

INTERLOCAL AGREEMENT

This Interlocal Agreement (“Agreement”) is entered into pursuant to the Interlocal Cooperation Act, Tex. Gov’t Code Ch. 791.001, *et seq.* by and between **Harris County, Texas** (“County”) a body corporate and politic under the laws of the State of Texas, acting by and through its governing body, the Harris County Commissioners Court, and the **City of Tomball** (“City”), a municipal corporation and home-rule city of the State of Texas. County and City may each be referred to herein individually as a “Party” or collectively as the “Parties”.

RECITALS

Whereas, County plans to expand and upgrade an existing 2-lane asphalt roadway to a 4-lane concrete boulevard section with an appropriate drainage system, referred to as the Telge Road Segment 4 project in Precinct 4 of Harris County.

Whereas, City desires an exclusive utilities easement, within the location of County’s Telge Road Segment 4 project, from approximately 1100 feet north of State Highway 99 to FM 2920;

Whereas, it is to the mutual benefit of the Parties for City to reimburse County for County’s acquisition of City’s exclusive utilities easement to be identified by metes and bounds, from approximately 1100 feet north of SH99 to FM2920 in association with the Telge Road Segment 4 project.

Whereas, County and City desire to cooperate in accordance with the terms of this Agreement to accomplish the acquisition of the exclusive utility easement and construction of the Telge Road Segment 4 project; and

Whereas, Harris County Commissioners Court finds that the acquisition of the exclusive utility easement and the Telge Road Segment 4 project serves a public purpose.

NOW THEREFORE, for and in consideration of the mutual covenants, agreements and benefits to the Parties herein named, the Parties agree as follows:

TERMS

Section I. Responsibilities of the Parties

A. County’s Responsibilities

- (i) Upon execution of this Agreement by the Parties, and receipt of Initial City Funding Share from the City per Section II.A. below, County will provide, or cause to be provided, engineering services and related support services necessary to prepare metes and bounds property descriptions for the purpose of acquiring utility easements on behalf of the City.
- (ii) County will submit the property descriptions to the City for review and approval.
- (iii) The County will use its best efforts and utilize its available resources necessary to prepare documents and acquire the right of way, in the City's name by donation, purchase, or exercise of eminent domain, in accordance with the County's usual procedures for such acquisitions. If property must be acquired in the County's name,

the County shall convey such property to the City at no additional cost after it has been acquired.

- (iv) When the right-of-way acquisition process is initiated, County will invoice City the amount of \$57,688.75 ("Initial City Funding Share").
- (v) As the right-of-way acquisition process moves forward, County will invoice City quarterly the amount of \$344,790.80 County determines are due from City ("City Progress Funding Share").
- (vi) Upon completion of the right-of-way acquisition process, County will invoice City pursuant to a final accounting determination ("Actual City Funding Share").

B. City's Responsibilities

- (i) City will review the metes and bounds prepared by County and will notify the County Engineer of any objections or approval within ten (10) calendar days of receipt by City. If City has not approved the metes and bounds within ten (10) calendar days from its receipt of the metes and bounds, then the metes and bounds submitted to City will be deemed approved.
- (ii) The City is willing to pay all costs incurred by the County to acquire the easement ("Easement Costs"). Such Easement Costs shall include, but is not limited to, all appraisal costs, special commission fees, court costs, damage costs, purchase costs, relocation costs, and miscellaneous costs associated with the preparation of documents and the purchase of the easements.
- (iii) For any case in which settlement is being sought in an amount above appraisal value for the easement portion of the Agreement, the City must provide concurrence within thirty (30) days.
- (iv) City will pay 100% of the cost of acquiring the utility easements, including but not limited to right-of-way acquisition costs, additional surveys, metes and bounds, and appraisals.
- (v) During construction, City will allow County unimpeded use of utility easements at no cost or charge to County.

Section II. Funding

- A. When the right-of-way acquisition process is initiated, County will invoice City in the amount of \$57,688.75 for the Initial City Funding Share as detailed in Exhibit A, attached hereto and incorporated by reference. City shall remit payment of the Initial City Funding Share to the County within thirty (30) days of the receipt of the invoice.
- B. After County begins the right-of-way acquisition process, City shall pay quarterly City Progress Funding Share payments in the amount of \$344,790.80 to County, in amounts determined by County, within thirty (30) days of receipt by City of each invoice from County.
- C. Upon completion of the right-of-way acquisition process, the County Engineer will determine the actual cost to the City of the Actual City Funding Share in connection with

the right-of-way acquisition process's completion in accordance with Exhibit A. County will notify City of the Actual City Funding Share.

- (i) If the Actual City Funding Share exceeds the amount(s) previously paid to County by City, then City will pay the shortage to County.
 - (ii) Alternatively, if the Actual City Funding Share is less than the amount(s) previously paid to County by the City, then County will refund to City the excess amount.
 - (iii) Any amount due and payable under this paragraph (C) will be paid within thirty (30) days after County notifies City of the amount of the Actual City Funding Share.
- D. County is not obligated to deposit the funds provided by City pursuant to this Agreement in an interest-bearing account. As such, City is not entitled to receive any interest earned on such funds. If County chooses to deposit such funds in an interest-bearing account, the interest earned thereon will be retained by County.
- E. County shall have no obligation for the costs associated with the Project contemplated under this Agreement until sufficient funds are certified by the County Auditor as available from current fiscal funds.

Section III. Limit of Appropriation

- A. City understands and agrees, said understanding and agreement also being of the absolute essence of this Agreement, that the County is not currently appropriating any funds for the this Agreement. County is not obligated to expend any County funds in connection with this Agreement. Notwithstanding anything herein to the contrary, County has no funds specifically allocated to performing its obligations hereunder, and County is under no obligation to expend any funds, except to the extent of any funds that County may, in its sole discretion, make available.
- B. City understands and agrees, said understanding and agreement also being of the absolute essence of this Agreement, that failure of the Harris County Auditor to certify funds or to certify sufficient funding for any reason shall not be considered a breach of this Agreement.

Section IV. County's Request for Records, Right to Review and Audit

County and its authorized representatives have the right to review and audit all books, records, vouchers and documents of whatever nature related to City's performance under this Agreement during the period of performance of the Agreement and for six (6) years thereafter.

Section V. Term and Termination

This Agreement shall commence upon final execution by all the Parties and shall remain in full force and effect until the County's receipt of payment from the City of all funds due and owing under the terms of this Agreement unless earlier terminated in accordance with the terms of this Agreement. Either Party may terminate this Agreement at any time, by providing thirty (30) days' written notice. If the County terminates this Agreement the County shall return any unexpended or uncommitted funds previously provided by City under this Agreement. If the City terminates the Agreement any unexpended or uncommitted funds may be used by the County to cover any costs associated with changes in the Project as result of City's termination. If the City terminates this Agreement the City shall return any and all acquisition costs that has already been acquired or started but not paid for to the County. Should this Agreement be terminated, City shall not be

entitled to any payment or reimbursement of interest that may have been realized by the County on any such funds provided by City.

Section VI. Non-Assignability

County and City bind themselves and their successors, executors, administrators, and assigns to the other Party of this Agreement and to the successors, executors, administrators, and assigns of such other Party, in respect to all covenants of this Agreement. Neither the County nor City shall assign, sublet, or transfer its interest in this Agreement without the prior written consent of the other Party.

Section VII. 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 County or City at the following addresses:

City: David Esquivel, P.E., City Manager
City of Tomball
401 Market Street
Phone: 281-351-5484
Email: desquivel@tomballtx.gov

County: Harris County Engineering Department
1111 Fannin Street, 11th Floor
Houston, Texas 77002
Attention: Interagency Agreement Coordinator

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.

Section VIII. Miscellaneous

- A. **Independent Parties.** It is expressly understood and agreed by the Parties that nothing contained in this Agreement shall be construed to constitute or create a joint venture, partnership, or other affiliation or like relationship between the Parties, it being specifically agreed that their relationship is and shall remain that of independent parties to a contractual relationship as set forth in this Agreement. The County is an independent contractor and neither it, nor its employees or agents shall be considered to be an employee, agent, partner, or representative of City for any purpose. Neither City, nor its employees, officers, nor

agents shall be considered to be employees, agents, partners or representatives of the County for any purposes. Neither Party has the authority to bind the other Party.

- B. No Third Party Beneficiaries. This Agreement shall be for the sole and exclusive benefit of the Parties and their legal successors and assigns. The County is not obligated or liable to any party other than City for the performance of this Agreement. Nothing in the Agreement is intended or shall be deemed or construed to create any additional rights or remedies upon any third party. Further, nothing contained in the Agreement shall be construed to or operate in any manner whatsoever to increase the rights of any third party, or the duties or responsibilities of County with respect to any third party.
- C. Waiver of Breach. No waiver or waivers of any breach or default (or any breaches or defaults) by either Party hereto of any term, covenant, condition, or liability hereunder, or the performance by either Party of any obligation hereunder, shall be deemed or construed to be a waiver of subsequent breaches or defaults of any kind, under any circumstances.
- D. No Personal Liability; No Waiver of Immunity.
 - (1) Nothing in the Agreement is construed as creating any personal liability on the part of any officer, director, employee, or agent of any public body that may be a Party to the Agreement, and the Parties expressly agree that the execution of the Agreement does not create any personal liability on the part of any officer, director, employee, or agent of the County.
 - (2) The Parties agree that no provision of this Agreement extends the County's liability beyond the liability provided in the Texas Constitution and the laws of the State of Texas.
 - (3) Neither the execution of this Agreement nor any other conduct of either Party relating to this Agreement shall be considered a waiver by the County of any right, defense, or immunity on behalf of itself, its employees or agents under the Texas Constitution or the laws of the State of Texas.
- E. Applicable Law and Venue. This agreement shall be governed by the laws of the State of Texas and the forum for any action under or related to the Agreement is exclusively in a state or federal court of competent jurisdiction in Texas. The exclusive venue for any action under or related to the Agreement is in a state or federal court of competent jurisdiction in Houston, Harris County, Texas.
- F. No Binding Arbitration; Right to Jury Trial. The County does not agree to binding arbitration, nor does the County waive its right to a jury trial.
- G. Contract Construction.

- (1) This Agreement shall not be construed against or in favor of any Party hereto based upon the fact that the Party did or did not author this Agreement.
- (2) The headings in this Agreement are for convenience or reference only and shall not control or affect the meaning or construction of this Agreement.
- (3) When terms are used in the singular or plural, the meaning shall apply to both.
- (4) When either the male or the female gender is used, the meaning shall apply to both.
- H. Recitals. The recitals set forth in this Agreement are, by this reference, incorporated into and deemed a part of this Agreement.
- I. Entire Agreement; Modifications. This Agreement contains the entire agreement between the Parties relating to the rights herein granted and the obligations herein assumed. This Agreement supersedes and replaces any prior agreement between the Parties pertaining to the rights granted and the obligations assumed herein. This Agreement shall be subject to change or modification only by a subsequent written modification approved and signed by the governing bodies of each Party.
- J. Severability. The provisions of this Agreement are severable, and if any provision or part of this Agreement or the application thereof to any person, entity, or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part of this Agreement to other persons, entities, or circumstances shall not be affected thereby.
- K. Survival of Terms. Any provision of this Agreement that, by its plain meaning, is intended to survive the expiration or earlier termination of this Agreement including, but not limited to an indemnification provision, if any, shall survive such expiration or earlier termination. If an ambiguity exists as to survival, the provision shall be deemed to survive.
- L. Multiple Counterparts/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.
- M. Warranty. By execution of this Agreement, City warrants that the duties accorded to City in this Agreement are within the powers and authority of City.

[Signature Page Follows]

HARRIS COUNTY

By: _____
Lina Hidalgo
County Judge

APPROVED AS TO FORM:

Christian D. Menefee
County Attorney

By: _____
Philip Berzins
Assistant County Attorney
CAO File No.: 19GEN2949

Attachments:

Exhibit A – Cost Estimate

CITY OF TOMBALL

By: _____
Lori Klein Quinn
Mayor

ATTEST

By: _____
Secretary

EXHIBIT A				
TELGE ROAD SEGMENT 4				
City of Tomball - Reimbursement Agreement				
No. of Tracts 15				
Description	QTY	Unit	Unit Cost	Estimated City Cost
Meets & Bounds + Add'l Survey	1	LS	\$25,025	\$ 25,025.00
Appraisals	11	Shared Tracts	\$1,400	\$ 15,400.00
	4	Sole Tracts	\$2,800	\$ 11,200.00
Contingency (15%)				\$ 6,063.75
Initial City Funding Share (ICFS)				\$ 57,688.75
ROW acquisition	182000	SQFT	\$6	\$ 1,092,000.00
Contingency (15%)				\$ 163,800.00
Estimated City Progress Funding Share (ECPFS)				\$ 1,255,800.00
Administrative Fee (5%)				\$ 65,674.44
Estimated Actual City Funding Share (EACFS)				\$ 1,379,163.19
Expected Quarterly Payments based on ECPFS and EACFS				\$ 344,790.80

ORDER OF COMMISSIONERS COURT
Authorizing an Interlocal Agreement between Harris County and City of Tomball

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 EXECUTION OF AN INTERLOCAL AGREEMENT
BETWEEN HARRIS COUNTY AND THE CITY OF TOMBALL FOR THE CITY OF
TOMBALL TO REIMBURSE HARRIS COUNTY IN CONNECTION WITH THE
ACQUISITION FOR THE CITY OF TOMBALL OF AN EXCLUSIVE UTILITIES
EASEMENT FROM APPROXIMATELY 1100 FEET NORTH OF SH99 TO FM2920
LOCATED IN HARRIS COUNTY PRECINCT 4**

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 thus adopted follows:

IT IS ORDERED THAT:

1. The Harris County Judge is authorized to execute on behalf of Harris County the attached Interlocal Agreement between Harris County and the City of Tomball for the City of Tomball to reimburse Harris County in connection with the acquisition of an exclusive utilities easement for the City of Tomball from approximately 1100 feet north of SH99 to FM2920 in association with the Telge Road Segment 4 expansion to upgrade the existing 2-lane asphalt roadway to a 4-lane concrete boulevard section with an appropriate drainage system located in Harris County Precinct 4. The Interlocal Agreement is incorporated by reference and made a part of this order for all intents and purposes as though set out in full word for word.
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.