

**AGREEMENT FOR DONATION TO DEERFIELD VILLAGE COMMUNITY
ASSOCIATION PERIMETER FENCE REPLACEMENT PROJECT**

This Agreement for Shared Costs and Fence Maintenance (this “*Agreement*”), dated as of _____, 2021, by and among **Harris County Municipal Utility District No. 136**, a conservation and reclamation district created pursuant to Art. XVI, § 59 of the Texas Constitution (the “*District*”), having an address of 1301 McKinney, Suite 5100, Houston, Texas 77010 and **Deerfield Village Community Association**, a non-profit Texas corporation (the “*HOA*”), having an address of 4041 Deerfield Village Drive, Houston, Texas 77084.

WHEREAS, the District is empowered under Texas Water Code, Chapter 49 to provide for recreational facilities, including parks, landscaping, parkways, green belts, sidewalks, trails, and beautification projects; and

WHEREAS, the District has determined it is in the best interest of the District to contribute funds to the HOA to help finance the completion of a uniform fence made out of Trex Fencing and decorative brick columns with wrought iron at the street entrances in the area surrounding all or a portion of the perimeter of Deerfield Village Subdivision to replace old or dilapidated fencing pursuant to its authority under Texas Water Code, Chapter 49 (the “*Perimeter Fence*”); and

WHEREAS, the Perimeter Fence is to be constructed within the District, as described in Exhibit A, attached hereto and by this reference made a part hereof (the “*Property*”); and

WHEREAS, the HOA has agreed to undertake ongoing maintenance of the Perimeter Fence;

NOW, THEREFORE, in consideration of the foregoing, the District and the HOA agree as follows:

1. Project. The HOA agrees to engage a competent contractor to undertake construction of the Perimeter Fence, as described in Exhibit A, subject to the HOA’s receipt of all necessary permits and landowner easements from each homeowner on whose property the Perimeter Fence will be located, if any. The HOA will make available to the District conceptual drawings, plans, and specifications for the Perimeter Fence.

2. HOA Powers and Responsibilities. The HOA represents to the District that it is authorized to allow the contractor to use the necessary areas surrounding the location of the Perimeter Fence for the removal of the old fencing and construction of the Perimeter Fence, and that the HOA is authorized and will take all necessary actions to retain its lawful authorization to maintain the Perimeter Fence for the term of this Agreement. The HOA further represents to the District that it is authorized and will take all necessary actions to retain its lawful authorization to keep homeowners on whose properties the Perimeter Fence will be placed from changing, modifying, or altering the Perimeter Fence without HOA approval, and that the HOA will take all necessary actions to pursue any party that damages or alters the Perimeter Fence without HOA approval.

3. Agreement to Pay Projects' Costs. The District agrees to pay a portion of the costs of the Perimeter Fence with a one-time contribution to the HOA in the amount of \$85,000.00 (the "Contribution"). The District shall pay one-half of the Contribution directly to the HOA within 30 days following receipt of an invoice, which shall be accompanied by a copy of the vendor contract for the Perimeter Fence installation, and the remaining portion of the Contribution shall be payable by the District directly to the HOA within 30 days following completion of the Perimeter Fence, receipt of a final invoice, and upon the District's final inspection and approval of the Perimeter Fence. The District shall not provide the first half of the Contribution without the legal opinion of an attorney of the HOA as described herein.

4. HOA Attorney Opinion. The District shall not be obligated under the terms of this Agreement without receipt by the District of a legal opinion by an attorney of the HOA, satisfactory to the District's attorney, providing that the HOA has all legal authority to enter into this Agreement and abide by all of its terms and obligations for the term of the Agreement.

5. Pre-Construction Inspection. Prior to providing any part of the Contribution, the District shall have the authority, at the District's discretion, to meet with the HOA's landscape architect, engineer and/or contractor to conduct a pre-construction inspection of the Property to note all conditions pertaining to the Property, including the location of vegetation, irrigation systems and private electrical/landscape lighting systems and their current condition. The HOA shall also determine, prior to construction of the Perimeter Fence, if there are any currently existing site drainage problems on the Property and shall notify the District in writing of any such drainage problems.

6. Notice of Construction. The HOA shall give advance notice of the schedule for removal of existing fencing and placement of any Perimeter Fence section immediately adjacent to or over District facilities, infrastructure, real property, or easements. Such notice will be provided no less than 48 hours prior to removal of such existing fence.

7. HOA Responsibilities Related to Construction. In conjunction with installation of the Perimeter Fence, the HOA agrees to remove the existing fence at the Property. The HOA's contractor will grade around the fence so that the existing drainage on the Property is not changed. As agreed to by the HOA and the affected homeowner, the HOA will repair damages caused to irrigation systems and private electrical/landscape lighting facilities on the Property which are damaged in connection with construction of the Perimeter Fence. As agreed to by the HOA and the affected homeowner, the HOA will restore the grass and plantings on the Property which are damaged in connection with the construction of the Perimeter Fence.

8. Responsibility for Repair, Replacement, and Maintenance of Perimeter Fence. Following the construction of the Perimeter Fence, the HOA will own, operate, and maintain the Perimeter Fence at its sole cost and expense, in accordance with the requirements of all laws, rules, and regulations applicable to the HOA and the Perimeter Fence, and in a condition and of a quality at least equal to that of original construction. At any point during the Term of this Agreement, if the District finds the HOA has not operated or maintained the Perimeter Fence in a condition and of a quality equal to that of its original construction, the District may, after providing written notice 60 days in advance, make such necessary repairs and submit an invoice to the HOA for all costs associated with the repair or maintenance of the Perimeter Fence.

9. Standards. Construction and maintenance of the fence by the HOA should be of a quality and a standard sufficient to assure and retain full manufacturer's warranty coverage for the claimed life of the fence, and the HOA will provide to the District copies of all invoices related to the construction of the fence and copies of all manufacturer's warranty materials, within 30 days of receipt, and copies of all loan documents within 30 days of execution.

10. Insurance. The HOA shall secure, and keep current comprehensive general liability insurance coverage in the minimum amount of \$1,000,000 per occurrence, and property coverage for the replacement value of the Perimeter Fence, with terms and coverages that are reasonable for similar projects, at all times during the term of the Agreement. Such general liability insurance policy, but not the property coverage, shall name the District as an additional insured party and provide a waiver of subrogation in favor of the District. Upon request by the District, the HOA shall provide a copy of its insurance policies to the District.

11. **INDEMNITY. THE HOA HEREBY BINDS ITSELF, ITS SUCCESSORS, ASSIGNS AND GRANTEEES, TO RELEASE, DISCHARGE, DEFEND, INDEMNIFY AND HOLD THE DISTRICT, ITS SUCCESSORS, ASSIGNS AND GRANTEEES, HARMLESS FROM ALL CLAIMS, CAUSES OF ACTION, DAMAGES, COSTS, LOSSES, LIABILITIES, EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) OR JUDGMENTS INCURRED IN CONNECTION WITH CLAIMS FOR INJURY TO OR DEATH OF ANY PERSON OR FOR DAMAGE OF THE PROPERTY, INCLUDING DAMAGE TO ANY OF THE DISTRICT'S PROPERTY, OR FOR ANY OTHER LOSSES ARISING OUT OF OR IN ANY WAY RELATED TO THE HOA'S INVOLVEMENT WITH THE CONSTRUCTION OR MAINTENANCE OF OR ANY OTHER ACTIONS RELATED TO THE PERIMETER FENCE.**

12. District and HOA Representatives. The District and the HOA may exercise any of their rights or duties under this Agreement through outside personnel they have retained, including but not limited to contractors, engineers, landscape architects, and surveyors, any of whom shall have the right to enter the Property for the purpose of constructing, repairing or replacing the Perimeter Fence.

13. No Waiver. No waiver by any party of any default of breach of any covenant, condition, or stipulation contained herein shall be treated as a waiver of any subsequent default or breach of the same or any other covenant, condition or stipulation hereof.

14. Notices. Any notices or communications required or permitted to be given by this Agreement must be: (i) given in writing and (ii) hand-delivered or mailed by prepaid, certified mail or overnight courier, or transmitted by electronic mail transmission to the party to whom such notice or communication is directed, to the mailing address or regularly-monitored electronic mail address of such party as follows:

District

Harris County Municipal Utility District No. 136
c/o Norton Rose Fulbright US LLP
Attention: Dimitri Millas, Attorney
1301 McKinney Street, Ste 5100
Houston, Texas 77010
E-Mail: dimitri.millas@nortonrosefulbright.com

HOA

Deerfield Community Village Association
4041 Deerfield Village Drive
Houston, Texas 77084
E-Mail: _____

15. Term of Agreement. The parties agree that this Agreement shall have a term of 30 years from the date hereof.

16. Severability. The provisions of this Agreement are severable, and if any word, phrase, clause, sentence, paragraph, section, or other part of this Agreement or its application to any person or circumstance is ever held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of the word, phrase, clause, sentence, paragraph, section, or other part of this Agreement to other persons or circumstances shall not be affected.

17. Entire Agreement. This Agreement represents the entire agreement among the District and the HOA concerning the subject matter hereof and may only be amended by a writing executed by the District and the HOA.

18. Counterparts. This Agreement may be executed in counterparts, each of which, when so executed and delivered, shall be an original, and together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date written above.

**HARRIS COUNTY MUNICIPAL
UTILITY DISTRICT NO. 136**

By: _____
Title: _____

**DEERFIELD VILLAGE COMMUNITY
ASSOCIATION**

By: _____
Title: _____

DISTRICT AND HOA ACKNOWLEDGMENT

THE STATE OF TEXAS §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the ____ day of _____, 2021,
by _____, _____ of HARRIS COUNTY MUNICIPAL UTILITY
DISTRICT NO. 136, a political subdivision, on behalf of said political subdivision.

Notary Public in and for
the State of T E X A S

Printed/Typed Name of Notary

My Commission Expires: _____

(SEAL)

THE STATE OF TEXAS §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the ____ day of _____, 2021,
by _____ of DEERFIELD VILLAGE COMMUNITY ASSOCIATION, a
non-profit corporation, on behalf of said corporation.

Notary Public in and for
the State of T E X A S

Printed/Typed Name of Notary

My Commission Expires: _____

(SEAL)

EXHIBIT A
DESCRIPTION OF PROPERTY