

**INTERLOCAL AGREEMENT BETWEEN GALVESTON COUNTY
AND CITY OF LEAGUE CITY FOR THE DICKINSON AVENUE PROJECT
AND OTHER ROAD IMPROVEMENT PROJECTS**

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This Interlocal Agreement (the “Agreement”) is entered on the date indicated below between the City of League City, Texas (the “City”), a municipal corporation and Galveston County, Texas (the “County”) and known together as the “Parties”.

RECITALS

WHEREAS, the Parties intend this Agreement to follow Chapter 791 of the Government Code, cited as the Interlocal Cooperation Act (the “Act”), as contract for government services related to roadway construction; and Transportation Code §251.012 and

WHEREAS, the County has committed to providing funding towards various road improvement projects located in League City in an amount not to exceed \$10,480,000; and

WHEREAS, the Parties have identified the Dickinson Avenue Project (the “Project”) as an eligible road improvement project in League City and the Parties desire to cooperate in the sharing of costs for the Project; and

WHEREAS, after reimbursing the City’s costs for Construction services and materials testing of the Project, the County will reallocate any remaining funding to other eligible road improvement projects in League City; and

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree to the following terms:

TERMS

1. Incorporation of Recitals. The recitals set forth above are true and correct and are hereby incorporated into this Agreement.
2. Term and Expiration of Services. The effective date of this Agreement shall be on the date of execution by both parties and shall continue until all funds have been expended.
3. Project Description. The Project contemplated in this Agreement is shown in **Exhibit A**, which is attached and incorporated herein and can be generally described as improving Dickinson Avenue between Walker Street and FM 646.
4. Definitions.

- 4.1. "City Project Costs" means all Project costs related to Design, Right-of-Way Acquisition, construction management administration and construction inspection services.
 - 4.2. "Construction" means the provision of all materials, equipment, labor, and surveying, necessary to construct the Project according to the plans and specifications.
 - 4.3. "County Project Costs" means all Project Costs related to materials testing and Construction services.
 - 4.4. "Design" means engineering, surveying, geotechnical, environmental and any other professional or technical services required to produce bidding documents, construction plans, and specifications for the Project.
 - 4.5. "Project Costs" means all costs related to causing the Project to be constructed, including, to Design services, Right-of-Way Acquisition and construction inspection services geotechnical/materials testing and Construction services.
 - 4.6. "Right-of-Way Acquisition" means all engineering, surveying, appraisal, legal, title company and other services required to acquire in fee simple the parcel(s) of land necessary to construct the Project.
5. Obligations of the City.
- 5.1. City as Project Manager. The City agrees to serve as Project Manager on behalf of the Parties and administer all aspects of Design, Right-of-Way Acquisition and Construction for the Project, including preparation of construction plans, competitive bidding, construction inspection of the Projects, and consultant selection, with the exception of the material testing consultant. The County will select the material testing consultant.
 - 5.2. City Contribution. The City shall be responsible for all City Project Costs.
 - 5.3. Transmission of Invoices. Upon the City's approval of each invoice for County Project Costs, the City will transmit a copy of the invoice to the County on a monthly-basis. Each invoice shall identify all County Project Costs incurred by the City relating to the Project. Each invoice submitted by the City to the County for reimbursement will clearly describe the work done for which reimbursement is sought.
 - 5.4. Access to Documentation. Upon request by the County, the City agrees to make available documentation in reasonable detail evidencing all County Project Costs for which reimbursement is sought.
6. Obligations of the County.
- 6.1. Reimbursement by County. After receipt, proper documentation and approval of each invoice for County Project Costs from the City, the County shall make a good faith effort to pay the amount which is due and payable within thirty (30) days of the County's approval of such invoice. Payment

not mailed or transmitted to the City within thirty (30) calendar days receipt by the County will accrue interest at a rate set forth in Government Code Section 221.025(b).

- 6.2. Reimbursement Limit. The Parties agree that in no event shall the total of the County's reimbursements under this Agreement for the Project exceed \$10,480,000.
- 6.3. Reallocation to Other Projects. In the event the amount of reimbursement by the County for the Project is less than \$10,480,000, the County agrees to reallocate the balance of any remaining funding to other road improvement projects in League City mutually-agreed to by the Parties.
7. Assignment. No assignment of this Agreement, in whole or in part, for any purpose shall be made by either party without the written consent of the other party. Subject to this limitation, this Agreement shall bind and inure to the benefit of the successors and assigns of the Parties.
8. Interpretation of Agreement. This Agreement or any portion thereof shall not be interpreted by a court of law to the detriment of a party based solely upon that party's authorship of the Agreement or any portion thereof.
9. Severability. If for any reason, any one or more paragraphs of this Agreement are held legally invalid, such judgment shall not prejudice, affect, impair or invalidate the remaining paragraphs of this Agreement as a whole.
10. Entire Agreement. This Agreement constitutes the entire Agreement between the parties hereto and supersedes all prior agreements, understandings and arrangements, oral or written, between the parties thereto with respect to the subject thereof.
11. Governing Law and Venue. This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of Texas and the venue for any cause of action shall be brought in Galveston County, Texas.
12. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to one and the same instrument.
13. No Joint Venture. This Agreement is not intended to create, nor should it be construed as creating a partnership, association, joint venture, or trust.
14. No Waivers. The waiver by any party hereto of a breach of any term or provision of this Agreement shall not be construed as a waiver of any subsequent breach.
15. Current Revenues Available and No Tax Revenue. Both parties agree that any payments that are made under this Agreement for government functions or services will be made from current revenues available to the paying party. Tax revenue may not be pledged to the payment of amounts agreed to be paid under this Agreement.

16. No Third-Party Beneficiary. Nothing in this Agreement shall entitle any third party to any claim, cause of action, remedy or right of any kind, it being the intent of the parties that this Agreement shall not be construed as a third-party beneficiary contract.
17. Force Majeure. If by reason of Force Majeure, the City shall be unable in whole or in part to carry out its obligations under this Agreement in accordance with the terms and conditions of this Agreement, it shall not be considered a breach by this Agreement. The term “Force Majeure” as used in this Agreement shall mean acts of God, strikes, lock-outs, or other industrial disturbances, acts of public enemy, orders of any kind of the federal or state government, or any civil or military authority, insurrection, riots, epidemics, landslides, lighting, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, the partial or entire failure of the City, or any other causes not reasonably within the control of the City.
18. Immunity. It is expressly understood and agreed that, in the execution of this Agreement, the Parties do not waive any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions.

Executed this _____ day of _____ 2018.

THE CITY OF LEAGUE CITY

John Baumgartner, City Manager

Attest:

Diana Stapp, City Secretary

Approved as to Form:

Nghiem V. Doan, City Attorney

GALVESTON COUNTY, TEXAS (the “County”)

Mark Henry, County Judge

Attest:

Dwight D. Sullivan, County Clerk