



## **AGREEMENT**

### **Section 1. Purpose**

The purpose of this Agreement is to outline the funding obligations related to the improvements to Independence Boulevard [Segment 1] and Staffordshire Road.

### **Section 2. Definitions**

- A. **City** means the City of Missouri City, Texas.
- B. **County** means Fort Bend County, Texas.
- C. **Project** means improvements to the Independence Boulevard [Segment 1] and Staffordshire Road as follows:

- (1) Independence Boulevard - Construction of a four-lane divided boulevard from Staffordshire Road, which includes a left turn lane, drainage improvements for the roadway and associated work to 1,400 feet east of Moore Road; and
- (2) Staffordshire Road – Construction of a concrete roadway with the addition of shoulders from Scanlin Street to Court Road, including the re-alignment of the intersection at Court Road, all within a 60' right of way, and drainage improvements.

D. **Eligible Project Costs** means costs, as determined by County, for construction of roadway improvements, project related drainage facilities, utility and pipeline conflicts, approved traffic control devices, and sidewalks up to five feet (5') wide for the Independence Boulevard portion of the Project. Eligible Project Costs shall exclude costs for engineering design and services related to the completion of Plans, Specifications and Estimates ("PS&E") for construction of such roadway improvements; and design and construction costs related to landscaping, irrigation, lighting, hike & bike trails, reconstruction of utilities, except utility conflicts created by the construction of Project elements and similar facilities proposed to be part of the Project.

### **Section 3. Incorporation of Recitals**

The representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are incorporated into this Agreement.

### **Section 4. County Rights and Obligations**

A. County shall have the right to approve the engineer and related consultants selected by the City for the Project.

B. During the work on the Project, County shall have the right to review all documents, maps, plats, records, photographs, reports and drawings affecting the construction and to inspect the work in progress, provided however, that in conducting such inspections,

County shall not interfere with the work in progress. Any deficiencies noted by County shall be brought to the attention of City and the deficiencies shall be promptly addressed by City.

C. County shall have the right to participate in the final inspection of the Project. At that time, any deficiencies noted by County shall be promptly addressed by City.

D. The County's sole financial obligation under this Agreement is to advance the funding for the Project to the City to facilitate early completion of the Project and to pay the City for Eligible Project Costs as specified in this Section.

- (1) The County agrees to pay fifty percent (50%) of the Eligible Project Costs up to a maximum amount of \$4,100,000.
- (2) The County agrees to advance an amount to fund costs, other than Project Costs, as determined by City, for engineering design and services related to the completion of PS&E ("Design Costs") within thirty (30) days of final execution of the Agreement or receipt of a request for funding from the City, whichever occurs later.
- (3) Upon the City's award of the construction contract for the Project, City will forward to the County a request for advance funding of the construction of the Project ("Construction Costs") that includes sufficient detail for the County to review the successful bidder's submittal. The County will forward payment for Construction Costs to the City within thirty (30) days of approval of the construction contract by the City Council and receipt of a request from the City for the advance funding of the Construction Costs, whichever is later. Advance payment for Construction Costs may include Eligible Project Costs; provided that, funding in an amount that exceeds the limits for the payment of Eligible Project Costs set forth herein shall be reimbursed by the City as provided by this Agreement.

E. The County is not obligated to expend more than \$8,500,00 on the Project from the 2013 General Obligation Bonds or any other sources of funding, including advance funding partially reimbursable by the City. However, the County's contribution to the Project, after reimbursement by the City, shall remain limited to fifty percent (50%) of the Eligible Project Costs up to a maximum amount of \$4,100,000.

- (1) Any advance funding by the County may be used by the City for Design Costs and Construction Costs; provided that, such funds advanced by the County shall not be considered as the County's contribution to fund the Project in excess of fifty percent (50%) of the Eligible Project Costs.
- (2) The City shall reimburse the County for all advance funding and payments by the County for Design Costs and Construction Costs in excess of fifty percent (50%) of the Eligible Project Costs or \$4,100,000, whichever is less, plus the County's Interest Expense, as defined herein.

## **Section 5. City Obligations**

A. The City is responsible for managing the design and overseeing the construction and completion of the Project and complying with the applicable state and federal laws.

B. The City is responsible for right of way acquisition and utility pipeline relocations required for completion of the Project, except for utility and pipeline relocations required due to direct conflicts with proposed improvements that are considered Eligible Project Costs.

C. The City shall reimburse the County for funds advanced by the County as specified in this Section.

(1) Funds used by the City for Design Costs shall be reimbursed by December 31, 2017. If the City has advertised the construction contract for the lowest bidder by September 30, 2017, the City will apply the reimbursement due to the County for Design Costs to the construction contract.

(2) Funds used by the City for construction of the Project less Eligible Project Costs, agreed to by the County, up to County's limit of financial obligation as provided by Section 4. D. above, shall be reimbursed by December 31, 2018.

(3) The City agrees to reimburse the County for any Interest Expense, as determined by the County Auditor, incurred by the County due to the advance funding of the Project by the County. Interest Expense means interest, if any, on the County's payments in excess of the fifty percent (50%) of the Eligible Project Costs or \$4,100,000, whichever is less, at a rate equal to the County's actual borrowing costs.

D. The City agrees to commence construction of the Project by December 31, 2017. In the event the City determines the Project lacks feasibility or for any other reason elects to forego its construction, the City shall provide written notice to the County of its decision to forego construction and, refund all advanced fund amounts provided by County upon thirty (30) days of said notice to the County.

E. The City shall submit reports to the County describing in sufficient detail the progress of the Project. These reports shall be submitted to County at increments agreed to between the parties as appropriate for the various phases of the Project. Reports received by the City from contractors detailing the progress of the Project shall suffice for the requirements of this section, so long as the City has reviewed such reports and confirmed accuracy of the contractor's report.

F. The City will submit the plans for the Project to the County Engineer for review in accordance with the 2013 General Obligation Bond requirements for the Project. During the work on the Project, the County may review the documents, maps, plats, records, photographs, reports, and drawings pertaining to the Project and may inspect the work in progress, provided that it does not interfere with the work.

G. Upon completion of the Project, but no later than 60 days after, the City will furnish the County with a full accounting of the funds expended on the Project and an electronic copy of the record drawings showing the Project as constructed. The County Auditor may review the City's records regarding this Project.

H. If, after completion of Project and the City's receipt of the funds as stated in Section 3, there are funds remaining and/or savings from Project, City shall return such funds to County within 30 days of County acceptance of full accounting required in Section 5.G above.

#### **Section 6. Liability**

The City and County are entitled to the immunities and defenses of the Texas Tort Claims Act.

#### **Section 7. Maintenance**

Upon completion of the Project, each party shall maintain that portion of the Project within its own jurisdiction.

#### **Section 8. Limit of Appropriation**

A. Prior to the execution of this Agreement, the City has been advised by the County, and the City clearly understands and agrees, such understanding and agreement being of the absolute essence to this Agreement, that the County shall have available the total maximum amount of \$8,500,000, with a total County contribution not to exceed \$4,100,000 after reimbursement by the City, specifically allocated to fully discharge any and all liabilities that may be incurred by the County for the Project. Notwithstanding, the total maximum amount available, County shall not be obligated to pay any amount in excess of the amount contributed by the City to the Project.

B. The City does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum funding that the City may become entitled to hereunder and the total maximum amount that the County will contribute to the Project, after reimbursement by the City, hereunder will not under any condition, circumstance or interpretation hereof exceed \$4,100,000.

C. Each party paying for the performance of its obligations under this Agreement shall make those payments from current revenues available to that party.

#### **Section 9. Insurance Requirements**

City agrees that it will require Contractor's insurance policies name County as well as City as additional insureds on all policies except for Workers' Compensation and Professional Liability. Any such insurance policies shall include at least the following minimum coverage:

A. Worker's Compensation in the amount required by law. The policy shall include the All States Endorsement.

B. Comprehensive General Liability Insurance including contractual liability insurance, \$1,000,000 per occurrence, \$2,000,000 aggregate (defense costs excluded from face amount of policy).

C. Comprehensive Automobile Liability Insurance, including owned, non-owned and hired vehicles used for the Project, with bodily injury and property damage with a combined limit of not less than \$1,000,000 each occurrence.

D. City may require insurance in excess of the amount of coverage set out above, as it deems necessary, in such cases County shall remain an additional insured. City will provide County with proof of insurance within 30 days of City's award of the contract for the Project construction.

#### **Section 10. Assignment**

No party hereto 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.

#### **Section 11. No Third Party Beneficiaries**

The parties do not intend that any specific third party obtain a right by virtue of the execution or performance of this Agreement.

#### **Section 12. Notices**

All notices and communications under this Agreement shall be mailed by certified mail, return receipt requested, or delivered to the following addresses:

County:	Fort Bend County Attn: Robert E. Hebert, County Judge 401 Jackson Street, 1 <sup>st</sup> Floor Richmond, Texas 77469
With a copy to:	Fort Bend County Engineering Department Attn: Richard Stolleis, P.E., County Engineer 301 Jackson Street Richmond, Texas 77469
City:	City of Missouri City, Texas Attn: City Manager 1522 Texas Parkway Missouri City, Texas 77489

#### **Section 13. Entire Agreement**

This Agreement contains the entire agreement between the parties relating to the rights granted and the obligations assumed. Any modifications concerning this instrument shall be of no force or effect, unless a subsequent modification in writing is signed by all parties hereto.

**Section 14. Execution**

This Agreement has been executed by the City and the County upon and by the authority of their respective governing bodies. This Agreement shall become effective on the date executed by the final party, and remain in effect until September 30, 2020 or until the Project is complete and the obligations under Sections 4 and 5 of this Agreement are fulfilled, whichever is sooner.

**FORT BEND COUNTY, TEXAS**

\_\_\_\_\_  
Robert E. Hebert, County Judge

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Laura Richard, County Clerk

APPROVED:

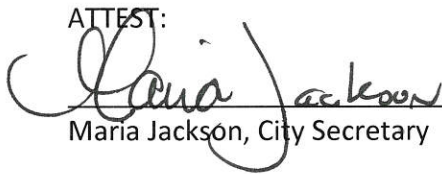
  
\_\_\_\_\_  
Richard W. Stolleis, P.E., County Engineer

**CITY OF MISSOURI CITY, TEXAS**

  
\_\_\_\_\_  
Allen Owen, Mayor

Date: May 15, 2017

ATTEST:

  
\_\_\_\_\_  
Maria Jackson, City Secretary

**AUDITOR'S CERTIFICATE**

I hereby certify that funds are available in the amount of \$\_\_\_\_\_ to accomplish and pay the obligation of Fort Bend County under the terms of this Agreement.

\_\_\_\_\_  
Robert Ed Sturdivant, Fort Bend County Auditor

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