

ORDINANCE NO. 2008-13

AN ORDINANCE APPROVING AND AUTHORIZING AN AGREEMENT BETWEEN THE CITY OF SHOREACRES AND THE CITY OF LA PORTE, FOR PARK ACQUISITION, DEVELOPMENT, AND OPERATION FOR JOINT USE; MAKING VARIOUS FINDINGS AND PROVISIONS RELATING TO THE SUBJECT; FINDING COMPLIANCE WITH THE OPEN MEETINGS LAW; AND PROVIDING AN EFFECTIVE DATE HEREOF.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SHOREACRES:

Section 1. The City Council hereby approves and authorizes the contract, agreement, or other undertaking described in the title of this ordinance, a copy of which is on file in the office of the City Secretary. The Mayor is hereby authorized to execute such document and all related documents on behalf of the City of Shoreacres. The City Secretary is hereby authorized to attest to all such signatures and to affix the seal of the City to all such documents.

Section 2. The City Council officially finds, determines, recites, and declares that a sufficient written notice of the date, hour, place and subject of this meeting of the City Council was posted at a place convenient to the public at the City Hall of the City for the time required by law preceding this meeting, as required by the Open Meetings Law, Chapter 551, Texas Government Code; and that this meeting has been open to the public as required by law at all times during which this ordinance and the subject matter thereof has been discussed, considered and formally acted upon. The City Council further ratifies, approves and confirms such written notice and the contents and posting thereof.

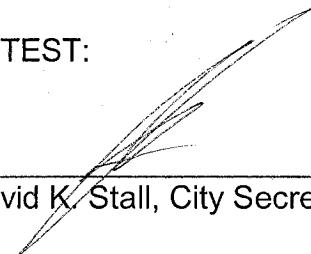
Section 3. This Ordinance shall be effective from and after its passage and approval, and it is so ordered.

PASSED AND APPROVED, this 8th day of September, 2008.

CITY OF SHOREACRES

By: 
Jayo Washington, Mayor

ATTEST:



David K. Stall, City Secretary

THE STATE OF TEXAS §

COUNTY OF HARRIS §

**Park Acquisition, Development, and Operation Joint Use
Interlocal Cooperation Agreement**

THIS INTERLOCAL COOPERATION AGREEMENT is made and entered into on this 25th day of August, 2008, by and between the City of Shoreacres, a municipal corporation under the laws of the State of Texas, herein referred to as “SHOREACRES,” and the City of La Porte, a municipal corporation under the laws of the State of Texas, herein referred to as “LA PORTE”.

WITNESSETH:

WHEREAS, the Texas State Legislature has authorized the use of Interlocal Cooperation Agreements between and among governmental entities; and,

WHEREAS, this Interlocal Cooperation Agreement is made under the authority granted by and pursuant to the Interlocal Cooperation Act, [Article 4413 (32c) V.T.C.S.] and [Article 6081t, V.A.C.S.], and as otherwise provided herein, relative to the joint authorizations by the respective City Councils of SHOREACRES and LA PORTE to acquire, develop and operate a park on property owned by SHOREACRES jointly for the purpose of providing recreational opportunities for the residents of the SHOREACRES and LA PORTE; and,

WHEREAS, the Coastal Coordination Council has selected this project for partial grant funding for the park acquisition through its Coastal Management Program Grant Cycle 12; and,

WHEREAS, SHOREACRES and LA PORTE further find that the performance of this agreement is in the common public interest of the parties, and that the funding and services to be provided by LA PORTE fairly compensates SHOREACRES for the use of the facilities identified in ATTACHMENT “A” attached here to and incorporated herein for all purposes, such property being owned by SHOREACRES for passive, nature-based recreation; and,

WHEREAS, SHOREACRES and LA PORTE agree that SHOREACRES property identified on Attachment “A” shall be used by LA PORTE and SHOREACRES for the purpose of providing recreational opportunities for the citizens of SHOREACRES and LA PORTE, for joint use by SHOREACRES and LA PORTE, with LA PORTE and SHOREACRES having proportionate use as set out herein;

NOW THEREFORE, FOR AND IN CONSIDERATION of the mutual agreements contained herein, the parties here to do hereby agree as follows:

1. SHOREACRES and LA PORTE hereby, through their respective City Councils agree to acquire, develop, and operate a passive use park dedicated to the preservation and enjoyment of the natural environment for the citizens of SHOREACRES and LA PORTE. Adoption of this Agreement and amendments thereto shall be by Ordinance. Ordinance adoption shall be completed by the parties in a timely manner so that the effective date of each ordinance adopting this Interlocal Agreement will occur on or before August 30, 2008 or as soon as possible thereafter.
2. This project involves a 2.08 acre passive use, nature-based, hereinafter called "JOINT TAYLOR BAYOU PARK". The JOINT TAYLOR BAYOU PARK may include but not be limited to, the design, construction, and operation of:
 - Crushed granite or mulch walking trails
 - Small parking area
 - Benches
 - Kayak/canoe landing
 - Such other elements or amenities that SHOREACRES and LA PORTE determines would benefit the JOINT TAYLOR BAYOU PARK or its public features.

All facilities or improvements at the Park must be approved by both cities before installation.

3. LA PORTE is willing to contribute the construction Phase 1 improvements (which may be, but are not limited to, the trails and parking area) and regular park maintenance toward all costs of the JOINT TAYLOR BAYOU PARK, provided that SHOREACRES will contribute the local share of the purchase price of the park toward all costs of the JOINT TAYLOR BAYOU PARK. Both cities will administer the design and construction of the JOINT TAYLOR BAYOU PARK. All costs attributable to the cost of the JOINT TAYLOR BAYOU PARK, including costs of design, engineering, construction and construction support services will sometimes be called the "JOINT TAYLOR BAYOU PARK Costs."
4. Unless this Agreement is amended and additional funds are thereby made available, it is expressly understood and agreed that SHOREACRES and LA PORTE have available the monies necessary to satisfy their obligations under this Agreement.

Article I.
DESIGN AND CONSTRUCTION

- I.1 After execution of this Agreement and within sixty (60) days or as soon as possible thereafter, SHOREACRES and LA PORTE representatives will approve a Design Concept Memorandum for Phase 1 of the JOINT TAYLOR BAYOU PARK that lays out the facilities and improvements to be constructed by La Porte as a part of this agreement.
- I.2 LA PORTE shall administer the construction of the approved improvements and facilities.
- I.3 The sharing of the costs of the construction of any subsequent improvements, as needed, will be laid out in amendments to this agreement and as agreed upon by both City Councils.

Article II.
OPERATIONS

- II.1 During the term of this Agreement, and any extensions thereof, SHOREACRES agrees to provide adequate police and fire protection and other necessary emergency services for the facilities at all times, and shall especially guard the property from abuse through vandalism or wanton destruction. SHOREACRES and LA PORTE shall perform and exercise all rights, duties and functions and services in compliance with all applicable Federal, State and local laws and regulations. SHOREACRES and LA PORTE are authorized to establish necessary rules and regulations as may be required to ensure the safe and orderly operation of recreational programs and the facilities.
- II.2 LA PORTE shall provide necessary maintenance for the park and its improvements, which may include trash removal and minimal mowing.
- II.4 SHOREACRES and LA PORTE residents will have equal and unlimited access to the park and its amenities.

Article III.
INDEMNITY

- III.1 To the extent allowed by law, LA PORTE and SHOREACRES do hereby release, indemnify and hold each other and their respective officials, agents and employees, in both their public and private capacities, harmless from any and all liability, claims, costs and expenses arising out of the performance of this agreement due to their own respective negligence or that of their officials, officers, employees or students. It is expressly understood and agreed that in the execution of this contract, neither LA PORTE nor SHOREACRES waives, nor

shall be deemed to waive, any immunity or defense that would otherwise be available to each against claims arising in the exercise of governmental powers and functions.

Article IV. INSURANCE

- IV.1 During the term of this Agreement, and any extensions thereof, SHOREACRES shall keep and maintain a comprehensive general liability policy, with LA PORTE as Additional Named Insured, with limits of liability of not less than Three Million Dollars (\$3,000,000.00) combined single limit bodily injury and property damage per occurrence, with a maximum deductible of One Thousand (\$1,000.00) per occurrence, for participants in SHOREACRES sponsored events and/or activities utilizing the facilities indicated on ATTACHMENT "A". Thirty (30) days prior notice of policy cancellation shall be provided to LA PORTE. Effective policy must not exclude participants in any scheduled or unscheduled activities at the facilities. Other policy exclusions are permissible, provided that they do not contradict the terms of this Agreement. SHOREACRES shall furnish LA PORTE with a *Certificate of Insurance* evidencing such coverage. Such insurance shall include contractual liability insuring the indemnity agreements contained in this Agreement.
- IV.2 During the term of this Agreement, and any extensions thereof, LA PORTE shall keep and maintain a comprehensive general liability policy, with SHOREACRES as Additional Named Insured, with limits of liability of not less than Three Million Dollars (\$3,000,000.00) combined single limit bodily injury and property damage per occurrence, with a maximum deductible of One Thousand (\$1,000.00) per occurrence, for participants in LA PORTE sponsored events and/or activities utilizing the facilities indicated on ATTACHMENT "A". Thirty (30) days prior notice of policy cancellation shall be provided to SHOREACRES. Effective policy must not exclude participants in any scheduled or unscheduled activities at the facilities. Other policy exclusions are permissible, provided that they do not contradict the terms of this Agreement. LA PORTE shall furnish SHOREACRES with a *Certificate of Insurance* evidencing such coverage. Such insurance shall include contractual liability insuring the indemnity agreements contained in this Agreement.

Article V. TERM

- V.1 The term of this agreement shall be for a period of forty (40) years commencing on the date of passage by the party last to ratify, unless terminated by either party by notice in writing not less than sixty (60) days prior to the current term in accordance with the Termination procedures as designated in Article IX.

V.2 At the end of the term of the Agreement, both the SHOREACRES and LA PORTE have the option to continue the Agreement for two (2) additional five (5) year terms. Such option shall be executed in writing by the Mayor of SHOREACRES, or his/her designee, and the City Manager of LA PORTE, or his/her designee. Should either party choose not to exercise their option, the Agreement shall be considered at an end. During the term of this Agreement, SHOREACRES and LA PORTE may enter into separate Agreements regarding future capital improvement projects or other baseball/softball facilities that may be contemplated in the cities, except that any capital improvement made by one party will require the prior written approval of the other party.

**Article VI.
ENTIRE AGREEMENT**

VI.1 This instrument contains the entire Agreement between the parties relating to the rights granted in the agreement and the obligations assumed as a part of the Agreement. Any representations or modifications concerning this agreement shall have no force or effect unless modified in writing, and signed by each party to the Agreement.

**Article VII.
SEVERABILITY**

VII.1 In case any one (1) or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or un-enforceability shall not affect any other provision thereof, and this agreement shall construed as if such invalidity, illegality or un-enforceable provision had never been contain herein.

**Article VIII.
AUTHORITY**

VIII.1 The undersigned officers and/or agents authorized to execute this contract on behalf of the partied hereto, and each party hereto certifies to the other that any necessary resolutions extending such authority have been duly passed and are now in full force and effect.

**Article IX.
TERMINATION**

IX.1 SHOREACRES may terminate the term of this agreement if and in the event LA PORTE fails or refuses to perform any one or more of its obligations which are to be performed during the term of this agreement, for ordinary mismanagement of the facilities under the control of LA PORTE as listed in Attachment "B", or for permitting deterioration of any part of the said premises by failure to maintain and

keep same in a proper state of repair. SHOREACRES shall not take any action or recourse against LA PORTE for any default in the performance of LA PORTE'S obligations, or any breach of this agreement by LA PORTE, until sixty (60) days after SHOREACRES has given LA PORTE written notice setting out in detail the type and nature of the default or breach, and the failure of LA PORTE to cure such default or breach within such sixty (60) day period. Any equipment remaining on the property after such thirty (30) day period shall be considered a part of the land and shall be the property of SHOREACRES.

- IX.2 LA PORTE may terminate the term of this agreement if and in the event SHOREACRES fails or refuses to perform any one or more of its obligations which are to be performed during the term of this agreement, for ordinary mismanagement of the facilities under the control of SHOREACRES as listed in Attachment "B", or for permitting deterioration of any part of the said premises by failure to maintain and keep same in a proper state of repair. LA PORTE shall not take any action or recourse against SHOREACRES for any default in the performance of SHOREACRES'S obligations, or any breach of this agreement by SHOREACRES, until sixty (60) days after LA PORTE has given SHOREACRES written notice setting out in detail the type and nature of the default or breach, and the failure of SHOREACRES to cure such default or breach within such sixty (60) day period. In the event of such termination, LA PORTE shall have the right to be compensated and SHOREACRES has the obligation to compensate LA PORTE for the amortized and pro-rated value of its contribution to the Joint Venture Park based on the original agreement term of forty (40) years.

**Article X.
REMEDIES**

- X.1 No right or remedy granted or reserved to the parties, is exclusive of any other right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every other right or remedy given hereunder. No covenant or condition of this agreement may be waived without written consent of the parties. Forbearance or indulgence by either party shall not constitute a waiver of any covenant or condition to be performed pursuant to this agreement.

**Article XI.
APPLICABLE LAW**

- XI.1 This agreement is governed by the laws of the State of Texas; any venue for any action shall be in courts of competent jurisdiction of Harris County, Texas.

Article XII.
SUCCESSORS AND ASSIGNS

XII.1 This agreement is binding on the successors, executors, administrators and assigns of the parties to this agreement. Neither LA PORTE nor SHOREACRES will assign, sublet, subcontract or transfer agreement without the written consent of the other party. No assignment delegation of duties or subcontract under this agreement will be effective without the prior written consent of the other party.

Article XIII.
NOTICES

XIII.1 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 hereinbelow or at such other address as the other party may have theretofore prescribed by notice to the sending party. Address for notice shall be as follows:

SHOREACRES:

City of SHOREACRES
601 Shoreacres Boulevard
Shoreacres, TX 77571
Attn: City Administrator

LA PORTE:

City of La Porte
604 W. Fairmont Parkway
La Porte, Texas 77571-6215
Attn: Director of Parks & Recreation Department

Article XIV.
RECITALS AND ATTACHMENTS


XIV.1 The recitals and attachments to this agreement are incorporated herein.

IN TESTIMONY WHEREOF, this instrument has been executed in duplicate counterparts, each to have equal force and effect of an original, has been executed on behalf of the parties hereto as follows:

- a. It has on the 8TH day of SEPTEMBER, 2008, been executed on behalf of the City of SHOREACRES by the Mayor and attested by its City Secretary, pursuant to ordinance of the City Council of the City of SHOREACRES authorizing such execution.

b. It has on the ___ day of _____, 2008, been executed on behalf of the City by the City Manager and attested by its City Secretary, pursuant to ordinance of the City Council of the City of La Porte authorizing such execution.

CITY OF SHOREACRES



John Washington, Mayor

ATTEST:



David K. Stall, City Secretary

APPROVED AS TO FORM:

Dick Gregg, Jr., City Attorney

CITY OF LA PORTE

Ron Bottoms, City Manager

ATTEST:

Martha Gillett, City Secretary

APPROVED AS TO FORM:

Clark T. Askins, Assistant City Attorney

ATTACHMENT "A"

PROPERTY ADDRESS: 0000 E. Bayou
 La Porte, Texas 77571

LEGAL DESCRIPTION:

Being 2.08 acres of land, more or less, and being out of a part of Lot 5, Block 3 of SHADY RIVER, SECTION 2, a subdivision in Harris County, Texas, according to the map or plat thereof recorded in Volume 114, Page 62 of the Map Records of Harris County, Texas, and together with a portion of Lot 18, in Block 41 of Shoreacres, a subdivision in Harris County, Texas, according to the map or plat thereof recorded in Volume 7, Page 10 & 11 of the Map Records of Harris County, Texas, said 2.08 acres being more particularly described by metes and bounds as follows;

BEGINNING at a 1/2 inch iron rod found at the Southeast corner of Lot 6, Block 3 of the aforementioned Shady River, Section 2;

THENCE North 89 deg. 45 min. 00 sec. East, along the South line of Lot 5, Block 3 of Shady River, same being the North line of Lot 18, Block 41 of Shore acres, a distance of 10.97 feet to a 1/2 inch iron rod set for corner;

THENCE North 24 deg. 38 min. 06 sec. West crossing Lot 5, Block 3 a distance of 162.20 feet to a 1/2 inch iron rod set for corner in the Southerly right-of-way line of East Bayou Drive, said point being in a curve;

THENCE in a Northeasterly direction along said curve to the left, having a radius of 212.33 feet, a distance of 19.62 feet to a 1/2 inch iron rod found for corner;

THENCE South 45 deg. 16 min. 12 sec. East, a distance of 162.12 feet to a 1/2 inch iron rod found for corner;

THENCE South 00 deg. 15 min. 00 sec. East, a distance of 43.20 feet to a 1/2 inch iron rod found for corner, said point being in the South line of Lot 5, Block 3 of Shady River, and the North line of Lot 18, Block 41 of Shoreacres;

THENCE North 89 deg. 45 min. 00 sec. East, along the common line between aforementioned Shady River & Shoreacres, a distance of 175.00 feet to a 1/2 inch iron set for corner in the Westerly line of Taylor's Bayou;

THENCE Southerly and Northwesterly with the edge of Taylor's Bayou with the following courses and distances; South 12 deg. 14 min. 00 sec. West, a distance of 313.25 feet South 28 deg. 01 min. 26 sec. West, a distance of 129.98 feet North 75 deg. 20 min. 00 sec. West, a distance of 126.00 feet

THENCE North 00 deg. 15 min. 00 sec. West, leaving said Bayou, and crossing said Lot 18 Block 41, of Shoreacres, a distance of 387.00 feet to the Point of Beginning and containing 2.08 acres of land, more or less.