

INTERLOCAL AGREEMENT

This Interlocal Agreement (“Agreement”) is entered into by and between **Harris County** (“County”) and **Alief Independent School District** (“District”) pursuant to the Interlocal Cooperation Act, Tex. Gov’t Code Ch. 791.001, *et seq.* County and District may each be referred to herein individually as a “Party” or collectively as the “Parties.”

RECITALS

Whereas, the County intends to construct new sidewalk segments, along Howell Sugarland Road between Bellaire Boulevard and Beechnut Street, in locations as generally shown on Exhibit A, in Harris County Precinct 3 (the “Project”);

Whereas, it is to the mutual benefit of the Parties to construct the Project;

Whereas, Harris County Commissioners' Court finds that the Project serves a public purpose;

Whereas, the Parties agree all funding provided under this Agreement shall come from current fiscal funds; and

Whereas, the Parties desire to cooperate in accordance with the terms of this Agreement to accomplish the construction of the Project.

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

TERMS

Section 1. Responsibilities of the Parties

A. County’s Responsibilities

- (i) The County will provide or cause to be provided, engineering services and related support services necessary to prepare the plans, specifications, and estimates (“PS&E”) for construction of the Project.
- (ii) The County Engineer or delegated staff member (“County Engineer”) will submit the PS&E to the District for review and approval, which will not be unreasonably withheld.
- (iii) Upon completion of the PS&E for the Project, approval by the District of the PS&E, and acquisition of any right-of-way and/or temporary easements, the County may at the recommendation of the County Engineer:
 - (a) Utilize an existing on-call construction contract for construction of the Project; or
 - (b) Advertise for and receive bids for construction of the Project, in a manner similar to other County projects.

- (iv) Upon determining and estimate of the Project Cost (“Project Cost Estimate”), based on one of the options above, the County shall invoice the District for the District Funding Share, as defined in Section II.B. below.
- (v) Upon receipt of the District Funding Share, the County may:
 - (a) Issue a purchase order for construction of the Project, under an existing on-call construction contract; or
 - (b) Award and issue a purchase order under a new construction contract for construction of the Project, based on the low bidder, in a manner similar to other County projects.
- (vi) Upon issue of a purchase order for construction of the Project, 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 District.
- (vii) The County is responsible for payment of all costs, fees, and/or expenses for the design and construction of the Project (“Project Costs”), less the District Funding Share.
- (viii) Upon completion of the construction of the Project, the County shall:
 - (a) Provide an opportunity for the District to participate in a final walk-through and preparation of a punch list in regards to the construction of the Project.
 - (b) Be responsible for the perpetual maintenance and repairs of the Project, at no cost to the District, in a manner consistent with County maintenance and repairs on similar projects.

B. District’s Responsibilities

- (i) The District shall review the PS&E prepared by the County for construction of the Project and will notify the County Engineer of any objections or approval within ten (10) days of receipt by the District. If the District has not approved the PS&E within ten (10) days from its receipt of the PS&E, then the PS&E submitted to the District will be deemed approved.
- (ii) The District shall remove and/or relocate, or cause to be removed and/or relocated, any District utilities, irrigation systems, and/or landscaping (“District Facilities”) found to be in conflict with construction of the Project, at no cost to the County.
- (iii) The District shall provide temporary construction easements as needed for re-construction of driveway grades outside of County right-of-way, if needed.
- (iv) District representatives will be allowed to visit the site of the Project, so long as they do not impede work in progress and identify themselves accordingly to the County’s representative.

Section 2. Funding

Notwithstanding any provision in this Agreement to the contrary, the following provisions will apply to all payments made under this Agreement:

- A. Upon determination of the Project Cost Estimate, the County will determine the District Funding Share.
- B. The District will fund 60% of the Project Cost Estimate, currently estimated at \$172,257.00 ("District Funding Share").
- C. The County may make minor changes in the PS&E through change(s) in contract ("CIC") that the County deems to be necessary or desirable during the construction of the Project, so long as the original scope and intent of the Project is maintained.
- D. The District will remit payment to the County within thirty (30) calendar days of receipt of an invoice from the County, in the amount of the District Funding Share.

Section 3. Limitation of Appropriation

- A. The District understands and agrees that the laws governing the letting of contracts for the County require the approval of the Harris County Auditor and his certification that funds are, or will be, available for the payment of the obligations created under the Agreement from current fiscal funds before such contracts become effective.
- B. The District understands and agrees, said understanding and agreement also being 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 3. District's Request for Records, Right to Review and Audit

The District and its authorized representatives shall have the right to review and audit all books, records, vouchers, and documents of whatever nature related to the County's performance under this Agreement during the period of performance of the Agreement and for six (6) years thereafter, or for so long as there exists any dispute or litigation arising from this Agreement. District is responsible for the cost of duplication.

Section 4. Term and Termination

- A. This Agreement is effective as of the date that it has been approved and executed by all Parties (the "Effective Date") and shall remain in full force and effect until the completion of construction of the Project or until the County's receipt of payment from the District of all funds due and owing under the terms of this Agreement unless earlier terminated in accordance with the terms of this Agreement ("Term").
- B. This Agreement may be terminated (i) by the County before award of the construction contract; (ii) at any time by mutual written consent of the Parties, or (iii) as otherwise provided under this Agreement. Should this Agreement be terminated, the District 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 the District.

Section 5. Liability of the Parties

To the extent allowed by law, 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, to the extent permitted by law.

Section 7. Miscellaneous

- A. **Non-Assignability.** The County and District 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 District shall assign, sublet, or transfer its interest in this Agreement without the prior written consent of the other Party, which will not be unreasonably withheld.
- B. **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, 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 District at the following addresses:

District:

Alief Independent School District
4250 Cook Road
Houston, Texas 77072
Attention: Charles Woods, Deputy Supt of Business

County:

Harris County Engineering Department
1001 Preston Avenue, 7th Floor
Houston, Texas 77002-1893
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.

- C. **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, association 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 the District for any purpose. Neither the District, nor its employees, officers, or 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.

- D. 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 the District 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.
- E. 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.
- F. 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.
- G. 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.
- H. 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.
- I. 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 female gender is used, the meaning shall apply to both.
- J. Recitals. The recitals set forth in this Agreement are, by this reference, incorporated into and deemed a part of this Agreement.
- K. 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.
- L. 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.
- M. 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 shall survive such expiration or earlier termination. If an ambiguity exists as to survival, the provision shall be deemed to survive.
- N. 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.
- O. Warranty. By execution of this Agreement, the District warrants that the duties accorded to the District in this Agreement are within the powers and authority of the District.

[EXECUTION PAGE FOLLOWS]

HARRIS COUNTY

By: 
Ed Emmett
County Judge *UK*

ALIEF INDEPENDENT SCHOOL DISTRICT

By: 
President of the Board
Date: 9/18/2018

APPROVED AS TO FORM:

VINCE RYAN
County Attorney

By: 
DeAnne A. Lin
Assistant County Attorney
CAO File No.: 18GEN1509

ATTEST

By: 
Secretary of the Board
Date: 9/18/2018

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 District of Houston, Texas, on OCT 09 2018, with all members present except none.

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

ORDER AUTHORIZING EXECUTION OF AN INTERLOCAL AGREEMENT BETWEEN HARRIS COUNTY AND ALIEF INDEPENDENT SCHOOL DISTRICT IN CONNECTION WITH THE CONSTRUCTION OF NEW SIDEWALK SEGMENTS, ALONG HOWELL SUGARLAND ROAD BETWEEN BELLAIRE BOULEVARD AND BEECHNUT STREET, IN HARRIS COUNTY PRECINCT 3

Commissioner Cagle introduced an order and moved that Commissioners Court adopt the order. Commissioner Morman 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 Ed Emmett	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Rodney Ellis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Jack Morman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Steve Radack	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. R. Jack Cagle	<input checked="" 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:

- The Harris County Judge is authorized to execute on behalf of Harris County the attached Interlocal Agreement between Harris County and Alief Independent School District in connection with the construction of new sidewalk segments, along Howell Sugarland Road between Bellaire Boulevard and Beechnut Street, in Harris County Precinct 3.
- All Harris County officials and employees are authorized to do any and all things necessary or convenient to accomplish the purposes of this order.

Presented to Commissioners' Court

OCT 09 2018
APPROVE C/M
Recorded Vol. _____ Page _____