS TO FORM:

[Signature]
Sr. Assistant City Attorney
L.D. File No.

COUNTERSIGNED BY:

[Signature]
City Controller [Signature]

DATE COUNTERSIGNED: 4-9-09

EXHIBIT F

**INTERLOCAL AGREEMENT
30 PERCENT REIMBURSEMENT**

THIS INTERLOCAL AGREEMENT is made on the Countersignature Date by and between the **CITY OF HOUSTON, TEXAS** ("City"), a municipal corporation and home-rule city of the State of Texas principally situated in Harris County, acting by and through its governing body, the City Council and Harris County Municipal Utility District No. 415, a Conservation and Reclamation District ("District").

The initial addresses of the parties, which one party may change by giving written notice of its changed address to the other party, are as follows:

City

District

Director of Department of Public Works
and Engineering
or Designee
City of Houston
P.O. Box 1562
Houston, Texas 77251

PREAMBLE

WITNESSETH:

WHEREAS, the District intends to develop a tract located within the municipal boundaries of the City; and

WHEREAS, it is necessary to construct the project described in Exhibit "A" (the "Project"); and

WHEREAS, the City and the District have determined that the District shall/shall not oversize the Project; and

WHEREAS, the City has agreed to participate in the cost of the Project in an amount not to exceed _____;

NOW, THEREFORE, the City and the District hereby agree to the terms and conditions of this Interlocal Agreement. This Interlocal Agreement consists of the following sections:

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EXHIBIT "A" - Attached

All of the above described sections and documents are hereby incorporated into this Interlocal Agreement by this reference for all purposes.

IN WITNESS HEREOF, the City and the District have made and executed this Interlocal Agreement in multiple copies, each of which is an original.

ATTEST/SEAL (if a corporation):
WITNESS (if not a corporation):

"District"

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Tax I.D. No. _____

CITY OF HOUSTON
BY:

COUNTERSIGNED
BY:

Director, Department of Public
Works and Engineering

City Controller

APPROVED AS TO FORM:

DATE COUNTERSIGNED:

Assistant City Attorney
L.D. File No.

I. DEFINITIONS

"Allowable Costs" includes the full cost of materials and labor for construction of the Project, but excluding costs of surveys, easements, engineering and inspection services.

"Allowable Oversizing Costs" [are/are not] authorized for this Interlocal Agreement. Allowable Oversizing Costs are the difference in Allowable Costs between the Project as bid for the oversizing requirements of this Interlocal Agreement and the Project as bid without oversizing.

"City" is identified in the Preamble and includes its successors and assigns.

"Closing" is described in Article III.

"District" is identified in the Preamble and includes its successors and assigns.

"Director " means the Director of the Department of Public Works and Engineering or such other person as may be designated by the Director by notice to the District to administer this Interlocal Agreement.

"Project" is defined in Exhibit "A".

II. DUTIES OF DISTRICT

A. Water, Wastewater, and Storm Sewer Capacity: Engineering Drawings

Before executing this contract, District shall (i) obtain all necessary water and wastewater and storm drainage capacity for the Project as required by the Director, and (ii) submit to the Director basic engineering drawings showing the location of the water and sewer lines.

B. Construction of the Project

(1) District must obtain preliminary plat approval from the City Planning Commission within 120 days of the effective date of this Agreement.

(2) Before the Project may be awarded, (i) the District must obtain final plat approval from the City Planning Commission and (ii) must submit to the Director and obtain his or her approval of all plans and drawing for the Project. Any change made by District to the final plans must be approved in advance by the Director.

(3) The District shall require its construction contractor(s) to construct the Project in a good and workmanlike manner in accordance with the engineering design approved by the Director prior to construction. The District shall provide all engineering required for construction of the Project.

(4) The District shall require its construction contractor(s) to provide performance and payment bonds in accordance with the requirements of Chapter 2253 of the Texas Government Code. The amount of the performance and payment bonds shall be the full cost of District's construction contract. The District shall also require its contractor(s) to provide one-year maintenance and surface restoration bonds as required by the permit. Provided, if the City does not approve or request corrections to the bonds within ten working days of its receipt of the bonds, the District may award the construction contract for the Project.

(5) Before the Notice to Proceed for the Project may be issued, the District shall require the contractor to obtain from the Director each permit (water, wastewater, storm sewer main as applicable) required to construct the Project.

(6) District shall acquire all lands and rights-of-way necessary to construct the Project. District shall coordinate with the City and other utilities to minimize the possibility of damage to utilities in the Project area. Upon completion of the Project, District shall ensure that the Project is

free and clear of all liens and encumbrances, including mechanics liens and purchase money security interests.

(7) District must award the contract for construction of the Project on the basis of competitive bids as provided in the Texas Water Code.

(8) District shall keep the Director reasonably informed regarding the progress of the Project as required by the Director. District shall notify and provide reasonable documentation for the Director for the following events: (1) advertisement for bids, (2) award of construction contract (including copies of bonds and insurance), (3) Notice to Proceed, (4) default of the contractor (if it occurs), and (5) completion of the Project such that it is ready for inspection by the City. The Project shall not be considered complete, and District or its contractor shall not connect the Project to the City's utility system until the Director issues a certificate of final completion.

(9) The Project shall be commenced and completed by the District in the time periods required by Article IV. The Director may grant a time extension not to exceed one additional year.

C. INDEMNIFICATION

The District shall require its construction contractor(s) to indemnify the City using in its ~~Contract~~(s) substantially the following language:

CONTRACTOR COVENANTS AND WARRANTS THAT IT WILL PROTECT, DEFEND, AND HOLD HARMLESS THE CITY, ITS EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY, THE "CITY") FROM ANY AND ALL THIRD PARTY CLAIMS, DEMANDS, AND LIABILITY, INCLUDING DEFENSE COSTS, RELATING IN ANY WAY TO DAMAGES, CLAIMS, OR FINES ARISING BY REASON OF OR IN CONNECTION WITH CONTRACTOR'S ACTUAL OR ALLEGED

NEGLIGENCE OR OTHER ACTIONABLE PERFORMANCE OR OMISSION OF THE CONTRACTOR IN CONNECTION WITH OR DURING THE PERFORMANCE OF THE DUTIES UNDER THIS CONTRACT. ALSO, DURING THE PERFORMANCE OF THE WORK AND UP TO A PERIOD OF ONE YEAR AFTER THE DATE OF FINAL ACCEPTANCE OF THE WORK, CONTRACTOR FURTHER EXPRESSLY COVENANTS AND AGREES TO PROTECT, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY FROM ALL CLAIMS, ALLEGATIONS, FINES, DEMANDS, AND DAMAGES RELATING IN ANY WAY TO THE ACTUAL OR ALLEGED JOINT AND/OR CONCURRENT NEGLIGENCE OF THE CITY AND CONTRACTOR, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT.

IT IS THE EXPRESSED INTENTION OF THE PARTIES HERETO THAT THE INDEMNITY PROVIDED HEREIN IS AN AGREEMENT BY THE CONTRACTOR TO INDEMNIFY AND PROTECT THE CITY FROM THE CITY'S OWN NEGLIGENCE WHERE SAID NEGLIGENCE IS AN ALLEGED OR ACTUAL CONCURRING PROXIMATE CAUSE OF ANY ALLEGED THIRD-PARTY HARM.

THE INDEMNITY PROVISION PROVIDED HEREIN SHALL HAVE NO APPLICATION TO ANY CLAIM OR DEMAND WHERE BODILY INJURY, DEATH, OR DAMAGE RESULTS ONLY FROM THE SOLE NEGLIGENCE OF THE CITY UNMIXED WITH ANY FAULT OF THE CONTRACTOR.

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THE LIABILITY OF THE CONTRACTOR UNDER THIS INDEMNITY PROVISION SHALL NOT EXCEED \$1,000,000 PER OCCURRENCE.

D. Insurance

District shall maintain in effect certain insurance coverage, which is described below.

District may satisfy this requirement through insured policies in the name of its Contractor.

(1) Risks and Limits of Liability. Contractor shall maintain the following coverages and limits of liability:

(Coverage)

(Limit of Liability)

Workers Compensation

Statutory for Worker's Compensation

Employer's Liability

Bodily Injury by accident \$500,000 (each accident)

Bodily Injury by Disease \$500,000 (policy limit)

Bodily Injury by Disease \$500,000 (each

employee)

Commercial General Liability:

Including Broad Form Coverage,
Contractual Liability, Bodily and
Personal Injury, and Completed
Operations

Bodily Injury and Property

Damage, Combined Limits of
\$1,000,000 each Occurrence
and \$2,000,000 Aggregate

Automobile Liability Insurance
(for automobiles used by the District
in the course of its performance
under this Agreement, including
Employer's Non-Ownership and Hired Auto
Coverage)

\$1,000,000 combined single limit
per Occurrence

Defense costs are excluded from the face amount of the policy.

Aggregate Limits are per 12-month policy period
unless otherwise indicated.

(2) Form of Policies. The Director may approve the form of the insurance policies, but nothing the Director does or fails to do relieves District from its duties to provide the required

coverage under this Agreement. The Director's actions or inactions do not waive the City's rights under this Agreement.

(3) Issuers of Policies. The issuer of any policy (i) shall have a Certificate of Authority to transact insurance business in Texas or (ii) shall be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+ and a Best's Financial Size Category of Class VI or better, according to the most current edition Best's Key Rating Guide.

(4) Insured Parties. Each policy, except those for Workers Compensation, Employer's Liability, and Professional Liability, must name the City (and its officers, agents, and employees) as Additional Insured parties on the original policy and all renewals or replacements.

(5) Deductibles. District shall be responsible for and pay any claims or losses to the extent of any deductible amounts and waives any claim it may have for the same against the City, its officers, agents, or employees.

(6) Cancellation. Each policy must state that it may not be canceled, materially modified, or nonrenewed unless the insurance company gives the Director 30 days' advance written notice. District shall give written notice to the Director within five days of the date on which total claims by any party against District reduce the aggregate amount of coverage below the amounts required by this Agreement. In the alternative, the policy may contain an endorsement establishing a policy aggregate for the particular project or location subject to this Agreement.

(7) Subrogation. Each policy except Professional Liability (if required) must contain an endorsement to the effect that the issuer waives any claim or right of subrogation to recover against the City, its officers, agents, or employees.

(8) Endorsement of Primary Insurance. Each policy, except Worker's Compensation and Professional Liability (if any), must contain an endorsement that the policy is primary to any other insurance available to the Additional Insured with respect to claims arising under this Agreement.

(9) Liability for Premium. District shall pay all insurance premiums, and the City shall not be obligated to pay any premiums.

(10) Subcontractors. District shall require all subcontractors to carry insurance naming the City as an additional insured and meeting all of the above requirements except amount. The amount must be commensurate with the amount of the subcontract, but in no case less than \$500,000 per occurrence.

(11) Proof of Insurance.

(a) Before issuance of the Notice to Proceed for the Project, District shall furnish the Director with Certificates of Insurance, along with an Affidavit from District confirming that the Certificates accurately reflect the insurance coverage maintained.

If requested in writing by the Director, District shall furnish the City with certified copies of District's actual insurance policies.

(b) District shall continuously and without interruption, maintain in force the required insurance coverages specified in this Section. If District does not comply with this requirement, the Director, at his or her sole discretion, may

- a. immediately suspend District from any further performance under this Agreement and begin procedures to terminate for default, or
- b. purchase the required insurance with City funds and deduct the cost of the premiums from amounts due to District under this Agreement.

The City shall never waive or be estopped to assert its right to terminate this Agreement because of its acts or omissions regarding its review of insurance documents.

E. Compliance with Laws

District shall comply with all applicable state and federal laws and regulations as well as all provisions of the City of Houston Charter and Code of Ordinances including all applicable provisions of Chapter 47 of the Houston Code of Ordinances.

III. DUTIES OF CITY

A. Payment by City

After completion of the Project, the Director shall schedule the Closing for payment to the District at a time and place convenient to the parties.

At or before the time of the Closing, District shall provide the Director:

- (1) An accounting of all Allowable Costs, including records and vouchers for all payments made by the District for Allowable Costs. District shall provide all documentation of Allowable Costs as required by the Director.
- (2) A certified copy of the subdivision or development plat and all documents necessary and required by the City Attorney to vest title to the Project in the City free and clear of any encumbrances.
- (3) Record drawings of the Project signed by the Project engineer.
- (4) Construction contractor's certificate of payment to subcontractors and material suppliers.
- (5) Certificate of final completion of the Project executed by the Office of the City Engineer.

- (6) Copy of acceptance letter for the Project signed by the Office of the City Engineer.

Upon receipt of the above-referenced items, the City shall pay the District. The sum of:

- (1) 100% of Allowable Oversizing Costs for the Project, and
- (2) 30% of the balance of Allowable Costs for the Project.

However, total reimbursement shall not exceed _____.

IV. TERM AND TERMINATION

A. This Interlocal Agreement is effective on the date of countersignature by the City Controller and shall remain in effect for the combination of the following terms:

- (1) From the Effective Date until the actual date on which District issues a Notice to Proceed with construction of the Project ("Construction Date"), which term shall not exceed 18 months, and

- (2) If the Closing Date is 3 years or less after the Construction Date, then until the City has reimbursed District for Allowable Costs and Allowable Oversizing Costs. Provided, however, the Director may grant a time extension not to exceed one additional year.

FAILURE OF THE DISTRICT TO COMPLETE PERFORMANCE OF ITS APPLICABLE OBLIGATIONS UNDER THIS CONTRACT WITHIN EITHER OF THE TIME PERIODS SET OUT ABOVE SHALL CONSTITUTE A DEFAULT OF THIS CONTRACT BY DISTRICT AND SHALL TERMINATE THE CITY'S DUTY TO REIMBURSE DISTRICT FOR ANY ELIGIBLE COSTS HEREUNDER OR FOR ANY COSTS WHATSOEVER AND SHALL CONSTITUTE A WAIVER BY DISTRICT OF ANY RIGHT TO CLAIM SUCH REIMBURSEMENT OR ANY OTHER

COSTS OR DAMAGES ARISING OUT OF THE CONTRACT OR THE DESIGN AND CONSTRUCTION OF THE PROJECT. DISTRICT'S FAILURE TO COMPLETE ITS OBLIGATIONS TIMELY AS SET OUT ABOVE SHALL NOT REQUIRE THE CITY TO GIVE NOTICE OF DEFAULT AS DESCRIBED BELOW OR TO GIVE DISTRICT ANY TIME TO CURE.

B. For any other reason except District's failure to complete its obligations timely, either party may terminate its performance under this Interlocal Agreement in the event of default by the other party and a failure by that party to cure such default receiving notice thereof, all as provided in this Section. Default shall occur if a party fails to observe or perform any of its duties under this Interlocal Agreement. Should such a default occur, the injured party shall deliver a written notice to the defaulting party describing such default and the proposed date of termination. Such date may not be sooner than the 30th day following receipt of the notice. The injured party, at its sole option, may extend the proposed date of termination to a later date. If prior to the proposed date of termination, the defaulting party cures such default, then the proposed termination shall be ineffective. If the defaulting party fails to cure such default prior to the proposed date of termination, then the injured party may terminate its performance under this Interlocal Agreement as of such date. The Director may give such notice for the purposes of this Interlocal Agreement.

V. MISCELLANEOUS

A. Independent Contractor

District is engaged as an independent contractor, and all of the services provided for herein shall be accomplished by District in such capacity. The City of Houston will have no control or

supervisory powers as to the detailed manner or method of the District's performance of the subject matter of this Interlocal Agreement. All personnel supplied or used by District shall be deemed employees or subcontractors of District and will not be considered employees, agents or subcontractors of the City of Houston for any purpose whatsoever. District shall be solely responsible for the compensation of all such personnel, for the withholding of income, social security and other payroll taxes and for the coverage of all worker's compensation benefits.

B. Force Majeure

"Force Majeure" includes, but is not limited to, acts of God, acts of the public enemy, war, blockades, insurrection, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, tornadoes, hurricanes, arrests and restraints of government and people, explosions, and any other inabilities of either party to carry out its obligations under this Interlocal Agreement, except strikes or labor disputes and breakage or damage to machinery or equipment, whether similar to those enumerated or otherwise, and not within the control of the party claiming such inability, and which by the exercise of due diligence and care such party could not have avoided.

If, because of Force Majeure any party hereto is rendered unable, wholly or in part, to carry out its obligations under this Interlocal Agreement, then such party shall give to the other party prompt written notice of the Force Majeure with reasonable full details concerning it; thereupon the obligation of the party given the notice, so far as they are affected by the Force Majeure, shall be suspended during, but no longer than, the continuance of the Force Majeure. The affected party shall use all possible diligence to remove the Force Majeure as quickly as possible, but his obligation shall not be deemed to require the settlement of any strike, lockout, or other labor difficulty contrary to the wishes of the party involved.

C. Severability

In the event any term, covenant or condition herein contained shall be held to be invalid by any court of competent jurisdiction, such invalidity shall not affect any other term, covenant or condition herein contained, provided that such invalidity does not materially prejudice either the District or the City in their respective rights and obligations contained in the valid terms, covenants or conditions hereof.

D. Entire Agreement

This Interlocal Agreement merges the prior negotiations and understandings of the parties hereto and embodies the entire agreement of the parties, and there are not other agreements, assurances, conditions, covenants (expressed or implied) or other terms with respect to the Project, whether written or verbal, antecedent or contemporaneous, with the execution hereof.

E. Notices

All notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received or, if earlier, on the third day following deposit in a United States Postal Service post office or receptacle with proper postage affixed (certified mail, return receipt requested) addressed to the respective other party at the address prescribed in the preamble of this Interlocal Agreement or at such other address as the receiving party may have theretofore prescribed by notice to the sending party.

F. Acceptance and Approval

An approval by the Director, or by any other instrumentality of the City, of any part of District's performance shall not be construed to waive compliance with this Interlocal Agreement or to

establish a standard of performance other than required by this Interlocal Agreement or by law. The Director is not authorized to vary the terms of this Interlocal Agreement..

G. Inspections and Audits

Representatives of the City shall have the right to perform, or cause to be performed, (1) audits of the books and records of the District relating to the Project, and (2) and inspections of all places where work is undertaken in connection with the Project. The District shall be required to keep such books and records available for such purpose for at least three (3) years after the ceasing of its performance under this Interlocal Agreement. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.

H. Enforcement

The City Attorney or his or her designee shall have the right to enforce all legal rights and obligations under this Interlocal Agreement without further authorization. District covenants to provide to the City Attorney all documents and records that the City Attorney deems necessary to assist in determining District's compliance with this Interlocal Agreement, with the exception of those documents made confidential by federal or State law or regulation.

I. Risk of Loss

Risk of loss or damage to the Project shall pass from the District to the City upon Closing.

J. Non-Waiver

Failure of either party hereto to insist on the strict performance of any of the agreements herein or to exercise any rights or remedies accruing hereunder upon default or failure of performance shall not be considered a waiver of the right to insist on, and to enforce by any appropriate remedy, strict compliance with any other obligation hereunder or to exercise any right or remedy occurring as a result of any future default or failure of performance.

K. Business Structure and Assignments

The District shall not assign this Interlocal Agreement at law or otherwise or dispose of all or substantially all of its assets without the prior written consent of both Directors. If the District desires approval of an assignment, the District shall immediately furnish the Director:

- (1) proof of the assignment and the name, telephone number, and address of the assignee and a clear identification of the fees to be paid to the Assignee; and
- (2) an original Affidavit of Ownership and Control of the Assignee.

The District shall not delegate any portion of its performance under this Interlocal Agreement without obtaining prior written consent from Director.

Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest as described in §9.406 of the Texas Business & Commerce Code. Provided, however, the District must provide the Director the information described in item (1) above.

L. Survival

District shall remain obligated to the City under all clauses of this Interlocal Agreement that expressly or by their nature extend beyond the expiration or termination of this Interlocal Agreement, including Sections II C (Indemnity).

EXHIBIT F-1

**INTERLOCAL AGREEMENT
70 PERCENT REIMBURSEMENT**

THIS INTERLOCAL AGREEMENT is made on the Countersignature Date by and between the **CITY OF HOUSTON, TEXAS** ("City"), a municipal corporation and home-rule city of the State of Texas principally situated in Harris County, acting by and through its governing body, the City Council and Harris County Municipal Utility District No. 415 ("District") Conservation and Reclamation District located in Harris County (District"). The initial addresses of the parties, which one party may change by giving written notice of its changed address to the other party, are as follows:

City

**Director of Department of Public Works
and Engineering
or Designee
City of Houston
P.O. Box 1562
Houston, Texas 77251**

District

PREAMBLE

WITNESSETH:

WHEREAS, the District intends to develop a tract located within the municipal boundaries of the City; and

WHEREAS, it is necessary to construct the project described in Exhibit "A" (the "Project"); and

WHEREAS, the City and the District have determined that the District shall/shall not oversize the Project; and

WHEREAS, the City has agreed to participate in the cost of the Project in an amount not to exceed _____;

NOW, THEREFORE, the City and the District hereby agree to the terms and conditions of this Interlocal Agreement. This Interlocal Agreement consists of the following sections:

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Exhibit "A": Description of Project

Exhibit "B": Request for Reimbursement of Eligible Storm Drainage Costs

All of the above described sections and exhibits are hereby incorporated into this

Interlocal Agreement by this reference for all purposes.

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IN WITNESS HEREOF, the City and the District have made and executed this
Interlocal Agreement in multiple copies, each of which is an original.

ATTEST/SEAL (if a corporation):
WITNESS (if not a corporation):

"District"

By: _____
Name:
Title:

By: _____
Name:
Title:
Tax Identification No. _____

ATTEST/SEAL:

CITY OF HOUSTON, TEXAS
Signed by:

Director, Department of Public
Works and Engineering

City Controller

APPROVED AS TO FORM:

DATE COUNTERSIGNED:

Assistant City Attorney
L.D. File No.

I. DEFINITIONS

"City" is identified in the Preamble and includes its successors and assigns.

"Closing" is described in Article III.

"Code of Ordinances" is the City of Houston Code of Ordinances.

"Construction Date" is described in Article IVA.

"Detention Facility Allocation" means the total cost of a Detention Facility constructed pursuant to a District Participation Agreement under §47-164 of the Code of Ordinances divided by the total number of lots projected by the District to be served by such facility, regardless of whether the lots were or will be developed in conjunction with this Interlocal Agreement.

"District" is identified in the Preamble.

"Director" means the Director of Public Works and Engineering or such person as he and she may designate for the purpose of administering this Interlocal Agreement...

"Eligible Construction Costs" means the full cost of materials, labor and related testing necessary for construction of the Main, as well as cost of construction management performed by independent contractors of District and the actual costs of publishing notice of bids for construction of the Project in accordance with the requirements of the Texas Water Code, but excludes all costs of lift stations and applicable permits of all kinds, which shall not be reimbursed by the City under this Interlocal Agreement.

"Eligible Costs" means Eligible Design, Construction, Over Sizing, and where applicable, Storm Drainage Costs.

"Eligible Design Costs" means the full cost of survey, design, and related testing services necessary for the water and wastewater Main, which services are performed by independent

contractors to the District, but excludes the cost of applicable permits of all kinds, which shall not be reimbursed by the City under this Interlocal Agreement.

"Eligible Over Sizing Costs" means the actual incremental costs of design and construction of water and wastewater Main sized at the request of the Director in excess of the capacity necessary for the residential units to be served by the Project.

"Eligible Storm Sewer Drainage Costs" means, for new low or moderate cost single family homes only, the actual cost, not to exceed \$3,000 per lot including allowable interest, of design, testing, and construction of storm sewer drainage for each lot. It includes either (a) the Detention Facility Allocation for each lot or (b) the portion of any required flood control impact fee attributable to such lot. The cost of applicable permits of all kinds is excluded from Eligible Storm Sewer Drainage Costs and will not be reimbursed under this Interlocal Agreement.

"Low or Moderate Cost" has the meaning set out in Section 47-164 (3) of the City of Houston Code of Ordinances.

"Main" means water, wastewater and storm water facilities eligible for reimbursement under Section 47-164 of the Code of Ordinances.

"Project" is defined in Exhibit "A".

"Property" is the land described in Exhibit "A".

"Related Entity" means, with respect to any party which has been an Developer hereunder: (i) any spouse, parent, child, grandchild, brother or sister of such Developer; or (ii) any person or entity (A) that directly or indirectly controls or is controlled by or is under common control with such Developer, (B) that is an officer of, partner in or trustee of, or serves in a similar capacity with respect to, such Developer or of which such Developer is an officer, partner or trustee, or with respect to which such Developer serves in a similar capacity, or (C)

that is the beneficial owner, directly or indirectly, of 10% or more of any class of equity securities of such Developer or of which such Developer is directly or indirectly the owner of 10% or more of any class of equity securities.

"Retail Purchaser" is a fee title purchaser of one Single Family Residence within the Property, who actually resides at the Single Family Residence.

"Single Family Residence" has the meaning set out in Section 42-1 of the City of Houston Code of Ordinances.

II. DUTIES OF DISTRICT

A. Water, Wastewater, and Storm Sewer Capacity; Preliminary Plan

Before executing this Interlocal Agreement, District shall (i) obtain all necessary water and wastewater and storm drainage capacity for the Project as required by the Director, and (ii) submit to the Director basic engineering drawings showing the location of the water, wastewater, and if applicable, storm sewer lines. If applying for Eligible Storm Sewer Drainage Costs, the District shall furnish the Director with pre-qualifying information requested by the Director.

B. Construction of the Project

(1) District must obtain preliminary plat approval from the City Planning Commission within 120 days of the effective date of this Agreement.

(2) Before the Project may be awarded, (i) the District must obtain final plat approval from the City Planning Commission and (ii) must submit to the Director and obtain his or her approval of all plans and drawing for the Project. Any change made by District to the final plans must be approved in advance by the Director.

(3) The District shall require its construction contractor(s) to construct the Project in a good and workmanlike manner in accordance with the engineering design approved by the

Director prior to construction. The District shall provide all engineering required for construction of the Project.

(4) The District shall require its construction contractor(s) to provide performance and payment bonds in accordance with the requirements of Chapter 2253 of the Texas Government Code. The amount of the performance and payment bonds shall be the full cost of District's construction contract. The District shall also require its contractor(s) to provide one-year maintenance and surface restoration bonds as required by the permit. The District and the City shall be dual obligees for the performance and payment bonds (District is primary obligee), and the City shall be the obligee for the maintenance and surface restoration bonds. District shall submit original duplicates of these bonds on form re-approved by the City Legal Department, to the Office of the City Engineer prior to award of the construction contract for the Project. Provided, if the City does not approve or request corrections to the bonds within ten working days of its receipt of the bonds, the District may award the construction contract for the Project.

(5) Before the Notice to Proceed for the Project may be issued, the District shall require the contractor to obtain from the Director each permit (water, wastewater, storm sewer main as applicable) required to construct the Project.

(6) District shall acquire all lands and rights-of-way necessary to construct the Project. District shall coordinate with the City and other utilities to minimize the possibility of damage to utilities in the Project area. Upon completion of the Project, District shall ensure that the Project is free and clear of all liens and encumbrances, including mechanics liens and purchase money security interests.

(7) District must award the contract for construction of the Project on the basis of competitive bids as required by the Texas Water Code.

(8) District shall keep the Director reasonably informed regarding the progress of the Project as required by the Director. District shall notify and provide reasonable documentation for the Director for the following events: (1) advertisement for bids, (2) award of construction contract (including copies of bonds and insurance), (3) Notice to Proceed, (4) default of the contractor (if it occurs), and (5) completion of the Project such that it is ready for inspection by the City. The Project shall not be considered complete, and District or its contractor shall not connect the Project to the City's utility system until the Director issues a certificate of final completion.

(9) The Project shall be commenced and completed by the District in the time periods required by Article IV. The Director may grant a time extension not to exceed one additional year.

C. INDEMNIFICATION

The District shall require its construction contractor(s) to indemnify the City using in its contract(s) substantially the following language:

CONTRACTOR COVENANTS AND WARRANTS THAT IT WILL PROTECT, DEFEND, AND HOLD HARMLESS THE CITY, ITS EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY, THE "CITY") FROM ANY AND ALL THIRD PARTY CLAIMS, DEMANDS, AND LIABILITY, INCLUDING DEFENSE COSTS, RELATING IN ANY WAY TO DAMAGES, CLAIMS, OR FINES ARISING BY REASON OF OR IN CONNECTION WITH THE ACTUAL OR ALLEGED NEGLIGENCE OR OTHER ACTIONABLE PERFORMANCE OR OMISSION OF THE CONTRACTOR (INCLUDING DISTRICT'S DISTRICT'S AND SUBDISTRICTS) IN CONNECTION WITH OR DURING THE PERFORMANCE OF THE DUTIES UNDER

THIS CONTRACT. DISTRICT FURTHER EXPRESSLY COVENANTS AND AGREES TO PROTECT, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY FROM ALL CLAIMS, ALLEGATIONS, FINES, DEMANDS, AND DAMAGES RELATING IN ANY WAY TO THE ACTUAL OR ALLEGED JOINT AND/OR CONCURRENT NEGLIGENCE OF THE CITY AND CONTRACTOR (INCLUDING CONTRACTOR'S SUBCONTRACTORS) ARISING OUT OF OR RELATED TO THIS CONTRACT, WHETHER DISTRICT IS IMMUNE FROM LIABILITY OR NOT, FOR A PERIOD OF UP TO 4 YEARS AFTER THE DATE OF CLOSING.

IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO THAT THE INDEMNITY PROVIDED HEREIN IS A CONTRACT BY THE CONTRACTOR TO INDEMNIFY AND PROTECT THE CITY FROM THE CITY'S OWN NEGLIGENCE WHERE SAID NEGLIGENCE IS AN ALLEGED OR ACTUAL CONCURRING PROXIMATE CAUSE OF ANY ALLEGED THIRD-PARTY HARM.

THE INDEMNITY PROVISION PROVIDED HEREIN SHALL HAVE NO APPLICATION TO ANY CLAIM OR DEMAND WHERE BODILY INJURY, DEATH, OR DAMAGE RESULTS ONLY FROM THE SOLE NEGLIGENCE OF THE CITY UNMIXED WITH ANY FAULT OF THE CONTRACTOR.

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THE LIABILITY OF THE CONTRACTOR UNDER THIS INDEMNITY PROVISION SHALL NOT EXCEED \$1,000,000 PER OCCURRENCE.

D. Insurance

District shall maintain in effect certain insurance coverage, which is described below.
District may satisfy this requirement through insured policies in the name of its Contractor.

(1) Risks and Limits of Liability. District shall maintain the following coverages and limits of liability:

<u>(Coverage)</u>	<u>(Limit of Liability)</u>
Workers' Compensation	Statutory for Workers' Compensation
Employer's Liability	Bodily Injury by accident \$500,000 (each accident) Bodily Injury by Disease \$500,000 (policy limit) Bodily Injury by Disease \$500,000 (each employee)
Commercial General Liability: Including Broad Form Coverage, Contractual Liability, Bodily and Personal Injury, and Completed Operations	Bodily Injury and Property Damage, Combined Limits of \$1,000,000 each Occurrence and \$2,000,000 Aggregate
Automobile Liability Insurance (for automobiles used by the District in the course of its performance under this Agreement, including Employer's Non-Owned and Hired Auto Coverage)	\$1,000,000 combined single limit per Occurrence

Defense costs are excluded from the face amount of the policy.
Aggregate Limits are per 12-month policy period
unless otherwise indicated.

(2) Form of Policies. The Director may approve the form of the insurance policies, but nothing the Director does or fails to do relieves District from its duties to provide the required coverage under this Agreement. The Director's actions or inactions do not waive the City's rights under this Agreement.

(3) Issuers of Policies. The issuer of any policy (i) shall have a Certificate of Authority to transact insurance business in Texas or (ii) shall be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+ and a Best's Financial Size Category of Class VI or better, according to the most current edition Best's Key Rating Guide.

(4) Insured Parties. Each policy, except those for Workers' Compensation, Employer's Liability, and Professional Liability, must name the City (and its officers, agents, and employees) as Additional Insured parties on the original policy and all renewals or replacements.

(5) Deductibles. District shall be responsible for and pay any claims or losses to the extent of any deductible amounts and waives any claim it may have for the same against the City, its officers, agents, or employees.

(6) Cancellation. Each policy must state that it may not be canceled, materially modified, or nonrenewed unless the insurance company gives the Director 30 days' advance written notice. District shall give written notice to the Director within five days of the date on which total claims by any party against District reduce the aggregate amount of coverage below the amounts required by this Agreement. In the alternative, the policy may contain an endorsement establishing a policy aggregate for the particular project or location subject to this Agreement.

(7) Subrogation. Each policy except Professional Liability (if required) must contain an endorsement to the effect that the issuer waives any claim or right of subrogation to recover against the City, its officers, agents, or employees.

(8) Endorsement of Primary Insurance. Each policy, except Workers' Compensation and Professional Liability (if any), must contain an endorsement that the policy is primary to any other insurance available to the Additional Insured with respect to claims arising under this Agreement.

(9) Liability for Premium. District shall pay all insurance premiums, and the City shall not be obligated to pay any premiums.

(10) Subcontractors. District shall require all subcontractors to carry insurance naming the City as an additional insured and meeting all of the above requirements except amount. The amount must be commensurate with the amount of the subcontract, but in no case less than \$500,000 per occurrence.

(11) Proof of Insurance.

- (a) Before issuance of the Notice to Proceed for the Project, District shall furnish the Director with Certificates of Insurance, along with an Affidavit from District confirming that the Certificates accurately reflect the insurance coverage maintained. If requested in writing by the Director, District shall furnish the City with certified copies of District's actual insurance policies.
- (b) District shall continuously and without interruption, maintain in force the required insurance coverages specified in this Section. If District does not comply with this requirement, the Director, at his or her sole discretion, may
 - a. immediately suspend District from any further performance under this Agreement and begin procedures to terminate for default, or
 - b. purchase the required insurance with City funds and deduct the cost of the premiums from amounts due to District under this Agreement.

The City shall never waive or be estopped to assert its right to terminate this Agreement because of its acts or omissions regarding its review of insurance documents.

E. Sale of Property

If Single Family Residences which qualify for Eligible Storm Water Drainage Costs are sold by developer(s) within the District, and funding for such costs is included in this Interlocal Agreement, then in order for the District to obtain Eligible Storm Water Drainage Costs it must

require the developer(s) to comply with this Section II.E as well as the time requirements specified in Section III.A.

Developer(s) shall convey the Property or portions thereof only as follows:

- (1) To Retail Purchasers by fee simple deed;
- (2) To family members within the first degree of consanguinity or affinity by lease.
- (3) To a natural person by a qualified lease. A qualified lease is any rental, lease, lease-purchase or other financial arrangement that does not convey title to the person, but only if such qualified lease is authorized by a City approved lease-purchase program; or
- (4) To a purchaser who agrees in writing:
 - a. To construct only Single Family Residences on the single family residential lots covered by this Participation Contract;
 - b. To abide by the requirements of this Subsection II E; and
 - c. That the City as a third-party beneficiary may enforce the provisions of this Section II E in the event the purchaser violates any of such provisions.

Once the purchaser has agreed to these conditions in the written contract, the District shall not be held accountable for the actions by such purchasers or subsequent purchasers who violate the terms of the contract executed pursuant to (4).

The Director shall monitor Developer's development and sale of the Property for compliance with the Participation Contract, including this Section II E.

F. Compliance with Laws

District shall comply with all applicable state and federal laws and regulations as well as all provisions of the City of Houston Charter and Code of Ordinances, including all applicable provisions of Chapter 47 of the Houston Code of Ordinances.

III. DUTIES OF CITY

A. Payment by City

After substantial completion of the Project and upon inspection and certification by the Director that construction of at least 25 percent of the housing to be served by the Project has been completed, the Director shall schedule the closing for payment to the District ("Closing") at a time and place convenient to the parties.

At least 30 days before the date of Closing, District shall provide the Director of Public Works and Engineering:

(1) An accounting of all Eligible Costs, including records and vouchers for all payments made by the District for Eligible Costs. District shall provide all documentation of Eligible Costs as required by the Director.

(2) A certified copy of the subdivision or development plat and all documents necessary and required by the City Attorney to vest title to the Project in the City free and clear of any encumbrances.

(3) Record drawings of the Project signed by the Project engineer.

(4) Construction contractor's certificate of payment to subcontractors and material suppliers.

(5) Certificate of final completion of the Project executed by the Office of the City Engineer.

(6) Copy of acceptance letter for the Project signed by the Office of the City Engineer.

Within 30 days after District completes the closing requirements, subject to the Limitation of Appropriation set out in Section B below, the City shall pay for water and wastewater Main as follows:

The Sum of:

- (a) 100 percent of the Eligible Over Sizing Costs for the Main,
- (b) 70 percent of the balance of Eligible Construction Costs for the Main,
- (c) 100 percent of the Eligible Design Costs,
- (d) Interest on the reimbursement cost as calculated above at the interest rate described in Article I of this Interlocal Agreement for the period of time between the District's loan disbursement and payment by the City.

For Projects serving single family housing that is sold at low or moderate cost as defined in Section 47-164 of the Code of Ordinances only, the City shall pay District, in addition to the above costs, Eligible Storm Sewer Drainage Costs (including the Detention Facility Allocation as set out in Section IV A and interest calculated at the rate set out in Article I from the date of loan disbursement up to the Date of Closing only) up to a maximum amount of \$3,000 per lot, upon proof furnished to the Director that lot and housing unit have been sold for low or moderate cost. The City shall pay Eligible Storm Sewer Drainage Costs during the period beginning with the date of Closing and ending on the third anniversary of the Construction Date ("the Storm Sewer Reimbursement Period"). In order to receive payment of such costs, the District shall submit to the Director a "Request for Reimbursement of Eligible Storm Drainage Costs" in the form set out in Exhibit "B" in accordance with procedures and including documentation to be established by the Director. The City shall not pay and District shall not be entitled to receive

reimbursement for Eligible Storm Sewer Drainage Costs for any lots sold after the Storm Sewer Reimbursement Period expires, except as provided for the Detention Facility Allocation in Section IV A (3). The City shall never be obligated to pay District any amount in excess of the Appropriated Funds set out for Eligible Storm Sewer Drainage Costs regardless of the number of homes sold.

B. Limit of Appropriation

(1) The City's duty to pay money to District under this Interlocal Agreement is limited in its entirety by the provisions of this Section.

(2) In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated (a) the sum of \$_____ to pay money due for Eligible Design, Construction, and Over Sizing Costs, including interest, and (b) the sum of \$_____ to pay for Eligible Storm Sewer Drainage Costs, including interest, under this Interlocal Agreement (the "Appropriated Funds"). The City Council of the City, in its discretion, may appropriate additional funding for this Interlocal Agreement, but it is not obligated to do so.

IV. TERM AND TERMINATION

A. This Interlocal Agreement is effective on the date of countersignature by the City Controller and shall remain in effect for the combination of the following terms:

(1) From the Effective Date until the actual date on which District issues a Notice to Proceed with construction of the Project ("Construction Date"), which term shall not exceed 18 months, and

(2) If the Closing Date is 3 years or less after the Construction Date, then until the City has reimbursed District for Eligible Design, Construction, and Over Sizing Costs.

FAILURE OF THE DISTRICT TO COMPLETE PERFORMANCE OF ITS APPLICABLE OBLIGATIONS UNDER THIS INTERLOCAL AGREEMENT WITHIN EITHER OF THE TIME PERIODS SET OUT ABOVE SHALL CONSTITUTE A DEFAULT OF THIS INTERLOCAL AGREEMENT BY DISTRICT AND SHALL TERMINATE THE CITY'S DUTY TO REIMBURSE DISTRICT FOR ANY ELIGIBLE COSTS HEREUNDER OR FOR ANY COSTS WHATSOEVER AND SHALL CONSTITUTE A WAIVER BY DISTRICT OF ANY RIGHT TO CLAIM SUCH REIMBURSEMENT OR ANY OTHER COSTS OR DAMAGES ARISING OUT OF THE INTERLOCAL AGREEMENT OR THE DESIGN AND CONSTRUCTION OF THE PROJECT. DISTRICT'S FAILURE TO COMPLETE ITS OBLIGATIONS TIMELY AS SET OUT ABOVE SHALL NOT REQUIRE THE CITY TO GIVE NOTICE OF DEFAULT AS DESCRIBED BELOW OR TO GIVE DISTRICT ANY TIME TO CURE.

(3) For Projects serving low or moderate cost single family housing only, from the Closing Date through the end of the Storm Sewer Reimbursement Period, as set out in III A above. District shall not be entitled to reimbursement for any Eligible Storm Sewer Drainage Costs if it fails to meet either of the deadlines in (1) and (2) above. District shall not be entitled to receive reimbursement for Eligible Storm Sewer Drainage Costs on any lot not built on and sold at low or moderate cost within the time period specified in this section.

Notwithstanding the foregoing, however, the City shall reimburse the District for the Detention Facility Allocation for eligible lots with homes sold for low or moderate cost even if the Detention Facility itself was constructed under a previous. The amount of interest payable on any Detention Facility Allocation shall never exceed the amount of interest payable on the