

**INTERLOCAL AGREEMENT FOR
CITY OF HILSHIRE VILLAGE PROJECT**

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

**ARTICLE 1
PARTIES**

THIS INTERLOCAL AGREEMENT FOR CITY OF HILSHIRE VILLAGE (“Agreement”) is made effective on the Countersignature Date between the **CITY OF HOUSTON, TEXAS** (“City”), a Texas home-rule city, and the **CITY OF HILSHIRE VILLAGE** (“Hilshire Village”), a Texas general law municipality, organized and existing under the laws of the State of Texas.

1.1. Addresses

The initial addresses of the parties, which one party may change by giving written notice of its changed address to the other party, are as follows:

City

City of Houston
Director, Public Works
P. O. Box 1562
Houston, Texas 77521
Attn: [Carol Haddock](#)
~~Email:~~

Hilshire Village

City of Hilshire Village
8301 Westview Drive
Houston, TX 77055
Attn: Mayor Robert Buesinger
Email: Mayor@hilshirevillagetexas.com

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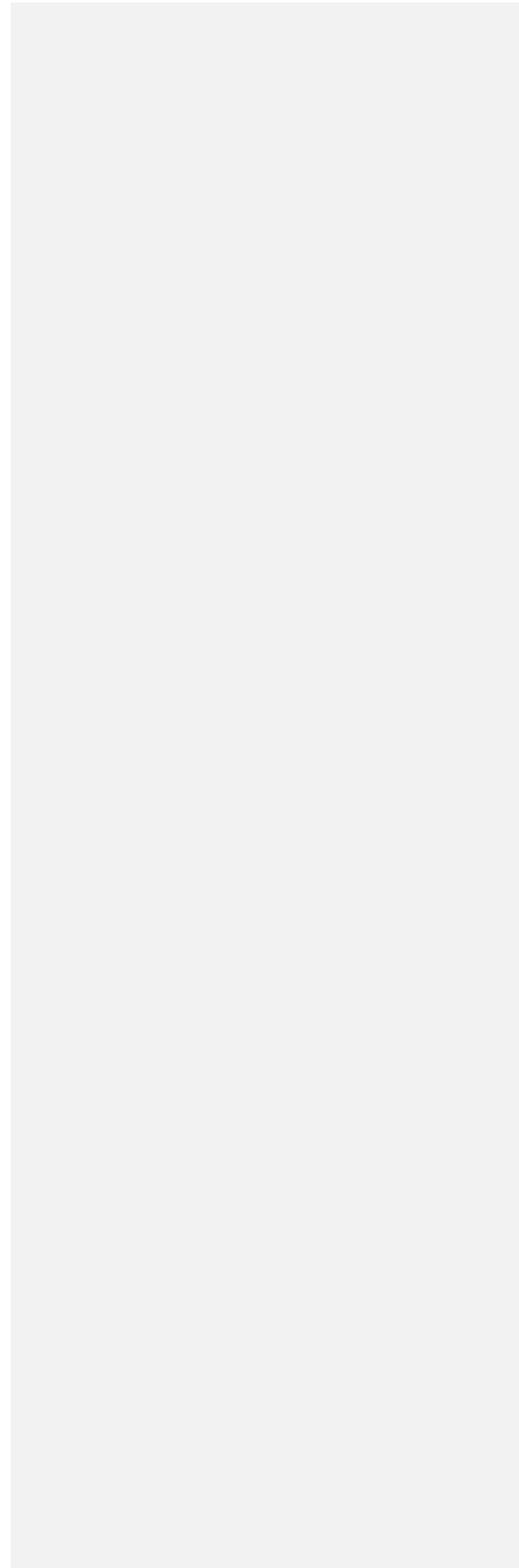
The parties agree as follows:

WHEREAS, it is of mutual benefit to both Parties to construct sidewalk improvements along Wirt Road from IH-10 Westbound Feeder Road to Westview Drive, referred to as the Wirt Road Safety Project (“Project”) as generally illustrated on Exhibit A attached hereto and incorporated herein by reference;

WHEREAS, both Parties desire to cooperate in accordance with the terms of this Agreement to jointly accomplish the construction of the Project; and

WHEREAS, both Parties agree that all funds used under this Agreement shall be from current fiscal funds.

NOW THEREFORE, in consideration of the mutual promises, obligations, and benefits herein set forth, the Parties agree as follows:



1.2. Table of Contents

This Agreement consists of the following sections:

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1.3. Parts Incorporated

The exhibit described above is incorporated into this Agreement.

Commented [NPH1]: Need updates for this TOC
Commented [MSL2R1]: Please clarify.

1.4. Controlling Parts

If a conflict between the sections of this Agreement and the exhibit arises, the sections control over the exhibit.

1.5. Signatures

The parties have executed this Agreement in multiple copies, each of which is an original.

**HILSHIRE VILLAGE:
CITY OF HILSHIRE VILLAGE**

By: _____
Name: Robert Buesinger
Title: Mayor
Tax ID No.: 74-2162965

ATTEST

By: _____
Name: Susan Blevins
Title: City Administrator/City Secretary

**THE CITY:
CITY OF HOUSTON, TEXAS**

Mayor

ATTEST/SEAL:

City Secretary

APPROVED AND RECOMMENDED:

APPROVED AND RECOMMENDED:

Chief Development Officer

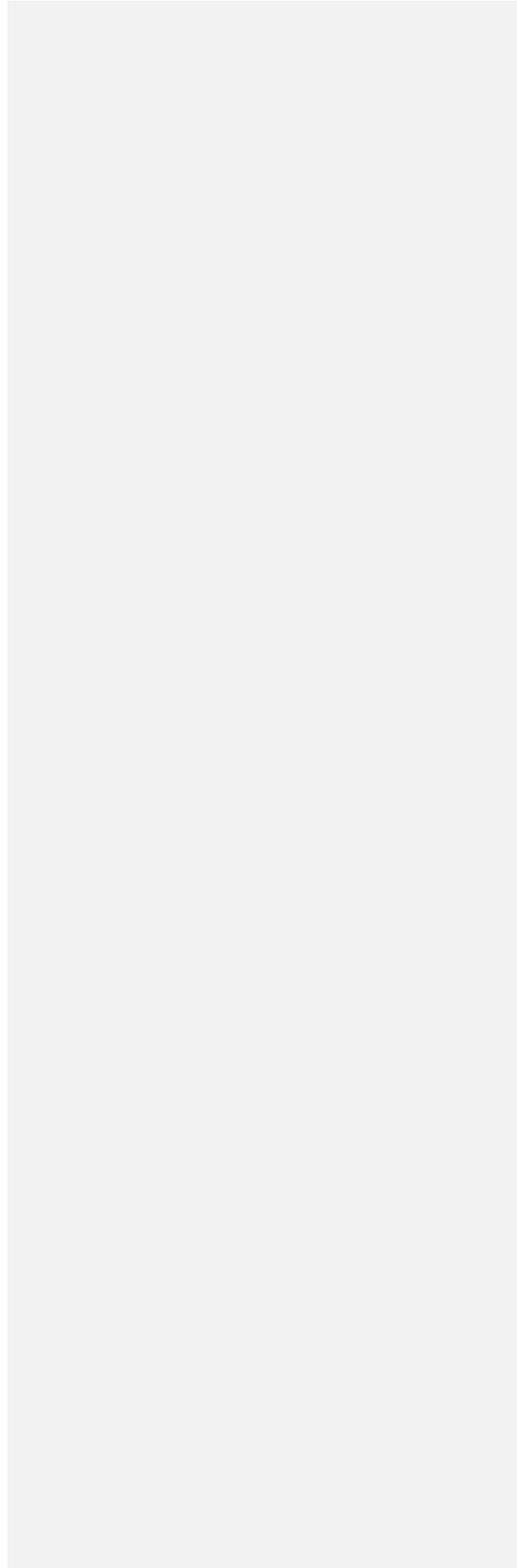
COUNTERSIGNED BY:

City Controller

DATE COUNTERSIGNED:

APPROVED AS TO FORM:

Senior Assistant City Attorney
L.D. File No. _____



ARTICLE 2 DEFINITIONS

As used in this Agreement, the following terms shall have meanings set out below:

- 2.1. **“Hilshire Village”** is defined in Article 1 of this Agreement and includes the Hilshire Village’s successors and assigns.
- 2.2. **“Hilshire Village Contribution”** is defined in Section 3.1.1 of this Agreement.
- 2.3. **“City”** is defined in Article 1 of this Agreement and includes its successors and assigns.
- 2.4. **“City Contribution”** is defined in Section 4.1.1 of this Agreement.
- 2.5. **“Countersignature Date”** is the date of countersignature by the City Controller of the City of Houston.
- 2.6. **“Project”** means the sidewalk improvements (Pedestrian and Safety Improvements) along the west side of Wirt Road from IH-10 Westbound Feeder Road to Westview Drive, referred to as the Wirt Road Safety Project, and as generally illustrated on Exhibit A.
- 2.7. **“Project Costs”** means the costs associated with the Project.

ARTICLE 3 DUTIES OF THE HILSHIRE VILLAGE

3.1. Hilshire Village Contribution; Scope of Work

3.1.1. Hilshire Village and Harris County have entered into a Joint Participation Interlocal Agreement, dated January 31, 2023, has received the commitment from Harris County Precinct 3 (County) to fund the design, permitting, construction, construction management and inspection, and maintenance of ~~the proposed~~ sidewalk improvements along Wirt Road (Pedestrian and Safety Improvements) for the Project. These improvements may also include potential crosswalk locations at intersecting streets and wheelchair ramps on the east and west sides of Wirt Road, if required by the City. Hilshire Village will be responsible for providing funds for the engineering services needed for the design of the Pedestrian and Safety Improvements, including permitting and approvals from the City and County required for the Project. The funding contributions by each participant are summarized in Exhibit A – Scope of Work for City of Hilshire Village Project.

Commented [MSL3]: Comment for Opposing Council: Typo?

3.1.2. Hilshire Village ~~and/or County~~ shall provide all labor, material, and supervision necessary to construct the Project. Hilshire Village ~~and/or County, their contractors and subcontractors,~~ will be responsible for all permits required for the Project and all consents required to be obtained from any applicable governmental agency.

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3.1.3 Hilshire Village will coordinate preparation of design and construction plans and specifications. ~~Hilshire Village will coordinate with the County on the award of the construction contract to one of the County's On Call Contractors, and administer construction administration, materials testing and surveying for the Project.~~ The City shall have no responsibility for administration of the construction contract and shall incur no obligation to any contractor thereby.

3.2. Insurance and Indemnification

Hilshire Village shall require that the Project contractor (and its subcontractors) provide the insurance and indemnification for the Project which are commensurate with other like public works construction projects.

3.3. ~~Minority and Women Business Enterprises~~

~~Hilshire Village shall comply with any applicable provisions relating to Minority and Women Business Enterprises.~~

Commented [SB4]: Hilshire does not have any MBE requirements. Does Hilshire funding (state, federal or county) required MBE? There is no City of Houston funding.

3.4 ~~Accounting Report~~

~~Upon completion of the Project, Hilshire Village shall provide the ~~Designee of City~~ with an accounting report that itemizes the Project Costs funded by the City Contribution, defined below, if applicable. The ~~Designee of City~~ shall approve the accounting report if, in the ~~Designee of City~~'s opinion, the City Contribution has been expended in accordance with this Agreement.~~

Commented [SB5]: There is no city funding

**ARTICLE 4
DUTIES OF CITY**

4.1. City Contribution; Conditions of Expenditure; Use of Excess Funds

4.1.1. The City shall contribute \$0.00 for Project Costs related to the Wirt Road Safety Project (Pedestrian and Safety Improvements) to the Village under this Agreement ("City Contribution").

~~4.1.2. The City Contribution², if any, must be expended in accordance with the purposes authorized under this Agreement. If Hilshire Village expends any portion of the City Contribution for purposes inconsistent with the terms of this Agreement, Hilshire Village shall be in default of this Agreement and shall immediately return to the City the applicable portion of the City Contribution in accordance with the provisions of Section 5.2 of this Agreement.~~

~~4.1.3. The City Contribution, if any, must be expended in accordance with the purposes authorized under Section 42-255(d) of the City Code of Ordinances. If Hilshire Village expends any portion of the City Contribution for purposes inconsistent with Section 42-255(d) or the terms of this Agreement, Hilshire Village shall be in default of this Agreement and shall immediately return to the City the applicable portion of the City Contribution in accordance with the provisions of Section 5.2 of this Agreement.~~

4.1.4. The City will assist Hilshire Village in the review and permit approval process of the Wirt Road Safety Project design plans. The design plans will be submitted through InterAgency for review and distribution.

4.1.5. The City will accept the partial survey of the west side of Wirt Road and Plan view only in the preparation of design plans for the proposed sidewalk improvements in the Wirt Road Safety Project, as previously coordinated and agreed upon by the City's Planning & Development Department, and the Multimodal Safety & Design (MSD) Branch, respectively.

Commented [MSL6]: Comment for Opposing Council: Not seeing this defined anywhere.

4.2. Taxes

~~The City is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax. Hilshire Village's invoices to the City, if any, must not contain assessments of any of these taxes. The **Personnel of City** will furnish the City's exemption certificate and federal tax identification number to Hilshire Village.~~

Commented [SB7]: There is no City of Houston Funding.

**ARTICLE 5
TERM AND TERMINATION**

5.1. Agreement Term

This Agreement is effective on the Countersignature Date, ~~and, unless sooner terminated under this Agreement, expires upon Hilshire Village's final remittance of any portion of the City Contribution that Hilshire Village has not (i) expended in accordance with Section 4.1 of this Agreement or (ii) encumbered to pay its obligations for the Project under a contract existing at the time of such termination.~~

Commented [SB8]: There is no City of Houston funding.

Commented [MSL9R8]: It's still being taken to Council. Left first part in.

5.2. Termination

5.2.1. ~~Either party may terminate this Agreement, without cause, by 30 days' written notice to the other party. After termination under this provision, neither party shall have any further obligation under this Agreement, except as follows: Hilshire Village shall return to the City any portion of the City Contribution that Hilshire Village has not (i) expended in accordance with Article 4 of this Agreement or (ii) encumbered to pay its obligations for the Project under a contract existing at the time of such termination.~~

~~TERMINATION OF THIS AGREEMENT IS THE PARTIES' ONLY REMEDY FOR TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. THE PARTIES WAIVE ANY CLAIMS THEY MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM TERMINATION FOR CONVENIENCE.~~

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~~5.2.2. Either party may terminate its performance under this Agreement if the other party defaults and fails to cure within 60 days the default after receiving notice of it. Default occurs if a party fails to perform one or more of its material duties under this Agreement. If a default occurs, the injured party shall deliver a written notice to the defaulting party describing the default and the proposed termination date. The date must be at least 30 days after receipt of such notice. The injured party, at its sole option, may extend the proposed termination date to a later date. If the defaulting party cures the default before the proposed termination date, the proposed termination is ineffective. If the defaulting party does not cure the default before the proposed termination date, the injured party may terminate its performance under this Agreement on the termination date. The **Designee of City** shall act on behalf of the City to notify Hilshire Village of a default and to effect termination. This Agreement shall terminate on December 31, 2024, or upon the completion of the Project, whichever occurs first.~~

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ARTICLE 6 MISCELLANEOUS PROVISIONS

6.1. Purpose of Agreement; Responsibilities of the Parties

The parties agree that this Agreement is necessary for the benefit of the public and that each party has the legal authority to perform and to provide the governmental function or service which is the subject matter of this Agreement. The parties further agree that neither party is an agent, servant, or employee of the other party and that each party is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

6.2. Force Majeure

Neither party shall be held liable for any loss or damage due to delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence, such causes may include acts of God, acts of civil or military authority, government regulations (except those promulgated by the party seeking the benefit of this section), embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, strikes, power blackouts, other major environmental disturbances or unusually severe weather conditions.

6.3. Severability

If any part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either party.

6.4. Entire Agreement

This Agreement merges the prior negotiations and understandings of the parties and embodies the entire agreement of the parties. No other agreements, assurances, conditions, covenants (express or implied), or other terms of any kind, exist between the parties regarding this Agreement.

6.5. Written Amendment

Unless otherwise specified elsewhere in this Agreement, this Agreement may be amended only by written instrument executed on behalf of the City (by authority of an ordinance adopted by the City Council) and Hilshire Village. The designee of City Director, or her designee, is only authorized to perform the functions specifically delegated to him or her in this Agreement.

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6.6. Applicable Laws

This Agreement is subject to the laws of the State of Texas, the City Charter and Ordinances, the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction. Venue for any litigation relating to this Agreement is in a state or federal court of competent jurisdiction in Harris County, Texas.

6.7. No Waiver of Immunity

Notwithstanding anything contained in the Agreement to the contrary, nothing in the Agreement shall constitute a waiver by either party of any provisions of (i) Chapters 75, 84, 95 or 101 of the Texas Civil Practice and Remedies Code, as amended, (ii) any laws relating to limitations of liability of the type of entity of such party, or (iii) sovereign or governmental immunity, as any of the foregoing may be available to such party.

6.8. Notices

All notices to either party to this Agreement must be in writing and must be delivered by hand, facsimile, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, Airborne Express, UPS or any other national overnight express delivery service. The notice must be addressed to the party to whom the notice is given at its address set out in Article 1 of this Agreement or other address the receiving party has designated previously by proper notice to the sending party. Postage or delivery charges must be paid by the party giving the notice. A copy of such notice shall be emailed at the time of posting to the email addresses of the persons set out in Article 1.

6.9. Captions

Captions contained in this Agreement are for reference only, and, therefore, have no effect in construing this Agreement. The captions are not restrictive of the subject matter of any section in this Agreement.

6.10. Non-Waiver

If either party fails to require the other to perform a term of this Agreement, that failure does not prevent the party from later enforcing that term and all other terms. If either party waives the other's breach of a term, that waiver does not waive a later breach of this Agreement. An approval by the ~~designee of City~~ Director, or her designee, or by any other employee or agent of the City, of any part of Hilshire Village's performance does not waive compliance with this Agreement or establish a standard of performance other than that required by this Agreement and by law.

6.11. Enforcement

The City Attorney, or his or her designee, may enforce all legal rights and obligations under this Agreement without further authorization. Hilshire Village shall provide to the City Attorney all documents and records pertaining to this Agreement that the City Attorney requests to assist in determining Hilshire Village's compliance with this Agreement, with the exception of those documents made confidential by federal or State law or regulation.

6.12. Ambiguities

If any term of this Agreement is ambiguous, it shall not be construed for or against any party on the basis that the party did or did not write it.

6.13. Survival

Hilshire Village shall remain obligated to the City under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement.

6.14. Parties in Interest

This Agreement does not bestow any rights upon any third party, but binds and benefits the City and Hilshire Village only.

6.15. Successors and Assigns

This Agreement binds and benefits the parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment and disposal of assets set out in the following paragraph. This Agreement does not create any personal liability on the part of any officer or agent of the City or Hilshire Village.

6.16. Business Structure and Assignments

Hilshire Village shall not assign this Agreement at law or otherwise or dispose of all or substantially all of its assets without the Director's, or her designee's, ~~designee of City's~~ prior written consent.

6.17. Remedies Cumulative

Unless otherwise specified elsewhere in this Agreement, the rights and remedies contained in this Agreement are not exclusive but are cumulative of all rights and remedies which exist now or in the future. Neither party may terminate its duties under this Agreement except in accordance with its provisions.

EXHIBIT A

SCOPE OF WORK FOR CITY OF HILSHIRE VILLAGE PROJECT

Estimated Project Cost: **\$383,840**

City of Houston (City) Contribution: **\$0.00**

Estimated Harris County Precinct 3 (County) Contribution:

- Provide construction funding for sidewalk improvements project
- Provide construction management and inspection of the project

City of Hilshire Village (Hilshire Village) Contribution: **\$89,385**

Managed by: CITY OF HILSHIRE VILLAGE

Project Scope:

- Pedestrian and Safety Improvement: Construction of 5-ft wide sidewalks along the west side of Wirt Road from Westview Dr and the Harris County Park at the northwest corner of the intersection of IH-10 and Wirt Rd., including potential crosswalk locations at intersecting streets and wheelchair ramps on the east and west sides of Wirt Road, if required by the City of Houston.

Commented [NPH10]: Do we need this information?

Commented [MSL11R10]: Not sure who's exhibit this is. If these are exhibits HPW provided, that is up to HPW.