



## PROJECT FUNDING REQUEST

**BOARD DATE:** December 15, 2022

**PRESENTED BY:** Nancy Richards

### ACTION REQUESTED

Approve by resolution a request from the Harris County Flood Control District (Harris County) for \$10,525,745 in grant from the Flood Infrastructure Fund for construction of a flood mitigation project.

### STAFF RECOMMENDATION

Approve       No Action

### PROJECT NAME AND NUMBER

C147/C547 Flood Risk Reduction, Project Number 40194

### BACKGROUND

Passed by the 86<sup>th</sup> Texas Legislature and approved by the voters through a constitutional amendment, the Flood Infrastructure Fund (FIF) program was created to provide funding for flood mitigation projects. The purpose of the FIF, as outlined in Senate Bill 7, was to assist in financing drainage, flood mitigation, and flood control projects. FIF projects to be presented for consideration have been scored and ranked utilizing prioritization criteria outlined in Texas Administrative Code Title 31 § 363.404 and further identified in the Flood Intended Use Plan. The prioritized list of projects was approved on September 17, 2020.

The Harris County Flood Control District (District) is a special purpose district whose mission is to provide flood damage reduction projects. The District's jurisdictional boundaries coincide with Harris County. It is located in southeast Texas next to Galveston Bay and it's the third most populous county in the United States. The county seat is the City of Houston. The District serves a population of 4.6 million.

### PROJECT NEED AND DESCRIPTION

Sims Bayou Tributary experiences repetitive flooding resulting in sustained severe damage due to lack of capacity. Currently, structures are inundated starting at the 10-year event. The South Post Oak Detention Basin C547-00-00 and Channel Improvement C147-00-00 Project will reduce flood risk by increasing the capacity of an existing drainage channel and a storm water detention basin.

The District is requesting funds for construction of channel improvements and expanding the storage volume of an existing dry bottom detention basin. The proposed project includes replacing and modifying bridges to accommodate the channel improvements. Basin C547 will be expanded to approximately 1,020 acre-feet. This mitigation project will remove 567 homes along 1.7 miles of watershed in Harris and Fort Bend Counties from the

<b>COMMITMENT PERIOD: SIX (6) MONTHS TO EXPIRE JUNE 30, 2023</b>
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floodplain and help contain a 100-year storm event within the banks of tributary C147-00-00. Planning and Design will be funded by the District's bond program.

### **PROJECT SCHEDULE**

<b>Task</b>	<b>Schedule Date</b>
Closing Date	March 1, 2023
Start of Construction	October 1, 2024
Construction Completion	October 1, 2026

### **KEY ISSUES**

The District's project is eligible under Category 2 of the 2020 Flood Intended Use Plan. This category of funding was designed for planning, acquisition, design, and construction activities to implement flood mitigation projects. Category 2 projects are eligible to receive up to 70 percent in grant funding. Recipients of financial assistance may either use their own available funds or borrow FIF funds at zero percent for any portion of the required local share not provided through FIF grant funds.

The District qualified for a \$10,525,745 grant under the FIF equal to 35 percent of the total project costs. The remaining project costs equal to \$19,547,813 will be provided by the District through a cash contribution.

The funding being provided by the TWDB is in the form of 100 percent grant, and therefore is not subject to our internal risk score analysis that is applied to loan. For this request, staff reviewed the District's annual audit and funding application information to assess the District's ability to manage existing obligations and business practices. Based on this analysis, staff believes the District has adequate capabilities to manage its obligations.

### **LEGAL/SPECIAL CONDITIONS**

- Executed Grant Agreement
- Demonstration of local share
- Notification of change to legal status
- Notification of conveyance or conversion

### **Attachments**

1. Project Data Summary
2. Project Budget
3. Resolution (22- )
4. Location Map

<b>Responsible Authority</b>	Harris Co FCD
<b>Program</b>	FLOOD
<b>Commitment Number</b>	G1001546
<b>Project Number</b>	40194
<b>List Year</b>	2020
<b>Type of Pledge</b>	N/A
<b>Pledge Level (if applicable)</b>	N/A
<b>Legal Description</b>	\$10,525,745 Grant Agreement
<b>Tax-exempt or Taxable</b>	Tax-Exempt
<b>Refinance</b>	No
<b>Outlay Requirement</b>	Yes
<b>Disbursement Method</b>	Escrow
<b>Outlay Type</b>	Outlay = Escrow Release
<b>Qualifies as Disadvantaged</b>	No
<b>Financial Managerial &amp; Technical Complete</b>	N/A
<b>Phases Funded</b>	Construction
<b>Pre-Design</b>	Yes
<b>Project Consistent with State Water Plan</b>	N/A
<b>Water Conservation Plan</b>	N/A
<b>Overall Risk Score</b>	N/A

**PROJECT TEAM**

<b>Team Manager</b>	<b>Financial Analyst</b>	<b>Engineering Reviewer</b>	<b>Environmental Reviewer</b>	<b>Attorney</b>
Nancy Richards	Kyle DuQuesnay	Lucia Loera	Britt Paredes	Annette Mass



**Project Budget Summary**  
 Harris Co FCD  
 40194 - C147/C547 Flood Risk Reduction Project

Budget Items	TWDB Funds	Local and Other Funds	Total
<b>Construction</b>			
Construction	\$10,525,745.00	\$10,014,414.00	\$20,540,159.00
<b>Subtotal for Construction</b>	<b>\$10,525,745.00</b>	<b>\$10,014,414.00</b>	<b>\$20,540,159.00</b>
<b>Basic Engineering Services</b>			
Design	\$0.00	\$2,957,783.00	\$2,957,783.00
<b>Subtotal for Basic Engineering Services</b>	<b>\$0.00</b>	<b>\$2,957,783.00</b>	<b>\$2,957,783.00</b>
<b>Special Services</b>			
Special Service Other (Construction Management)	\$0.00	\$739,446.00	\$739,446.00
<b>Subtotal for Special Services</b>	<b>\$0.00</b>	<b>\$739,446.00</b>	<b>\$739,446.00</b>
<b>Other</b>			
Land/Easements Acquisition	\$0.00	\$1,728,138.00	\$1,728,138.00
<b>Subtotal for Other</b>	<b>\$0.00</b>	<b>\$1,728,138.00</b>	<b>\$1,728,138.00</b>
<b>Contingency</b>			
Contingency	\$0.00	\$4,108,032.00	\$4,108,032.00
<b>Subtotal for Contingency</b>	<b>\$0.00</b>	<b>\$4,108,032.00</b>	<b>\$4,108,032.00</b>
<b>Total</b>	<b>\$10,525,745.00</b>	<b>\$19,547,813.00</b>	<b>\$30,073,558.00</b>

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD  
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE IN THE AMOUNT OF  
\$10,525,745 TO THE HARRIS COUNTY FLOOD CONTROL DISTRICT  
FROM THE FLOOD INFRASTRUCTURE FUND  
THROUGH  
THE EXECUTION OF A GRANT AGREEMENT IN THE AMOUNT OF \$10,525,745

(22- )

WHEREAS, the Harris County Flood Control District (District), located in Harris County, Texas, has filed an application for financial assistance from the Flood Infrastructure Fund (FIF) in accordance with Texas Water Code Chapter 15, Subchapter I, to finance construction of a flood project, identified as Project No. 40194; and

WHEREAS, the District seeks financial assistance from the Texas Water Development Board (TWDB) in the amount of \$10,525,745 through execution of a Grant Agreement, all as is more specifically set forth in the application and in recommendations of the Executive Administrator's staff; and

WHEREAS, the District will provide a local share of \$19,547,813 through a cash contribution;

WHEREAS, the TWDB hereby finds:

1. that the application and financial assistance requested meet the requirements of Texas Water Code, Chapter 15, Subchapter I; 31 TAC Chapter 363, Subchapters A and D; and the State Fiscal Year 2020 Flood Intended Use Plan (FIUP);
2. the District has demonstrated a sufficient level of cooperation among eligible political subdivisions and has included all of the eligible political subdivisions substantially affected by the flood project in accordance with Texas Water Code § 15.536(2);
3. that the District has submitted a written memorandum of understanding relating to the management of the project watershed executed by all governing bodies of eligible political subdivisions located in the project watershed;
4. that no debt obligations are to be assumed by the District for the financial assistance and no taxes or revenues are required to be pledged by the District in accordance with Texas Water Code § 15.536(3);
5. that the District is eligible to receive grant funding in accordance with Texas Water Code § 15.534 and the applicable FIUP;
6. that the District has demonstrated that the benefit-cost ratio of the Project meets the requirements of the FIUP; and

7. that the request for financial assistance does not include redundant funding for activities already performed or funded through another source, in accordance with the FIUP; and
8. that the District has demonstrated that the application meets the requirements of the FIUP related to the National Flood Insurance Program in the area to be served by the Project; and
9. that the Project was developed using the best and most recent available data, in accordance with the FIUP; and
10. that the District has documented that it has planned for operations and maintenance costs associated with the Project, in accordance with the FIUP; and
11. that the District has considered possible floodwater capture techniques that could be associated with the Project for water supply purposes, in accordance with the FIUP; and

NOW THEREFORE, based on these findings, the TWDB resolves as follows:

A commitment is made by the TWDB to Harris County Flood Control District for financial assistance in the amount of \$10,525,745 from the Flood Infrastructure Fund, to be evidenced by the execution of a Grant Agreement. This commitment will expire on June 30, 2023; however, the Executive Administrator may, at his discretion, grant up to one extension for a maximum of three months.

Such commitment is conditioned as follows:

Standard Conditions:

1. this commitment is contingent on availability of TWDB funds on hand;
2. this commitment is contingent upon the District's continued compliance with all applicable laws, rules, policies, and guidance (as these may be amended from time to time to adapt to a change in law, in circumstances, or any other legal requirement), including but not limited to 31 TAC Chapter 363;

The Following Conditions Must Be Included in the Grant Agreement:

3. the Grant Agreement must provide that the District will comply with all applicable TWDB laws and rules related to the use of the financial assistance;
4. the Grant Agreement must provide that the District must comply with all conditions as specified in the final environmental finding of the Executive Administrator when issued, including the standard emergency discovery conditions for threatened and endangered species and cultural resources;

5. the Grant Agreement must provide that the District will not begin construction for a portion of the Project until the environmental finding has been issued for that portion of the Project;
6. the Grant Agreement must contain a provision requiring the District to maintain insurance coverage sufficient to protect the TWDB's interest in the project;
7. the Grant Agreement must include a provision requiring a final accounting to be made of the total sources and authorized use of Project funds within 60 days of the completion of the Project;
8. the Grant Agreement must include a provision stating that the District shall return any grant funds that are determined to be surplus funds remaining after completion of the Project and completion of a final accounting, including any interest earned on the grant funds;
9. the Grant Agreement must contain a provision that the TWDB may exercise all remedies available to it in law or equity, and any provision of the Grant Agreement that restricts or limits the TWDB's full exercise of these remedies shall be of no force and effect;
10. financial assistance proceeds are public funds and, as such, the Grant Agreement must include a provision requiring that these proceeds shall be held at a designated state depository institution or other properly chartered and authorized institution in accordance with the Public Funds Investment Act, Government Code, Chapter 2256 and the Public Funds Collateral Act, Government Code, Chapter 2257;
11. financial assistance proceeds shall not be used by the District when sampling, testing, removing, or disposing of contaminated soils and/or media at the Project site. The Grant Agreement shall include an environmental indemnification provision wherein the District agrees to indemnify, hold harmless, and protect the TWDB from any and all claims, causes of action, or damages to the person or property of third parties arising from the sampling, analysis, transport, storage, treatment, recycling, and disposition of any contaminated sewage sludge, contaminated sediments, and/or contaminated media that may be generated by the District, its contractors, consultants, agents, officials, and employees as a result of activities relating to the Project to the extent permitted by law;
12. the Grant Agreement must contain a provision requiring the District to submit quarterly status reports on the progress of the project that details information requested by the Executive Administrator. The Executive Administrator may withhold authorization to release funds from escrow or adjust the amount of funds to be released from escrow based on the receipt of the quarterly status reports and the projected quarterly needs for the project;

13. the Grant Agreement must contain a provision stating that the District shall abide by all applicable construction contract requirements related to the use of iron and steel products produced in the United States, as required by Texas Government Code, Chapter 2252, Subchapter G;
14. prior to release of funds for the relevant services, and if required under the TWDB's financial assistance program and if not previously provided with the application, the District shall submit executed contracts for engineering and, if applicable, financial advisor and legal services, for the Project that are satisfactory to the Executive Administrator. Fees to be reimbursed under the contracts must be reasonable in relation to the services performed, reflected in the contract, and acceptable to the Executive Administrator;
15. prior to closing, when any portion of financial assistance is to be held in escrow or in trust, the District shall execute an escrow agreement or trust agreement, approved as to form and substance by the Executive Administrator, and shall submit that executed agreement to the TWDB;
16. prior to release of funds for construction, the District must provide the TWDB with evidence that the necessary acquisitions of land, leases, easements, and rights-of-way have been completed, or that the District has the legal authority necessary to complete the acquisitions;

PROVIDED, however, the commitment is subject to the following special conditions:

Special Conditions:

17. prior to closing, the District shall execute a Grant Agreement in a form and substance acceptable to the Executive Administrator;
18. prior to closing, the District will certify that it is not prohibited from receiving state funds under Texas Penal Code § 1.10(d) (related to federal laws regulating firearms, firearm accessories, and firearm ammunition). The District will also certify that, during the term of the Grant Agreement, the District will immediately notify TWDB, in writing, of any suit against it by the Attorney General of Texas under Texas Penal Code § 1.10(f);
19. prior to closing, the District will certify that it is not prohibited from receiving state grant funds under Texas Government Code § 2.103 (related to the regulation of firearm suppressors). The District will also certify that, during the term of the Grant Agreement, the District will immediately notify TWDB, in writing, of any suit against it by the Attorney General of Texas under Texas Government Code § 2.104;
20. prior to closing, the District will certify that it is not prohibited from receiving state grant funds under Texas Local Government Code § 364.004 (related to public camping bans). The District will also certify that, during the term of the Grant



Agreement, the District will immediately notify TWDB, in writing, of any suit against it by the Attorney General of Texas under Texas Local Government Code § 363.003;

21. prior to closing, the District must demonstrate its required local share of \$19,547,813;
22. the District must notify the Executive Administrator in writing thirty (30) days prior to taking any actions to alter its legal status in any manner;
23. the Grant Agreement must include a provision requiring that prior to any action by the District to convey its Obligations held by the TWDB to another entity, the conveyance and the assumption of the Obligations must be approved by the TWDB;
24. prior to release of funds for each Project phase or portion of a Project phase, the District must deposit into the District's construction account the District's share of funds, based on the Board-approved grant percentage, necessary to complete the upcoming phase(s) or portion of the phase of the Project, as approved by the Executive Administrator.

APPROVED and ordered of record this, the 15th day of December, 2022.

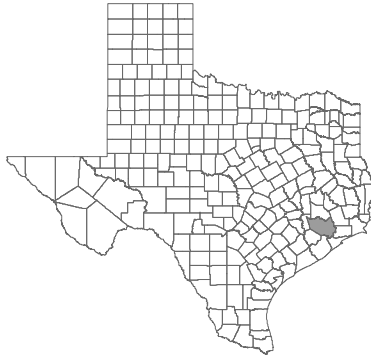
TEXAS WATER DEVELOPMENT BOARD

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Brooke T. Paup, Chairwoman

DATE SIGNED: \_\_\_\_\_

ATTEST:

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Jeff Walker, Executive Administrator



# Harris County Flood Control District

