

INTERLOCAL AGREEMENT

This Interlocal Agreement (“Agreement”) is entered into by and between **Harris County** (“the County”) and **City of Deer Park** (“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, the County intends to construct improvements to Ivy Avenue between SH 225 and 8th Street (“the Project”), and

WHEREAS, the Project will include re-construction of the existing concrete pavement, sidewalks, storm sewer, traffic signals and related appurtenances, and

WHEREAS, any City Utilities that are found to be in conflict with the Project (“City Utilities”) will be included in the design and construction of the Project by the County, and

WHEREAS, the Parties have agreed that the Project will be a mutual benefit to the County and the City, and

NOW THEREFORE, the County and the City desire to cooperate in accordance with this Agreement to jointly accomplish the 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,.
- (ii) The County will submit the PS&E to the City for review and approval.
- (iii) Upon completion of the PS&E for the Project, and approval by the City of the PS&E, the County Engineer may advertise for and receive bids for construction of the Project in a manner similar to other such County projects.
- (iv) Upon receipt of funding from the City 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.
- (v) 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/she deems necessary or desirable during the

construction of the Project, including the re-construction or relocation of any affected City Utilities.

B. City's Responsibilities

- (i) 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 ten (10) days aforementioned.
- (ii) The City will provide its funding share for the design and construction of the Project as provided by the terms of this Agreement.
- (iii) Upon completion of construction of the Project, the City shall assume full ownership of and responsibility for the maintenance and repair of the Project, to the extent and in the same manner as other like facilities within the City. The County will not be not responsible for the ongoing maintenance or condition of the Project.

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 cost to the City based on such lowest and best bid, in accordance with Exhibit A attached hereto ("City Cost"). If the City Cost does not exceed the sum of \$1,135,673.40, 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 exceeds the sum of \$ 1,135,673.40, 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 such case, the County Engineer will notify the City of its decision. Within thirty (30) calendar days after receipt of said notification, the City shall remit payment to the County in the amount of \$ 1,135,673.40;
 - (ii) The County may reject all bids and elect not to proceed with the letting of a contract and terminate this Agreement as set forth below, in which case the City shall then remit payment within thirty (30) days thereafter to the County in the amount of 15% of the most current construction cost estimate related to any City Utilities that were included in the engineering for the Project; or
 - (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 negotiated, the Parties shall proceed under the terms of the Amendment. If the Parties fail to agree on 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 then 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.
 - (ii) Alternatively, if the Actual City Cost is determined to be 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.

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 affecting the Project. However, the City shall give notice by telephone to the County Engineer prior to any scheduling 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 complete the construction of the Project (“Additional Construction”). If such Additional Construction is necessary, the County Engineer will 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 cost will include 15% for related engineering services and 5% for administrative 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.

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. However, the County has no obligation to deliver the record drawings and specifications until 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 of any requested records, vouchers and/or documents.

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 which relate to the Project.
- 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 Deer Park
710 E, San Augustine
Deer Park, Texas 77536
Attention: Bill Pedersen, Public Works Director
Email: bpedersen@deerparktx.org

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

Any Notice given hereunder is deemed given upon hand delivery, or within 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 _____, 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 _____, 2017, been executed on behalf of the City by the Mayor and attested to by its City Secretary, pursuant to ordinance of the City Council of the City of Deer Park authorizing such execution.

HARRIS COUNTY

CITY OF DEER PARK

By: _____
Ed Emmett
County Judge

By: _____
Mayor

APPROVED AS TO FORM:

ATTEST

VINCE RYAN
County Attorney

By: _____
City Secretary

By: _____
James M. Lemond
Assistant County Attorney
CAO File Number 17GEN0502

COUNTERSIGNED BY:

City Controller

EXHIBIT A

IVY AVENUE - CITY OF DEER PARK

February 28, 2017

				City Costs
<u>No.</u> Estimate or Final Pay Est.	Description	Estimated Total Costs (Estimate Used In Agreement)	Estimated County Costs (Estimate Used In Agreement)	Estimated City Costs (Estimate Used In Agreement)
	CONSTRUCTION			
	Total Construction Cost for Project	\$ 1,947,195.73		
	City Utilites Construction Cost:			
	Water Line	\$ 2,990.00		\$ 2,990.00
	Wastewater Line	\$ 8,855.00		\$ 8,855.00
	Extra Work Items	\$ 2,242.50		\$ 2,242.50
	Subtotal - City Utilites ConstructionCost	\$ 14,087.50		\$ 14,087.50
	Remaining Cost	\$ 1,933,108.23	\$ 966,554.12	\$ 966,554.12
	Subtotal - Construction Cost	\$ 1,947,195.73	\$ 966,554.12	\$ 980,641.62
	Contingency -5% For Potential High Bids	\$ 97,359.79	\$ 48,327.71	\$ 49,032.08
	Subtotal	\$ 2,044,555.52	\$ 1,014,881.82	\$ 1,029,673.70
	Contingency -10% For Potential CIC's	\$ 204,455.55	\$ 101,488.18	\$ 102,967.37
	TOTAL CONSTRUCTION COST	\$ 2,249,011.07	\$ 1,116,370.00	\$ 1,132,641.07
	ENGINEERING &RELATED SERVICES			
	Preliminary/Design/Contract Phases	\$ 161,670.70	\$ 161,670.70	
	Construction Phase	\$ 29,000.00	\$ 29,000.00	
	City Utilities - Engineering-Preliminary, Design, Contract & Construction Phases	\$ 2,113.13		\$ 2,113.13
	TOTAL ENGINEERING COSTS	\$ 192,783.83	\$ 190,670.70	\$ 2,113.13
	ADMINISTRATION			
	5% of Construction Cost Related to City Utilities	\$ 813.55		\$ 813.55
	5% of Engineering Cost Related to City Utilities	\$ 105.66		\$ 105.66
	TOTAL ADMINISTRATION COST	\$ 919.21	\$ -	\$ 919.21
	CONSTRUCTION MATERIALS TESTING (CMT)	\$ 67,470.33	\$ 67,470.33	\$ -
	TOTAL COSTS FOR PROJECT	\$ 2,510,184.43	\$ 1,374,511.03	\$ 1,135,673.40

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 EXECUTION OF AN INTERLOCAL AGREEMENT BETWEEN HARRIS COUNTY AND CITY OF DEER PARK FOR THE RE-CONSTRUCTION OF IVY AVENUE FROM SH 225 TO 8TH STREET IN HARRIS COUNTY PRECINCT 2

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 Ed Emmett	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Rodney Ellis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Jack Morman	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Steve Radack	<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 **City of Deer Park** for the re-construction of Ivy Avenue from SH 225 to 8th Street, in Harris County Precinct 2.
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.