

**JOINT PARTICIPATION AGREEMENT BY AND BETWEEN HARRIS COUNTY,  
HARRIS COUNTY FLOOD CONTROL DISTRICT, AND TIMBERLAKE ESTATES  
PROPERTY OWNERS ASSOCIATION**

This Joint Participation Agreement ("Agreement") is entered into by and between Harris County (the "County"), a body corporate and politic under the laws of the State of Texas, Harris County Flood Control District ("Flood Control"), a body corporate and politic under the laws of the State of Texas, and Timberlake Estates Property Owners Association ("POA") sometimes referred to herein individually as "Party" or jointly as the "Parties."

**RECITALS**

WHEREAS, it is of mutual benefit to both Parties to construct improvements to drainage facilities in and around Timberlake Estates ("Subdivision") of which improvements include a detention pond ("Project") as generally illustrated in Exhibit B attached hereto and incorporated herein by reference;

WHEREAS, the Parties desire to cooperate in accordance with the terms of this Agreement to jointly accomplish the construction of the Project.

NOW THEREFORE, in consideration of the mutual promises, obligations, and benefits herein set forth, the Parties agree as follows:

**TERMS**

**Section 1. Responsibilities of the Parties**

A. County's Responsibilities

- (i) The County will provide or cause to be provided, engineering services and related support services necessary to prepare plans, specifications, and estimates ("PS&E") for the construction of the Project.
- (ii) The County shall be responsible for obtaining all necessary permits and jurisdictional approvals for construction of the project.
- (iii) Upon award of a construction contract or authorization of construction services, County will manage and inspect the construction of the Project in a manner similar to that of other County construction projects.
- (iv) The County shall provide wildlife mitigation and construction sequencing to minimize disruption of the existing wildlife.
- (v) The County will coordinate with the POA on trees that will have to be removed from the drainage easement that can be relocated. The cost associated with this will be subtracted from the appraised value of the drainage easement.

C. Flood Control's Responsibilities

**Commented [BP(1)]:** Has anyone been discussing this with flood control?

Upon completion of construction on the Project, Flood Control is responsible for repairing and maintaining the Project.

B. POA's Responsibilities

Upon execution of the Agreement the POA will:

(a) P

~~Provide the County with a drainage easement for the proposed detention pond.~~

~~Provide the County with an invoice for the appraised drainage easement value as provided in Section 2; and~~

(b) Provide Flood Control with a drainage easement for the proposed detention pond generally illustrated in Exhibit C attached hereto and incorporated herein by reference.

**Section 2. Funding of the Project**

Notwithstanding any provision in this Agreement to the contrary, the following provisions will apply to all payments made under this Agreement:

A. The County agrees to provide (\$459,518) for the drainage easement cost as generally illustrated in Exhibit A attached hereto and incorporated herein by reference.

B. The County agrees to provide payment to the POA within thirty (30) business days of receipt of the invoice.

**Commented [F1(2):** Is this sufficient time if we need to go to CC approval and request a PO?

**Section 3. Term and Termination**

A. This Agreement shall commence upon final execution by all the Parties (the "Effective Date") and shall remain in full force and effect until the completion of construction of the Project or the POA's receipt of all payments due from the County under this Agreement, whichever occurs later.

B. This Agreement may be terminated by the County before award of the construction contract and at any time by mutual written consent of the Parties, or as otherwise provided under this Agreement.

**Section 4. Limitation of Appropriation**

A. POA understands and agrees, said understanding and agreement also being of the absolute essence of this Agreement, that the County is not currently appropriating any funds for the Project. County may appropriate funds to complete the Project, but such funds shall not under any conditions, circumstances, or interpretations thereof exceed the sum certified available by the Harris County Auditor.

B. POA understands and agrees, said understanding and agreement also being of the absolute essence of this Agreement, that failure of the Harris County Auditor to certify funds or to certify sufficient funding for any reason shall not be considered a breach of this Agreement.

**Section 5. Miscellaneous**

- A. **Non-Assignability.** The Parties bind themselves and their successors, executors, administrators, and assigns to the other Party of this Agreement and to the successors, executors, administrators, and assigns of such other Party, in respect to all covenants of this Agreement. Neither Party shall assign, sublet, or transfer its interest in this Agreement without the prior written consent of the other Party
  
- B. **Notice.** Any notice required to be given under this Agreement (“Notice”) shall be in writing and shall be duly served when it shall have been (a) personally delivered to the address below, (b) deposited, enclosed in a wrapper with the proper postage prepaid thereon, and duly registered or certified, return receipt requested, in a United States Post Office, addressed to the Party at the following addresses:

POA:                    Timberlake Estates Property Owners Association  
                             12719 Fairbridge Lane  
                             Cypress, Texas 77429  
                             Attention: Doug Keith  
                             Email: chairman@tepoacypress.com

County:                Harris County Engineering Department  
                             1111 Fannin, 11th Floor  
                             Houston, Texas 77002-1893  
                             Attention: Interagency Agreement Coordinator  
                             [Email:](#)

Flood Control:        [Harris County Flood Control District](#)  
                             [9900 Northwest Freeway](#)  
                             [Houston, Texas 77092](#)  
                             [Attention:](#)  
                             [Email:](#)

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Any Notice given by mail hereunder is deemed given upon deposit in the United States Mail and any Notice delivered in person shall be effective upon receipt.

Each Party shall have the right to change its respective address by giving at least fifteen (15) days’ written notice of such change to the other [PartyParties](#).

Other communications, except for Notices required under this Agreement, may be sent by electronic means or in the same manner as Notices described herein.

- C. **Independent Parties.** It is expressly understood and agreed by the Parties that nothing contained in this Agreement shall be construed to constitute or create a joint venture, partnership, association or other affiliation or like relationship between the Parties, it being specifically agreed that their relationship is and shall remain that of independent parties to a contractual relationship as set forth in this Agreement. Each Party is an independent contractor and neither it, nor its employees or agents shall be considered to be an employee, agent, partner, or representative of another Party for any purpose. Any Party, nor its employees, officers, or agents shall be considered to be employees,

agents, partners or representatives of another Party for any purposes. Neither Party has the authority to bind the other Party.

- D. No Third Party Beneficiaries. This Agreement shall be for the sole and exclusive benefit of the Parties and their legal successors and assigns. The Parties are not obligated or liable to any party other than the Parties for the performance of this Agreement. Nothing in the Agreement is intended or shall be deemed or construed to create any additional rights or remedies upon any third party. Further, nothing contained in the Agreement shall be construed to or operate in any manner whatsoever to confer or create rights or remedies upon any third party, increase the rights or remedies of any third party, or the duties or responsibilities of the Parties with respect to any third party.
- E. Waiver of Breach. No waiver or waivers of any breach or default (or any breaches or defaults) by either Party hereto of any term, covenant, condition, or liability hereunder, or the performance by either Party of any obligation hereunder, shall be deemed or construed to be a waiver of subsequent breaches or defaults of any kind, under and circumstances.
- F. No Personal Liability; No Waiver of Immunity.
- (1) Nothing in the Agreement is construed as creating any personal liability on the part of any officer, director, employee, or agent of any public body that may be a Party to the Agreement, and the Parties expressly agree that the execution of the Agreement does not create any personal liability on the part of any officer, director, employee, or agent of the County.
  - (2) The Parties agree that no provision of this Agreement extends the County's liability beyond the liability provided in the Texas Constitution and the laws of the State of Texas.
  - (3) Neither the execution of this Agreement nor any other conduct of either Party relating to this Agreement shall be considered a waiver by the County of any right, defense, or immunity on behalf of itself, its employees or agents under the Texas Constitution or the laws of the State of Texas.
- G. Applicable Law and Venue. This Agreement shall be governed by the laws of the State of Texas and the forum for any action under or related to the Agreement is exclusively in a state or federal court of competent jurisdiction in Texas. The exclusive venue for any action under or related to the Agreement is in a state or federal court of competent jurisdiction in Houston, Harris County, Texas.
- H. No Binding Arbitration; Right to Jury Trial. The County does not agree to binding arbitration, nor does the County waive its right to a jury trial.
- I. Contract Construction.
- (1) This Agreement shall not be construed against or in favor of any Party hereto based upon the fact that the Party did or did not author this Agreement.
  - (2) The headings in this Agreement are for convenience or reference only and shall not control or affect the meaning or construction of this Agreement.
  - (3) When terms are used in the singular or plural, the meaning shall apply to both.

(4) When either the male or female gender is used, the meaning shall apply to both.

- J. Recitals. The recitals set forth in this Agreement are, by this reference, incorporated into and deemed a part of this Agreement.
- K. Entire Agreement; Modifications. This Agreement contains the entire agreement between the Parties relating to the rights herein granted and the obligations herein assumed. This Agreement supersedes and replaces any prior agreement between the Parties pertaining to the rights granted and the obligations assumed herein. This Agreement shall be subject to change or modification only by a subsequent written modification approved and signed by the governing bodies of each Party.
- L. Severability. The provisions of this Agreement are severable, and if any provision or part of this Agreement or the application thereof to any person, entity, or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part of this Agreement to other persons, entities, or circumstances shall not be affected thereby.
- M. Survival of Terms. Any provision of this Agreement that, by its plain meaning, is intended to survive the expiration or earlier termination of this Agreement shall survive such expiration or earlier termination. If an ambiguity exists as to survival, the provision shall be deemed to survive.
- N. Multiple Counterparts/Execution. This Agreement may be executed in several counterparts. Each counterpart is deemed an original and all counterparts together constitute one and the same instrument. In addition, each Party warrants that the undersigned is a duly authorized representative with the power to execute the Agreement.
- O. Warranty. By execution of this Agreement, POA warrants that the duties accorded to the POA in this Agreement are within the powers and authority of the POA.
- P. Anti-Boycott. In accordance with Tex. Gov't Code Ann. §2270.002, POA warrants and represents that it does not boycott Israel and agrees that it will not boycott Israel during the term of this Agreement.
- Q. Foreign Terrorist Organizations. In accordance with Tex. Gov't Code Ann. Chapter 2252 Subchapter F, POA warrants and represents that, at the time of execution of this Agreement and for the duration of the term of this Agreement, POA does not appear on the Texas State Comptroller's list of companies known to have contracts with or provide supplies or services to a foreign terrorist organization.

[Execution Page Follows]

HARRIS COUNTY  
FLOOD CONTROL DISTRICT

By \_\_\_\_\_  
LINA HIDALGO  
COUNTY JUDGE

APPROVED AS TO FORM:

Christian D. Menefee  
COUNTY ATTORNEY

By: \_\_\_\_\_  
Assistant County Attorney

**TIMBERLAKE ESTATES PROPERTY  
OWNERS ASSOCIATION**

By: \_\_\_\_\_  
Doug Keith  
President

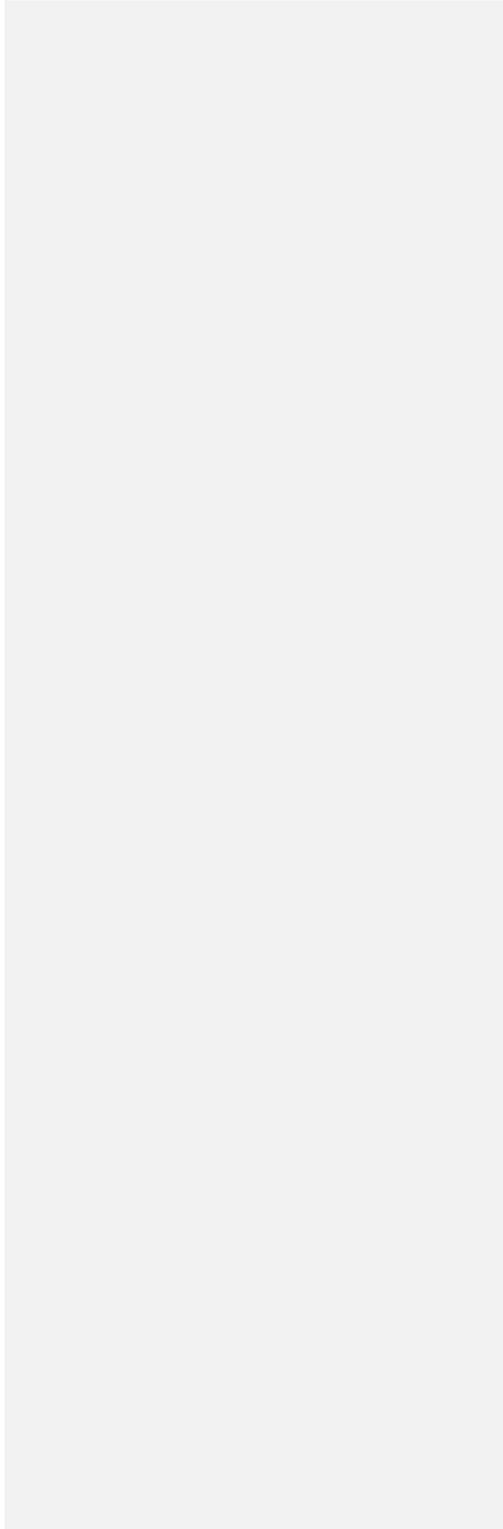
HARRIS COUNTY

By: \_\_\_\_\_  
LINA HIDALGO  
COUNTY JUDGE

APPROVED AS TO FORM:

Christian D. Menefee  
COUNTY ATTORNEY

By: \_\_\_\_\_  
Philip Berzins  
Assistant County Attorney  
CAO # 21GEN3693



**ORDER OF COMMISSIONERS COURT**

The Commissioners Court of Harris County, Texas, met in regular session at its regular term at the Harris County Administration Building in the County of Houston, Texas, on \_\_\_\_\_, with all members present except \_\_\_\_\_.

A quorum was present. Among other business, the following was transacted:

**ORDER AUTHORIZING EXECUTION OF A JOINT PARTICIPATION AGREEMENT BETWEEN HARRIS COUNTY AND TIMBERLAKE ESTATES PROPERTY OWNERS ASSOCIATION TO CONSTRUCT DRAINAGE IMPROVEMENTS TO TIMBERLAKE ESTATES SUBDIVISION AND ALL RELATED APPURTENANCES IN HARRIS COUNTY PRECINCT 3**

**Commented [F1(3):** Does Harris County Flood Control District need to be included also here?

Commissioner \_\_\_\_\_ introduced an order and moved that Commissioners Court adopt the order. Commissioner \_\_\_\_\_ seconded the motion for adoption of the order. The motion, carrying with it the adoption of the order, prevailed by the following vote:

	Yes	No	Abstain
Judge Lina Hidalgo	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Rodney Ellis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Adrian Garcia	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Tom S. Ramsey, P.E.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. R. Jack Cagle	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The County Judge thereupon announced that the motion had duly and lawfully carried and that the order had been duly and lawfully adopted. The order thus adopted follows:

IT IS ORDERED THAT:

1. The Harris County Judge is authorized to execute on behalf of Harris County the attached Joint Participation Agreement between Harris County and Timberlake Estates Property Owners Association to construct drainage improvements to Timberlake Estates Subdivision and all related appurtenances in Harris County Precinct 3.

**Commented [F1(4):** Does Harris County Flood Control District need to be included also here?

2. All Harris County officials and employees are authorized to do any and all things necessary or convenient to accomplish the purposes of this order.

