

**INTERLOCAL AGREEMENT BETWEEN
WALLER COUNTY AND
CITY OF WALLER**

This Interlocal Agreement (the “Agreement”) is made by and between Waller County, a political subdivision of the State of Texas (the “County”), and the City of Waller, a general law municipality. The County and City of Waller may be referred to individually as a “Party” or collectively as the “Parties.” This Agreement is made to be effective as of the date fully executed by both Parties.

RECITALS

WHEREAS, Section 791.028 authorizes a local government to contract with another local government to pay jointly all or part of the costs of a road project, including design, construction, utility adjustments, acquisition of interests in land required for or beneficial to the road project; and

WHEREAS, the Commissioners Court of the County finds that the Project contemplated in this Agreement serves a public purpose; and

WHEREAS, Section 791.003(4)(A) of the Texas Government Code provides that a “political subdivision” such as City of Waller, is a “local government” for purposes of the Interlocal Cooperation Act, which Act has been codified as Chapter 791, as amended, Texas Government Code (“Chapter 791”); and

WHEREAS, Section 791.003(4)(A) of the Texas Government Code provides that a county, such as the County, is a “local government” for purposes of Chapter 791; and

WHEREAS, this Agreement shall constitute an interlocal cooperation agreement as authorized pursuant to the provisions of Chapter 791; and

WHEREAS, the Project, as defined in this Agreement, consists of roadway improvements and shared infrastructure designed to improve traffic flow, circulation, and drainage within the service area, with the specific scope and details to be determined and agreed upon by the County; and

WHEREAS, the Parties have determined and hereby represent that they are authorized and empowered to make, execute and deliver this Agreement; that the terms, conditions and provisions of this Agreement are mutually agreeable, fair and advantageous to the Parties; and that they desire to enter into this Agreement for the purpose of setting forth the specific terms and conditions upon which the Road Improvements and related shared infrastructure will be funded and constructed; and

NOW, THEREFORE, for and in consideration of the mutual covenants, agreements and benefits to both Parties, it is agreed as follows:

1) DEFINITIONS

- A) Project means road improvements to Old Houston Highway approximately between Blinka Road and FM 362, including reconstruction of the base and subgrade, 3” asphalt overlay along with concrete sections at major volume driveways as agreed by the Parties, adjustment of impacted utilities, and acquisition of right-of-way.
- B) Effective Date means the date on which this Agreement becomes valid and enforceable. The Effective Date of this Agreement is the date of the final signature.
- C) Road Improvements means the work and related activities to be performed by the City of Waller on Old Houston Highway, located within the County, as generally described in this Agreement and Exhibit A and as may be further detailed in future specifications or exhibits to be agreed upon by the Parties.

2) PURPOSE, RIGHTS, & DUTIES

- A) The purpose of this Agreement is to set forth the respective obligations of each Party regarding the Project, including those portions located within the County and any associated shared infrastructure.
- B) City of Waller is responsible for completing the design and overseeing the construction of the Project in compliance with the applicable state and federal laws related to the Project. This responsibility shall include the management of the adjustment of utilities, including gas, overhead power and telecommunications, and entering into a contract for engineering design inclusive of construction project phase services, and construction inspection and testing services. City of Waller agrees to provide the County with copies of both the engineering and design contract, and the construction contract prior to execution, and to incorporate any reasonable requests by County. City of Waller agrees that any portion of the Project that is located within the County will comply with the County standards and specifications for like projects or receive written acceptance of proposed standards and specifications by the County. The Project has a total estimated cost of \$7,459,460.00, which includes design, construction, right-of-way acquisition, utility adjustments, and construction inspection and testing services. City of Waller acknowledges and accepts the fact that the County is obligated to follow Chapter 262 of the Texas Local Government Code as it relates to the awarding of the contract. The Parties agree that Waller County shall be responsible for funding 40.7% of the Project cost, provided that the amount the County is required to pay to the City under this Agreement shall not exceed \$3,036,000.22. The City shall be responsible for paying all Project costs that exceed the total estimated cost of \$7,459,460.00. This may be modified by written agreement of both Parties for changes to the Project that increase or decrease the total project costs.

- C) During the work on the Project, City of Waller shall provide the County thirty (30) days to review all documents, maps, plats, records, photographs, reports and drawings affecting the construction and allow the County to inspect the work in progress. City of Waller shall oversee all above elements of the Project. Any deficiencies brought to the attention of City of Waller by the County shall be promptly addressed by City of Waller. If the City of Waller's Engineer determines that the deficiencies are actionable under the terms of the construction contract, City of Waller will work with the construction contractor to correct any County identified deficiencies.
- D) The City of Waller shall be responsible for the acquisition of any and all parcels necessary for the construction of the Project. The County will make available for the Project, all right-of-way, easements, and parcels in the vicinity of and necessary for the Project owned, acquired and/or controlled by the County.
- E) At the City of Waller's award of the construction contract, the County will pay to City of Waller \$1,518,000.11 pursuant to Section B. Upon completion of construction of the Project, but no later than ninety (90) calendar days after final payments to construction contractor, City of Waller will furnish the County with a full accounting of the funds expended on the Project. The County will pay the remaining funds not to exceed the total amount listed in Subsection B, provided that the portion of the Project located within the County complies with all County standards and specifications, and the County has accepted the work.
- F) Upon completion of the Project, the City of Waller will maintain the Project. This provision survives the termination of this Agreement.
- G) Ownership and use of work material
 - i. All drawings, specifications, plans, computations, sketches, data, records, photographs, tapes, renderings, models, publications, statements, accounts, reports, studies, and other materials prepared by the City of Waller or any City of Waller subcontractors in connection with the services provided by the City of Waller under this Agreement (collectively, "Work Material"), are the sole property of the City of Waller and the County and for their exclusive use and reuse at any time. The City of Waller will provide to the County upon request a copy of all Work Material for portions of the Project located within the County. The Work Material will not be used by any person or organization other than the Parties on other projects unless expressly authorized by the Parties in writing. To the extent permitted by law, the Work Material will not be used or published by either Party or any other party unless expressly authorized by both Parties in writing. To the extent permitted by law, the Parties will treat all Work Material as confidential.
- H) Each Party paying for the performance of governmental functions or services under this Agreement must make those payments from current revenues available to the paying Party.

3) **Miscellaneous**

- A) After the Effective Date of this Agreement, the City of Waller shall commence procurement of an engineering firm to provide design services for the Project. The City of Waller shall execute the Project in a timely manner.
- B) The City of Waller shall allow the County to participate in the punch list process prior to issuing final acceptance or discharging the construction contractor. The City of Waller shall require the construction contractor to address punch list items provided by the County.

4) **ASSIGNMENT**

Neither Party shall assign its rights or obligations under this Agreement.

5) **NOTICES**

All notices and communications permitted or required to be given under this Agreement will be in writing and will be deemed delivered in person or deposited in the United States mail, postage, prepaid, addressed as follows:

If formal notices to: **County**

Contact: Carbett "Trey" Duhon III

Title: Waller County Judge

Address: 425 FM 1488, Hempstead, TX 77445

If routine notices to: **County**

Contact: J. Ross McCall, P.E.

Title: Waller County Engineer

Address: 775 Business US 290, Hempstead, TX 77445

If notices to: **City of Waller**

Contact: Danny Marburger

Title: Mayor

Address: 1218 Farr St, Waller, TX 77484

Any such notices will be either (a) sent by certified mail, return receipt requested, in which case such notice will be deemed delivered three (3) business days after the deposit thereof, postage prepaid, in the United States mail, or (b) sent by a nationally recognized overnight courier, in which case such notice will be deemed delivered upon actual receipt, or (c) delivered by hand delivery, in which case such notice will be deemed delivered upon receipt. The above address and email may be changed by written notice to the other Party; provided, however, that a notice of a change of address will not be effective until actual receipt of such notice. Copies of notices are for informational purposes only; and a failure to give or receive copies of any notice will not be deemed a failure to give notice. If any notice, letter or information herein requires "actual receipt," such notice, letter, or information will not be deemed received until the Party entitled to receive

the same has physical possession of such notice, letter or information.

The term “business day” as used in this Agreement will mean a day that is not a Saturday, Sunday, or legal holiday in Waller County, Texas.

6) TERM

The term of this Agreement shall commence on the Effective Date and shall terminate on the earlier of January 29, 2028, or completion of the work, unless renewed or earlier terminated as set forth herein. This Agreement is renewable upon written consent of both Parties.

7) TERMINATION

This Agreement may be terminated for cause by either Party upon ten (10) days’ prior written notice to the other Party. The defaulting Party shall have thirty (30) days to cure any default prior to the termination of the Agreement.

8) GOVERNING LAW

This Agreement and the rights and obligations arising hereunder will be governed by, construed and enforced in accordance with the laws of the State of Texas without regard to the conflicts or choice of law principles thereof.

9) NO WAIVER OF IMMUNITY

Nothing contained in this Agreement nor the execution of this Agreement, nor the performance of any obligation hereunder, will operate to or be deemed to waive any immunity or defense to which any County trustee, officer, employee, volunteer, representative, or agent may be entitled under law.

10) ENTIRE AGREEMENT

This Agreement contains the entire agreement of the Parties and there are no other promises or conditions in any other agreement whether oral or written. This Agreement supersedes any prior written or oral agreement between the Parties.

By signing this Agreement, the authorities representing the Parties agree to the terms stated for their respective organizations.

11) MODIFICATION OF AGREEMENT

This Agreement may be modified or amended if the amendment is made in writing and is signed by both Parties.

12) SEVERABILITY

If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable, provided that the terms, conditions, and underlying meaning of the Agreement may be carried out.

13) JURISDICTION; VENUE

The Parties irrevocably and unconditionally consent to the jurisdiction of the State of Texas, and agree that any court of competent jurisdiction located in Waller County, Texas, will be an appropriate and convenient place of venue and will be the sole and exclusive place of venue to resolve any dispute with respect to this Agreement.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, County and City of Waller have caused their respective duly authorized representatives to execute, seal and deliver this Agreement, all as of the date of signature.

COUNTY:

CITY:

WALLER COUNTY

CITY OF WALLER

Carbett "Trey" J. Duhon III, County Judge

Mayor

Date

Date

ATTEST:

Debbie Hollan, County Clerk

Approved:

J. Ross McCall, P.E., County Engineer

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in an amount not to exceed **\$3,036,000.22** to accomplish and pay the obligation of Waller County in the foregoing matter.

Alan R. Younts, County Auditor