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2021-0850

**FIRST AMENDMENT TO THE INTERLOCAL AGREEMENT CONTRACT FOR  
IMPROVEMENTS TO EL DORADO BOULEVARD BETWEEN THE CITY OF HOUSTON  
AND HARRIS COUNTY**

**THE STATE OF TEXAS       §**  
**§**  
**COUNTY OF HARRIS       §**

**THIS FIRST AMENDMENT TO THE INTERLOCAL AGREEMENT CONTRACT FOR IMPROVEMENTS TO EL DORADO ("FIRST AMENDMENT")** is made on the counter-signature date by and between the **CITY OF HOUSTON, TEXAS** (the "City"), a home-rule city of the state of Texas, and **HARRIS COUNTY** (the "County"), a body corporate and politic under the laws of the State of Texas.

**RECITALS:**

1. Pursuant to Ordinance No. 2018-170 (March 7<sup>th</sup>, 2018) the City and the County entered into an Interlocal Agreement for improvements to El Dorado Boulevard (the "Original Agreement").
2. The City and the County now desire to amend the Original Agreement to change the cost sharing terms for phase two of the project and to appropriate additional funds.
3. **NOW THEREFORE**, the parties agree as follows:

**ARTICLE I.**

The "Recitals", paragraphs two and three, are deleted in their entirety and replaced with the following:

WHEREAS, the County is willing to provide a fixed contribution in the amount of \$3,146,000.00 towards the cost of the Project **in Phase One and 50% of the Project Cost in Phase Two ("County Cost")**. The cost of the Project ("Project Cost") shall include but not be limited to costs of engineering and related services, right of way ("ROW") acquisition, utility relocations/adjustments, construction, and construction materials testing ("CMT").

WHEREAS, City is willing to provide 100% of the Project Cost less the

County Cost in Phase One, and 50% of the Project Cost in Phase Two (“City Cost”).

Article 2 – “Funding” is retitled to Article 2 – “Phase One Funding”

Article 3 – “Phase Two Funding” (in full below) is being inserted into this agreement and all following section numbering is changed to incorporate this addition:

### **III. Phase Two Funding**

- A. Upon receipt and tabulation of bids, Harris County Commissioners Court ("Commissioners Court"), upon recommendation by the County Engineer, will determine the lowest and best bid for the construction of the Project. Commissioners Court's determination of the lowest and best bidder is final and conclusive. The County may reject all bids and re-advertise for bids.
- B. The County Engineer will determine the City Cost based on such lowest and best bid, deducting **\$270,155.00** for utility relocations to be complete by others, in accordance with Exhibit B-1 attached hereto. If the City Cost does not exceed the sum of **\$1,308,381.80**, the County Engineer shall notify the City of the amount of the City Cost and the City will remit payment to the County in such amount within thirty (30) calendar days after receipt of said notification.
- C. If City Cost does exceed the sum of **\$1,308,381.80**, then the County shall notify the City of the amount of the City Cost and the City may remit payment to the County in such amount, including the amount in excess ("Excess Cost"), within thirty (30) calendar days after receipt of said notification.
- D. If the City does not exercise its option to pay the City Cost plus Excess Cost as described above, the County may proceed under one of the following options:
  - (i) The County may elect to pay the Excess Cost, subject to approval by Commissioners Court and certification by the Harris County Auditor ("Count Auditor"). In which case, the County Engineer will notify the City of its decision in writing. Within thirty (30) calendar days after receipt of said notification, the City shall remit payment to the County in the amount of **\$1,308,381.80**;
  - (ii) The County may reject all bids and elect not to proceed with the award of a contract for construction of the Project, and terminate this Agreement as set forth below;
  - (iii) The County may reject all bids and re-advertise for bids as in the first instance; or
  - (iv) The County may attempt to negotiate an amendment to this Agreement to provide for payment of the City Cost plus the Excess Cost. If such an amendment is obtained, the Parties shall proceed under the terms of the Amendment. If the Parties fail to agree to an amendment to this Agreement, the County may proceed under one of the other options.
- E. Upon completion of construction of the Project, the County Engineer will determine the actual City Cost in accordance with Exhibit B-1 ("Actual City Cost"). The County will notify the City of the Actual City Cost.

- (i) If the Actual City Cost exceeds the amount(s) previously paid to the County by the City, then the City will pay the shortage to the County, to the extent permitted by law.
  - (ii) Alternatively, if the Actual City Cost is less than the amount(s) previously paid to the County by the City, then the County will refund to the City the excess amount.
  - (iii) Any amount due and payable under this paragraph (E) will be paid within sixty (60) days after the County notifies the City of the amount of the Actual City Cost.
- F. The County is not obligated to deposit the funds provided by the City pursuant to this Agreement in an interest-bearing account. As such, the City is not entitled to receive any interest earned on such funds. If the County chooses to deposit such funds in an interest-bearing account, the interest earned thereon will be retained by the County.
- G. In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated the sum of **[appropriation amount]**<sup>1</sup> to pay money due under this Agreement (**the "Second Allocation"**). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so.

## ARTICLE II.

Except as modified under this First Amendment, the Original Agreement will remain in full force and effect. In the event of a conflict between the Original Agreement, and this First Amendment, this First Amendment shall prevail.

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<sup>1</sup> HPW: We will need this number before we can send out.

## Signatures

The Parties have executed this Agreement in multiple copies, each of which is an original. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms. The Parties hereby agree that each Party may sign and deliver this Agreement electronically or by electronic means and that an electronic transmittal of a signature, including but not limited to, a scanned signature page, will be as good, binding, and effective as an original signature.

### Harris County

By: \_\_\_\_\_  
Lina Hidalgo, County Judge

APPROVED AS TO FORM  
CHRISTIAN D. MENEFEE  
County Attorney

By: Philip Berzins  
Philip Berzins  
Assistant County Attorney  
C.A.O. File No.: 21GEN1448

### CITY OF HOUSTON, TEXAS

By: \_\_\_\_\_  
Mayor Amanda Washington  
9-30-2021

ATTEST/SEAL:

Asst. J. Haniel  
City Secretary

APPROVED:

DocuSigned by: \_\_\_\_\_ 8/26/2021  
Cecil Haddock  
A93C410B72B34E3  
Director, Houston Public Works

COUNTERSIGNED BY: \_\_\_\_\_  
Sharon Brown  
City Controller

DATE COUNTERSIGNED:

10/4/2021

APPROVED AS TO FORM:

Stephen Gamble  
Assistant City Attorney  
L.D. No. 0631700038002

**HARRIS COUNTY**  
**ENGINEERING DEPARTMENT**

1001 Preston, 7<sup>th</sup> Floor  
Houston, Texas 77002  
(713) 755-5370

April 13, 2018

City of Houston  
Department of Public Works and Engineering  
611 Walker, 14th Floor  
Houston, Texas 77002  
Attention: Thomas A. Artz, P.E.

**SUBJECT: Interlocal Agreement between Harris County and City of Houston for the design and construction of improvements to El Dorado Boulevard from Clear Lake City Boulevard to approximately 585-feet north of Willow Shores Drive, located in Harris County Precinct 2**

Dear Mr. Artz:

The subject agreement was executed by Harris County Commissioners' Court on April 10, 2018. Enclosed for the City's record are two fully executed original agreements. If you have any questions or need additional information, please call me at (713) 274-3659.

Sincerely,



Bill Nobles, P.E.  
Interagency Agreement Coordinator

BN/

Attachment

cc: Commissioner Jack Morman, Pct. 2  
Arcadio Avalos, Pct. 2  
Dave Walden, Pct. 2  
Jeremy Phillips, Pct. 2  
Misty Rios, Pct. 2  
Tammy Fuselier, Pct. 2  
Jennifer Almonte, Pct. 2  
Helen Berrott-Tims, Pct. 2

Terry Jones, HCED  
Angela Murry, HCED  
Cassandra Green, HCED  
Veronica Thomas, HCED  
Nora Martinez, HCED  
Central File

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## INTERLOCAL AGREEMENT

This Interlocal Agreement ("Agreement") is entered into by and between **Harris County** ("the County") and **City of Houston** ("the City") pursuant to the Interlocal Cooperation Act, Tex. Gov't Code Ch. 791.001, *et seq.* The County and the City may each be referred to herein individually as a "Party" or collectively as the "Parties."

### RECITALS

WHEREAS, it is of the mutual benefit of the Parties to improve El Dorado Boulevard from Clear Lake City Boulevard to approximately 585-feet north of Willow Shores Drive by constructing the west 2 lanes to complete a full 4-lane boulevard roadway, including a bridge over Harris County Flood Control Unit B104-00-00, traffic signals, and necessary appurtenances (the "Project").

WHEREAS, the Project is located completely within the City limits and within the County boundaries.

WHEREAS, the County is willing to provide a fixed contribution in the amount of \$3,146,000.00 towards the cost of the Project ("County Cost"). The cost of the Project ("Project Cost") shall include but not be limited to costs of engineering and related services, right of way ("ROW") acquisition, utility relocations/adjustments, construction, and construction materials testing (CMT).

WHEREAS, City is willing to provide 100% of the Project cost less the County Cost ("City Cost").

NOW THEREFORE, the Parties desire to cooperate in accordance with this Agreement to jointly accomplish the design and construction of the Project.

### TERMS

#### I. Responsibilities of the Parties

##### A. County's Responsibilities

- (i) Upon execution of this Agreement by the Parties, the County will provide engineering services and related support services necessary to prepare plans, specifications and estimates ("PS&E") for construction of the Project. The Project will be designed in accordance with the County's standard requirements and specifications, except that City's specifications will be used for any necessary traffic signal upgrades or modifications.

- (ii) The County will submit PS&E to the City for review and approval. Upon completion of the PS&E for the Project, and approval by the City of the PS&E, the Harris County Engineer, or authorized staff ("County Engineer") may advertise for and receive bids for construction of the Project, in a manner similar to other County projects.
- (iii) Upon receipt of the City Cost pursuant to this Agreement, the County may award the contract for the construction of the Project, to the lowest and best bidder in accordance with the usual and customary procedures of the County. Such award shall be subject to certification of the availability of funds for the Project by the Harris County Auditor. The County reserves the right to decline to award the contract to any bidders and, in its sole discretion either re-advertise for bids or terminate this Agreement as provided herein.
- (iv) Upon award of a contract, the County will:
  - (a) Manage and inspect the construction of the Project in a manner similar to that of other similar County construction projects; and
  - (b) Through its contractor, construct the Project in accordance with the PS&E approved by the City. The County Engineer may make minor changes in the PS&E through change(s) in contract ("CIC") that he deems necessary or desirable during the construction of the Project.
- (vi) The County will provide the County Cost in accordance with the terms of this Agreement.

**B. City's Responsibilities**

- (i) By execution of this Agreement, City authorizes the County and its contractors to access the City's right-of-way as needed to design and construct the Project on the City's right-of-way. The City authorizes the County to temporarily place the Project, including the City's ROW, on the County's road log for design and construction purposes.
- (ii) The City will review the PS&E prepared by the County, and will notify the County Engineer of any objections or approval within ten (10) days of receipt by the City. The City agrees that approval will not be unreasonably withheld, and the County may proceed as if approved in the event the City has not provided any objections or approval within the aforementioned ten (10) days.
- (iii) The City will provide the City Cost as provided by the terms of this Agreement.
- (iv) Upon completion of construction of the Project, the County will remove the Project, including the City's ROW, from the County's road log and upon acceptance by the City, the City shall assume full ownership of and responsibility



for the maintenance and repair of the Project, including the City's ROW, to the extent and in the same manner as other like facilities within the City. The County will not be responsible for the ongoing maintenance or condition of the Project, including the City's ROW.

## II. Funding

- A. Upon receipt and tabulation of bids, Harris County Commissioners Court ("Commissioners Court"), upon recommendation by the County Engineer, will determine the lowest and best bid for the construction of the Project. Commissioners Court's determination of the lowest and best bidder is final and conclusive. The County may reject all bids and re-advertise for bids.
- B. The County Engineer will determine the City Cost based on such lowest and best bid in accordance with Exhibit A attached hereto. If the City Cost does not exceed the sum of \$3,864,000, the County Engineer shall notify the City of the amount of the City Cost and the City will remit payment to the County in such amount within thirty (30) calendar days after receipt of said notification.
- C. If City Cost does exceed the sum of \$3,864,000, then the County shall notify the City of the amount of the City Cost and the City may remit payment to the County in such amount, including the amount in excess ("Excess Cost"), within thirty (30) calendar days after receipt of said notification.
- D. If the City does not exercise its option to pay the City Cost plus Excess Cost as described above, the County may proceed under one of the following options:
  - (i) The County may elect to pay the Excess Cost, subject to approval by Commissioners Court and certification by the Harris County Auditor ("County Auditor"). In which case, the County Engineer will notify the City of its decision in writing. Within thirty (30) calendar days after receipt of said notification, the City shall remit payment to the County in the amount of \$3,864,000;
  - (ii) The County may reject all bids and elect not to proceed with the award of a contract for construction of the Project, and terminate this Agreement as set forth below;
  - (iii) The County may reject all bids and re-advertise for bids as in the first instance; or
  - (iv) The County may attempt to negotiate an amendment to this Agreement to provide for payment of the City Cost plus the Excess Cost. If such an amendment is obtained, the Parties shall proceed under the terms of the Amendment. If the Parties fail to agree to an amendment to this Agreement, the County may proceed under one of the other options.



- E. Upon completion of construction of the Project, the County Engineer will determine the actual City Cost in accordance with Exhibit A ("Actual City Cost"). The County will notify the City of the Actual City Cost.
- (i) If the Actual City Cost exceeds the amount(s) previously paid to the County by the City, then the City will pay the shortage to the County, to the extent permitted by law.
  - (ii) Alternatively, if the Actual City Cost is less than the amount(s) previously paid to the County by the City, then the County will refund to the City the excess amount.
  - (iii) Any amount due and payable under this paragraph (E) will be paid within sixty (60) days after the County notifies the City of the amount of the Actual City Cost.
- F. The County is not obligated to deposit the funds provided by the City pursuant to this Agreement in an interest-bearing account. As such, the City is not entitled to receive any interest earned on such funds. If the County chooses to deposit such funds in an interest-bearing account, the interest earned thereon will be retained by the County.
- G. In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated the sum of \$3,864,000 to pay money due under this Agreement (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so.

### III. City's Right of Access and Right to Review

During the construction of the Project, the City will have the right of access to the construction site. The City will also have the right to review all documents, maps, plats, records, photographs, reports or drawings in connection with the Project. However, the City shall give notice by telephone to the County Engineer prior to any inspection of either the construction site or documents. In conducting said inspections, the City shall not interfere with the work in progress.

### IV. Additional Construction

- A. During construction of the Project, the County Engineer may determine that additional construction is necessary to construct the Project ("Additional Construction"). If such Additional Construction is necessary, the County Engineer will then notify the City and issue a CIC covering the Additional Construction. Such Additional Construction may include work beyond the construction initially advertised, included in the accepted bids, or upon which the Contractor based its bid.
- B. If the events set out in IV (A) above occur as noted, the County Engineer will determine the estimated cost of the Additional Construction in accordance with Exhibit A. The County Engineer will notify the City of the cost of the Additional Construction, which

will include 15% for related engineering services ("Additional Construction Cost"). Within forty-five (45) calendar days after receipt of said notification, the City will transmit a check to the County in the amount of the Additional Construction Cost, to the extent permitted by law.

#### V. City's Request for Records, Right to Review and Audit

- A. Upon receipt of a written request from the City, the County shall furnish to City a copy of the record drawings and specifications for the Project. However, the County has no obligation to deliver such record drawings and specifications all sums due to the County are paid in full.
- B. The City and its authorized representatives have the right to review and audit all books, records, vouchers and documents related to the County's performance under this Agreement during the period of performance, and for three (3) years thereafter, or for so long as there exists any dispute or litigation arising from this Agreement. The City will be responsible for the cost of the duplication.

#### VI. Termination

The County may terminate this Agreement at any time by written notice to the City. In the event of termination by the County, the County will have no further obligation pursuant to this Agreement, other than to return any unexpended funds paid to the County by the City. In addition, any interest earned on said funds paid to the County by the City pursuant to this Agreement will become the sole property of the County.

#### VII. Assignment

- A. Upon completion of the construction of the Project, the City will automatically be assigned any rights that the County may have against the contractor, the design engineer and/or the surety on the contractor's performance bond.
- B. No Party shall make, in whole or in part, any assignment of this Agreement or any obligation hereunder without the prior written consent of the other Party.

#### VIII. 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 personally delivered to the address below, or 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 County or the City at the following addresses:

City: City of Houston  
Department of Public Works and Engineering  
611 Walker, 14th Floor  
Houston, Texas 77002

Attention: Thomas A. Artz, P.E.  
Email: [thomas.artz@houstontx.gov](mailto:thomas.artz@houstontx.gov)

County: Harris County Engineering Department  
1001 Preston Avenue, 7th Floor  
Houston, Texas 77002-1893  
Attention: Interagency Agreement Coordinator  
Email: [bill.nobles@hcpid.org](mailto:bill.nobles@hcpid.org)

Any Notice given hereunder is deemed given upon hand delivery or three (3) days after the date of deposit in the United States Mail.

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 Party.

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

#### IX. Liability of the Parties

Each Party shall be responsible for all claims and liability due to the activities of the Party's employees, officials, agent or subcontractors arising out of or under this Agreement and which result from any act, error, or omission, intentional tort, intellectual property infringement, or failure to pay a vendor, committed by the Party or its employees, officials, agents, consultants under contract, or any other entity over which it exercises control.

#### X. Miscellaneous

- A. Effect of Agreement; Modifications. This Agreement supersedes any and all other discussions, negotiations and representations of any kind and represents the entire Agreement of the Parties concerning the subject herein. Any oral or written representations or modifications concerning this instrument shall not be effective, excepting a subsequent written modification signed by both Parties.
- B. 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.

IN TESTIMONY OF WHICH, this Agreement, in duplicate counterparts, each having equal force and effect of an original, has been executed on behalf of the Parties hereto as follows, to-wit:

- a. It has on the \_\_\_\_\_ day of APR 10 2018, ~~2017~~, been executed on behalf of the County by the County Judge of Harris County, Texas, pursuant to an order of the Commissioners Court of Harris County authorizing such execution.

- b. It has on the \_\_\_\_\_ day of \_\_\_\_\_, 2018, been executed on behalf of the City by the Mayor and attested by its City Secretary, pursuant to ordinance of the City Council of the City of Houston authorizing such execution.

HARRIS COUNTY

By: Ed Emmett

Ed Emmett  
County Judge

CITY OF HOUSTON

By: Admonda Washington

Mayor

APPROVED AS TO FORM:

VINCE RYAN  
County Attorney

ATTEST

By: Corra Russell

City Secretary

By: Peggy S. Block

Assistant County Attorney  
CAO File Number 16 GEN 2001

COUNTERSIGNED BY:

Cliff Brown  
City Controller

DATE COUNTERSIGNED:

3-13-18  
APPROVED:

Carol Ellinger Haddock  
Carol Ellinger Haddock, P.E.  
Director  
Houston Public Works

APPROVED AS TO FORM:

Elin Nason  
Assistant City Attorney  
L.D. File No. 0631700038001

## EXHIBIT B-1

## El Dorado Phase 2 Budget Breakdown

Partner	\$	%	Notes
County	\$ 1,308,381.80	50%	
COH	\$ 1,308,381.80	50%	
Phase 2 Total	\$ 2,616,763.60		
COH Phase 1 Rollover (Estimated)	\$ 252,363.56		
<b>COH Phase 2 Contribution</b>	<b>\$ 1,056,018.24</b>		

## Notes:

- |  |                 |
|--|-----------------|
| 1. Awarded Amount                            | \$ 2,886,918.60 |
| 2. City of Clear Lake Utilities Construction | \$ 270,155.00   |
| 3. City and County Construction              | \$ 2,616,763.60 |

## 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 City of Houston, Texas, on \_\_\_\_\_, with all members present except \_\_\_\_\_.

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

### ORDER AUTHORIZING AMENDMENT TO THE INTERLOCAL AGREEMENT BETWEEN HARRIS COUNTY AND CITY OF HOUSTON

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 adopted follows:

IT IS ORDERED that:

1. The Harris County Judge is authorized to execute on behalf of Harris County the attached Amendment to the Interlocal Agreement between Harris County and the City of Houston for the purpose of adding additional improvements and funding to the Agreement.
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.