

New Business Item No. 1

1. **CONSIDERATION AND POSSIBLE ACTION – RESOLUTION NO. R2011-148** – A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PEARLAND, TEXAS, AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO ENTER INTO AN INTERLOCAL AGREEMENT AND AN AMENDED MEORANDUM OF UNDERSTANDING WITH BRAZORIA DRAINAGE DISTRICT NO. 4. *Mr. Trent Epperson, Project Director.*

**AGENDA REQUEST
BUSINESS OF THE CITY COUNCIL
CITY OF PEARLAND, TEXAS**

AGENDA OF: November 28, 2011	ITEM NO.: Resolution No. R2011-148
DATE SUBMITTED: November 15, 2011 DEPARTMENT OF ORIGIN: Projects	
PREPARED BY: Andrea Brinkley	PRESENTOR: Trent Epperson
REVIEWED BY: Mike Hodge	REVIEW DATE: November 18,2011
SUBJECT: Interlocal Agreement with Brazoria Drainage District No. 4 for Hickory Slough Detention Pond at Max Road and Amended Memorandum of Understanding with Brazoria Drainage District No. 4 for Hickory Slough Detention Pond at Max Rd.	
EXHIBITS: R2011-148; A- Amended Memorandum of Understanding; B- Interlocal Agreement	
EXPENDITURE REQUIRED: N/A AMOUNT AVAILABLE: N/A ACCOUNT NO.: N/A	AMOUNT BUDGETED: N/A PROJECT NO.: N/A
ADDITIONAL APPROPRIATION REQUIRED: None ACCOUNT NO.: N/A PROJECT NO.: N/A	
To be completed by Department: <input checked="" type="checkbox"/> Finance <input checked="" type="checkbox"/> Legal <input type="checkbox"/> Ordinance <input checked="" type="checkbox"/> Resolution	

EXECUTIVE SUMMARY

The City of Pearland 's current Capital Improvement Program includes the design and construction of the Hickory Slough Detention Pond at Max Road. This project is being designed in conjunction with the Max Road Sports Complex and Hughes Ranch Rd. extension. The City wishes to amend the Memorandum of Understanding with Brazoria Drainage District No. 4 (BDD4) to include this detention pond facility and to enter into an Interlocal Agreement with BDD4 to allow for the construction of the Hickory Slough Detention Pond at Max Rd.

When constructed the Hickory Slough Detention Pond at Max Rd. will provide general floodplain improvements, as well as serve as detention mitigation for Max Rd. Sports Complex, Hughes Ranch Rd extension and the detention mitigation required by the

Strategic Partnership Agreement with Brazoria County Municipal Utility District No. 16. The detention pond will be located on the north bank of Hickory Slough west of Max Rd., and southeast of the Stone Rd/Hughes Ranch Rd intersection. The property is owned by the City and it is anticipated that construction of Phase One (Phase 1) of the facility will begin in the 2nd quarter of 2012.

The proposed Interlocal Agreement defines the roles and responsibilities of the City and BDD4 as well as the funding for the project. Both the City and BDD4 will review and approve the design of the facility. The City and BDD4 will each fund one half of the construction related services of the project, with BDD4 funding an amount not to exceed \$2,000,000.00 towards the construction related services of Phase 1 of the project. Phase 1 of the detention pond will contain a hydraulic storage capacity of 153 acre feet, and Phase 2 will provide 95 acre feet, for a combined total of 248 acre feet of hydraulic storage capacity.

In addition to the Interlocal Agreement, the existing Memorandum of Understanding (MOU), last amended in June 2010, shall be amended to define the roles of both entities for the project. The MOU provides that the City will own the detention pond, and of the 248 acre feet of ultimate hydraulic storage capacity, will own and allocate 124 acre feet for general watershed improvements (flood reduction for existing development) and will allocate 124 acre feet for the City's use for future development. Also, the City will be responsible for mowing and maintenance of the side slopes, gates, fences, pump station and pilot channels. BDD4 will be responsible for the maintenance of the outfall structure and back slope drains. Finally the City will assume operational responsibilities for the detention pond due to its dual use for detention and recreation.

After approval by Council, the Interlocal Agreement and the amended Memorandum of Understanding will be submitted to Brazoria Drainage District No. 4 Board at their next regular meeting for their consideration and approval.

RECOMMENDED ACTION

Staff recommends approval of the amended Memorandum of Understanding and Hickory Slough Detention at Max Road Interlocal Agreement with Brazoria Drainage District #4, and authorization for the City Manager to execute the Interlocal Agreement and the amended Memorandum of Understanding.

RESOLUTION NO. R2011-148

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PEARLAND, TEXAS, AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO ENTER INTO AN INTERLOCAL AGREEMENT AND AN AMENDED MEORANDUM OF UNDERSTANDING WITH BRAZORIA DRAINAGE DISTRICT NO. 4.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PEARLAND, TEXAS:

Section 1. That certain Interlocal Agreement by and between the City of Pearland and Brazoria Drainage District No. 4, a copy of which is attached hereto as Exhibit "A" and made a part hereof for all purposes, is hereby authorized and approved.

Section 2. That certain Amended Memorandum of Understanding by and between the City of Pearland and Brazoria Drainage District No. 4, a copy of which is attached hereto as Exhibit "B" and made a part hereof for all purposes, is hereby authorized and approved.

Section 3. That the City Manager or his designee is hereby authorized to execute and the City Secretary to attest an Interlocal Agreement and an Amended Memorandum of Understanding with Brazoria Drainage District No. 4.

PASSED, APPROVED and ADOPTED this the _____ day of _____,
A.D., 2011.

TOM REID
MAYOR

RESOLUTION NO. R2010-74

ATTEST:

YOUNG LORFING, TRMC
CITY SECRETARY

APPROVED AS TO FORM:

DARRIN M. COKER
CITY ATTORNEY

AMENDED MEMORANDUM OF UNDERSTANDING

**BETWEEN
BRAZORIA DRAINAGE DISTRICT NO. 4 AND CITY OF PEARLAND
FOR DRAINAGE REGULATION**

This Memorandum of Understanding (“MOU”) is dated and effective as of the day last signed by the parties hereto, BRAZORIA DRAINAGE DISTRICT NO. 4, acting by and through its Chairman, (“*District*”) and the CITY OF PEARLAND, TEXAS, acting by an through it Mayor, (“*City*”).

RECITALS

WHEREAS, *City* and *District*, as local governmental entities, are authorized to enter into this MOU for the provision of governmental functions and services, pursuant to Chapter 791 of the Texas Government Code; and

WHEREAS, *City* is a home rule municipal corporation primarily located within the boundaries of District and Brazoria County; and

WHEREAS, *City* is empowered to regulate the subdivision of land within its corporate boundaries and its area of extraterritorial jurisdiction; and

WHEREAS, *City* is empowered adopt reasonable rules and regulations governing plats and the subdivision of land; and

WHEREAS, no land within *City* or its area of extraterritorial jurisdiction may be subdivided unless and until a plat of such subdivision has been approved by *City*; and

WHEREAS, *City* is empowered to act as Floodplain Administrator, on behalf of the Federal Emergency Management Administration (“FEMA”), in adopting and enforcing regulations designed to minimize flood losses; and

WHEREAS, *City* requires, as a condition of subdivision plat approval, compliance with applicable rules and regulations of *City* relating to floodplain management and flood damage prevention; and

WHEREAS, *District*, a conservation and reclamation district, was created and exists for the purpose of reclamation and drainage of flooded lands and other lands needing drainage within District; and

WHEREAS, *District* is primarily located within the corporate boundaries of City within Brazoria County; and

WHEREAS, in furtherance of *District's* purpose, *District* is empowered to acquire, construct, improve, and maintain facilities necessary to carry out its mandated purpose; and

WHEREAS, *City* and *District* have established similar drainage criteria and regulations, in order to a) assure that development within their overlapping jurisdictions does not circumvent their respective floodplain management and flood damage prevention plans, b) establish consistent application, c) simplify compliance, and d) avoid conflicts in the joint administration of said drainage criteria and regulations within their overlapping jurisdictions; and

WHEREAS, it is the desire of *City* and *District* that persons seeking approval within the overlapping jurisdictions of *City* and *District* for (1) subdivision plat or replat, (2) properties that have been rezoned to a higher run-off coefficient or land use type, or (3) developments on an existing site which increase impervious cover, be required to comply with *City's* and *District's* drainage criteria and regulations to prevent new development from negatively impacting existing property and structures; and

WHEREAS, *City* and *District* desire to amend the Memorandum of Understanding between *City* and *District* dated February 28, 2001 in order to specify the roles of each party related to *City's* Corrigan subdivision drainage improvement project.

WHEREAS, *City* and *District* desire to amend the Memorandum of Understanding between *City* and *District* dated June 28, 2004 in order to specify the roles of each party related to the *City's* Bailey Road Expansion at Cowart's Creek, Veteran's Detention Facility at Mary's Creek, Cowart's Creek Diversion Ditch and Detention Facility and the West Mary's Creek Detention Facility .

WHEREAS, *City* and *District* desire to amend the Memorandum of Understanding between *City* and *District* dated October 16, 2007 in order to specify the roles of each party related to the *City's* East Mary's Creek Regional Detention Facility.

WHEREAS, *City* and *District* desire to amend the Memorandum of Understanding between *City* and *District* dated March 3, 2009 in order to specify the roles of each party related to the *City's* Cowart's Creek Detention Pond, Clear Creek Detention Pond, Magnolia Road Outfall Channel, Town Ditch, Cullen Detention Pond, and Hickory Slough Mitigation Facility.

WHEREAS, *City* and *District* desire to amend the Memorandum of Understanding between *City* and *District* dated July 6, 2010 in order to specify the roles of each party related to the *City's* Hickory Slough Detention Pond at Max Road.

NOW THEREFORE, *City* and *District*, agree as follows:

1. *City* and *District* agree to jointly cooperate and administer their respective drainage criteria and regulations, imposed upon all property and development located within their overlapping jurisdictions which propose to discharge storm waters into a *City* or *District* outfall

facility, in an effort to promote and protect public health, safety and welfare, by minimizing public and private losses resulting from flood conditions.

2. *District* agrees to review, and where warranted, approve and accept any and all drainage plans submitted to *District* pertaining to real property and development constructed within any and all subdivisions located within *City's* Extraterritorial Jurisdiction (“ETJ”) within *District's* jurisdiction, including but not limited to the subdivisions of Silver Lake, Southwyck, Southdown, County Place and Avalon Terrace in accordance with Exhibits “A” and “B” attached hereto and incorporated herein for all purposes, and in accordance with *District's* Rules, Regulations & Guidelines attached hereto by reference.

3. *City* and *District* recognize and agree that *District* shall, in cooperation with Brazoria County, review, and where warranted, approve and accept any and all subdivision plats submitted to *District* pertaining to real property and development constructed within *City's* ETJ within *District's* jurisdiction, in accordance with Exhibit “B”, and in accordance with *District's* Rules, Regulations and Guidelines attached hereto by reference.

4. Prior to *City's* approval of any and all subdivision plats for property located within *City's* incorporated limits within *District's* jurisdiction, *City* agrees to cause to be submitted to *District*, for review and comment, said plats regarding compliance with *District's* Flood Protection Plan and Rules, Regulations & Guidelines to insure dedication of adequate drainage and access easements along *District's* drainage facilities, including but no limited to its channels, creeks and tributaries, in accordance with *District's* Rules, Regulations & Guidelines, similar to the procedure followed by *City* regarding utility companies.

5. *City* agrees to require all developers of property, adjacent to a drainage facility within *District's* jurisdiction and maintained by *District*, to designate, by plat, drainage and access easements for use by *District* in accessing and maintaining its drainage facilities, in accordance with the parties' respective drainage criteria and regulations. Said easements must be free of obstruction, motor vehicle accessible and able to accommodate *District's* equipment. Location of said easements shall be mutually agreed upon by *City* and *District*, upon consultation with developer during the platting process.

6. *City* agrees to make available for *District's* review and copying, any and all records pertaining to proposed development within their overlapping jurisdictions for purposed of monitoring compliance with *District's* Rules, Regulations and Guidelines.

7. *City* and *District* recognize and agree that historically, *District* has maintained the drainage facilities listed below located upon property in which *City* holds the fee or easement interest. *City* hereby grants *District* continued access to these drainage facilities for maintenance of the same and *District* hereby agrees to continue maintenance of said facilities in accordance with the parties mutual understandings:

- a) Ditch #A 103-00-00, more commonly known as Dissen/Settegest Ditch;
- b) Ditch #A 104-00-00, more commonly known as Barry Rose Ditch;
- c) Ditch #A 104-00-00, more commonly known as Regency Park Ditch;

- d) Ditch #B 106-00-00, more commonly known as Pasternek Ditch
8. With regard to the Corrigan Subdivision drainage improvements, *City* and *District* agree:
- a) The *District* will continue to own and maintain the existing ditch # B116-00-00, more commonly known as Corrigan Ditch.
 - b) The *District* intends to transfer ownership of the existing Corrigan Detention Pond to *City*.
 - c) *City* has acquired land for the Corrigan bypass ditch, also known as Hatfield Ditch, and will retain ownership of said land.
 - d) *District* will mow the Hatfield Ditch and the Corrigan Detention Pond.
 - e) *City* will own, operate, and maintain the Hatfield Ditch, the Corrigan Detention Pond and appurtenances.
 - f) The Corrigan Detention Pond will be constructed by *City* with 4:1 side slopes and a 20-foot maintenance berm.
9. With regard to the Bailey Road Expansion at Cowart's Creek, Veteran's Detention Facility at Mary's Creek, Cowart's Creek Diversion Ditch and Detention Facility, the West Mary's Creek Detention Facility ("Detention Facilities"), the *City* and *District* agree:
- a) The *City* will own the Detention Facilities (including the Cowart's Creek Diversion Ditch).
 - b) The *District* will maintain the Detention Facilities and Diversion Ditch upon their completion; said maintenance responsibilities will consist of mowing and repairs related to the outfall structures, side slope, gates, fences, pilot channels, back slope drains, etc.
 - c) The *City* will maintain the discharge/intake structures for the Detention Facilities, including, but not limited to, valves, screens, etc.
 - d) The *City* will assume all operational responsibilities for the Detention Facilities.
10. With regard to the East Mary's Creek Detention Facility ("Detention Facility), the *City* and *District* agree:
- a) The *City* will own the Detention Facilities. The *City* will own 125-ac-ft of the hydraulic storage capacity and the *District* will own 75 ac-ft.
 - b) The *District* will maintain the Detention Facility upon its completion; said maintenance responsibilities will consist of mowing and repairs related to the outfall structures, side slope, gates, fences, pilot channels, back slope drains, etc.
 - c) The *City* will maintain the discharge/intake structures for the Detention Facilities.
 - d) The *City* will assume all operational responsibilities for the Detention Facilities.
11. With regard to the Cowart's Creek Detention Pond, Clear Creek Detention Pond, Cullen Detention Pond, Magnolia Road Outfall Channel and Town Ditch ("Detention Facilities, Channel and Ditch") the *City* and *District* agree:
- a) The *City* will own the Detention Facilities, Channel and Ditch.

- b) The *District* will maintain the Detention Facilities, Channel and Ditch. Said maintenance shall include but not be limited to mowing and repairs related to the outfall structures, side slopes, gates, fences, pilot channels, and back slope drains.
- c) The *City* will maintain the discharge/intake structures for the Detention Facilities, Channel and Ditch. Said maintenance shall include, but not be limited to, valves and screens.
- d) The *City* will assume all operational responsibilities for the Detention Facilities, Channel and Ditch.

12. With regard to the Hickory Slough Mitigation Facility (“Mitigation Facility”), the *City* and *District* agree:

- a) The *City* will own the portion of the Mitigation Facility that lies on *City* property as recorded in the Official Public Records of Brazoria County Doc. #2005-035689, and the *District* will own the portion of the Mitigation Facility that lies on *District* property as recorded in the Official Public Records of Brazoria County Doc# 2009021502.
- b) The *District* will maintain the Mitigation Facility upon its completion. Said maintenance shall include but not be limited to mowing and repairs related to the side slopes, gates, fences, and low water crossing.

13. **With regard to the Hickory Slough Detention Pond at Max Road (“Detention Pond”), the *City* and *District* agree:**

- a) The *City* will own the Detention Pond. The *City* will own 124 ac-ft of the hydraulic storage capacity in addition to 124 ac-ft of hydraulic storage capacity, which shall be allocated for general watershed improvement.**
- b) The *City* will provide the mowing and maintenance including side slopes, gates, fences, pump station, and pilot channels for the Detention Pond.**
- c) The *District* will provide all maintenance and repairs related to the outfall structures and back slope drains.**
- d) The *City* will assume all operational responsibilities for the Detention Pond.**

14. *District’s* Engineer is hereby designated as the natural person selected by *District* to lead, direct and coordinate *District’s* work in accordance with this MOU.

15. *City’s* Engineer is hereby designated as the natural person selected by *City* to lead, direct and coordinate *City’s* work in accordance with this MOU.

16. The term of this MOU shall be for a period of five (5) years, commencing on the _____ day of _____, **2011**. This MOU shall automatically renew at the expiration of said term and shall continue to renew thereafter in five (5) year increments unless either party gives the other party ninety (90) day’s written notice of its desire to terminate this MOU.

17. This Agreement may only be amended, modified, or supplements in writing and subsequently signed and dated by *City*, as acted upon by its *City Council* and *District*, as acted upon by its Board of Directors.

18. *City* and *District* recognize and agree that this MOU is not in any way intended to limit, alter or reduce the express or implied authority, rights or obligation of either party as reflected in their respective drainage criteria and regulations or any other applicable law, but rather is intended to further clarify and reflect the parties' mutual understandings in jointly administering their respective drainage criteria and regulations.

IN WITNESS WHEREOF, this MOU is executed on behalf of *City* and *District* by their respective authorized officers, in multiple counterparts, each of which is to constitute an original, pursuant to the prior authorization of the governing bodies of the respective parties acting in duly posed and noticed open public meeting of the respective governing bodies on the dates recited in the signature blocks below.

CITY OF PEARLAND, TEXAS

BRAZORIA DRAINAGE DISTRICT NO. 4

By: _____
Tom Reid, Mayor

By: _____
Jeff H. Brennan, Chairman

Date: _____

Date: _____

ATTEST:

ATTEST:

Young Lorfing, TRMC
City Secretary

Kathy Wells
Director of Administrative Services

APPROVED AS TO FORM:

Darrin Coker
City Attorney

**INTERLOCAL AGREEMENT BETWEEN
CITY OF PEARLAND
AND
BRAZORIA DRAINAGE DISTRICT NO. 4**

This AGREEMENT is made between BRAZORIA DRAINAGE DISTRICT NO. 4 (“*District*”) and the CITY OF PEARLAND (“*City*”), each being a governmental entity pursuant to the Texas Interlocal Cooperation Act, Chapter 791, Texas Government Code.

WHEREAS, the *City* finds it necessary to construct the Hickory Slough Detention Pond at Max Road (“Detention Pond”). The proposed site for the Detention Pond is located in the *City* west of Max Road, south of future Hughes Ranch Road, and north of Hickory Slough which is under the jurisdiction of the *District*. The Detention Pond will serve territory located within the jurisdiction of each entity;

WHEREAS, the construction of this Detention Pond will provide stormwater detention for improvements associated with the Max Road Sports Complex, Hughes Ranch Road, Brazoria County Municipal Utility District No.16, and will benefit both the *City* and the *District*; and

WHEREAS, the *City* has agreed to fund the design and one-half (1/2) of the construction related services of the Detention Pond.

WHEREAS, the *District* has agreed to fund one-half (1/2) of the construction related services of the Detention Pond.

WHEREAS, Phase I of the Detention Pond will provide approximately 153 ac-ft of hydraulic storage capacity and Phase II of the Detention Pond will provide approximately 95 ac-ft of hydraulic storage capacity.

WHEREAS, Subject to Section III of this Agreement, the *District* desires to fund an amount not to exceed \$2,000,000.00 towards of the construction related services associated with Phase I of the Detention Pond, and ultimately fund a total amount equal to one-half the total combined construction costs for Phase I and Phase II of the Detention Pond.

WHEREAS, while the *District* traditionally provides the mowing maintenance of regional detention facilities, the *City* will provide mowing maintenance for the Detention Pond due to its dual use as a drainage facility and a sports complex.

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

I. DESIGN AND CONSTRUCTION

A. *City* and *District* agree that *City* shall:

1. Provide all engineering plans and specifications for the Detention Pond.
2. Submit 60% and 90% construction plans of the Detention pond to the *District* for review.
3. Obtain all engineering design reviews and approvals that may be required by third parties, including all permits, licenses, certificates, etc. necessary for the design, construction, operation and maintenance of the Detention Pond.
4. Prepare a written response to any comments the *District* submits during the review period.
5. Review and approve all design and construction plans and specifications for the Detention Pond.
6. Publish the Invitation to Bid in the local paper, conduct a pre-bid meeting, and receive bids for the construction of the Detention Pond.
7. Tabulate and review all bids submitted and prepare a recommendation to the City Council to award a contract and authorize the City Manager to execute the contract.
8. Upon award of a construction contract to the lowest responsible bidder, provide all equipment, material and labor necessary to construct the Detention Pond.
9. Provide funding for costs in excess of \$2,000,000.00 for all Phase I construction related costs, which shall include Construction, Construction Management & Inspection, and Construction Material Testing contracts for the Detention Pond.
10. Provide funding for Phase II construction related costs, which shall include Construction, Construction Management & Inspection, and Construction Material Testing contracts for the Detention Pond.
11. Retain the authority to process any Change Orders that may be necessary for construction of the Detention Pond.
12. Receive pay estimates from the contractor and make periodic payments to the contractor.
13. Submit monthly invoices to the *District* for the Phase I construction related costs.
14. Provide the *District* and *District's* representative's access to the Detention Pond to perform maintenance and inspection services.

B. *City and District* agree that *District* shall:

1. Review the 60% and 90% construction plans for the Detention Pond and provide written comments to the *City* within 14 days of receipt of the same.
2. Approve all construction plans and specifications for the Detention Pond.
3. Subject to Section III below, provide funding, not to exceed \$2,000,000.00, for all Phase I construction related costs, which shall include contracts for the Construction, Construction Management & Inspection, and Construction Material Testing of the Detention Pond. Upon receipt of an invoice(s) from the *City* as provided herein, the *District* shall review the invoice(s) and make payment to the *City* for construction related costs associated with Phase I of the Detention Pond within 14 days of receipt of the invoice.
4. Allow the *City* and all of *City's* representative's access to Hickory Slough for construction, maintenance and inspection services associated with the Detention Pond.

II. OWNERSHIP, MAINTENANCE AND OPERATION

- A. The *City* and *District* recognize, understand and agree that the *City* shall own the Detention Pond upon its completion.
- B. The maintenance and operation of the Detention Pond shall be in accordance with the Amended Memorandum of Understanding (MOU) between the *City* and the *District* attached hereto as Exhibit (“___”).

III. FINAL ACCOUNTING

Within thirty (30) days following the issuance of a Certificate of Final Completion for construction of Phase II, *City* will perform, or cause to be performed, a final accounting of the construction related costs of Phase I & II of the Detention Pond (“Total Construction Costs”). If the final accounting concludes that the actual expenditures of the *District* exceeds one-half (1/2) of the Total Construction Costs, then the *City* shall refund one-half (1/2) of the difference between actual expenditures of the *District* and the Total Construction Costs within thirty (30) days after the final accounting is complete. If the actual expenditures of the *District* are less than one-half (1/2) of the Total Construction Costs then the *District* shall pay the *City* one-half (1/2) of the difference between actual expenditures of the *District* and the Total Construction Costs within thirty (30) days after receiving written notice from *City*.

IV. TERM

- A. The term of this Agreement for purposes of construction shall be for a period two (2) years, commencing on the effective date reflected herein and terminating on the same

day of the year 2013 and shall be extended automatically until construction of the Detention Pond is complete.

- B. The term of this Agreement for purposes of maintenance shall be for the life of the Detention Pond and in accordance with the MOU.

V. MISCELLANEOUS

- A. *City* and *District* recognize and agree that *District*, in performance of this agreement, shall act as an independent contractor and shall have control of its own work and the manner in which it is performed and all employees of *District* shall remain *District* employees and shall not be considered agents, employees, or borrowed servants of the *City*.
- B. *City* and *District* recognize and agree that the *City*, in performance of this Agreement, shall act as an independent contractor and shall have control of its own work and the manner in which it is performed and all employees of the *City* shall remain *City* employees and shall not be considered agents, employees, or borrowed servants of *District*.
- C. Nothing herein shall be construed to make either party a purchaser or consumer of goods or services from the other.
- D. *City* and *District* shall comply with all applicable laws, regulations and requirements in performance of their respective obligations under this agreement.
- E. *City* and *District* agree to acquire and maintain the minimum limits of insurance required by law and sufficient to cover each party's performance hereunder.
- F. *City* and *District* recognize and agree that nothing herein shall be construed to create any rights in third parties.
- G. *City* and *District* agree that no party shall have the right to seek indemnification or contribution from any other party hereto for any losses, costs, expenses, or damages directly or indirectly arising, in whole or part from this Agreement.
- H. Whenever possible, each provision of this agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any section, subsection, paragraph, sentence, clause, phrase, work or portion of this Agreement is, for any reason, held invalid unconstitutional or otherwise unenforceable by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.
- I. The Rights and Obligations of this Agreement shall not be assigned without prior written consent of the *City* and *District*.

J. This Agreement may only be amended, modified, or supplemented in writing and subsequently signed and dated by the *City*, as acted upon by its City Council and the *District*, as acted upon by its Board of Commissioners.

K. This Agreement and all obligations created hereunder shall be performable in Brazoria County, Texas

Each person signing below represents that he or she has read this Agreement in its entirety, including any and all attachments and exhibits, understands its terms, is duly authorized to execute this Agreement on behalf of the party indicated by his or her name below and agrees on behalf of said party that the party will be bound by these terms.

SIGNED and ENTERED this _____ day of _____, 2011.

BRAZORIA DRAINAGE DISTRICT NO. 4

Jeffrey H. Brennan, Chairman

ATTEST:

Kathy Wells, Director of Administrative Services

CITY OF PEARLAND

Bill Eisen, City Manager

ATTEST:

Young Lorfing, City Secretary