

THE STATE OF TEXAS

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KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF FORT BEND

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**INTERLOCAL AGREEMENT FOR CITY-MANAGED MOBILITY PROJECT  
FORT BEND COUNTY PROJECT NO. 13204 – INDEPENDENCE BLVD [SEGMENT 2]  
MISSOURI CITY PROJECT NO. [ 50085 ]**

This Agreement is made and entered into pursuant to the Interlocal Cooperation Act, Chapter 791 of the TEXAS GOVERNMENT CODE and Section 251.012 of the TEXAS TRANSPORTATION CODE, by and between the City of Missouri City, a municipal corporation and home-rule city of the State of Texas, principally situated in Fort Bend County, acting by and through its City Council, ("City"), and Fort Bend County, a body corporate and politic under the laws of the State of Texas, acting by and through its Commissioners Court, ("County").

**RECITALS**

WHEREAS, in 2013 the citizens of Fort Bend County voted to approve the issuance of general obligation bonds that allows the County to participate with other local governmental entities to fund certain regional street and road improvements and associated drainage facilities ("Mobility Projects") that are funded in part by the state or federal government; and

WHEREAS, the project contemplated in this Agreement is the construction or roadway improvements that will enhance the traffic flow/circulation and drainage in the service area, and such Project is desired by the City and the County; and

WHEREAS, the County may not expend proceeds of bond issues or taxes levied pursuant to Article III, Section 52 (b) or (c) of the Texas Constitution on city streets that are not integral parts of or connecting links with county roads or state highways in accordance with Section 251.012 of the TEXAS TRANSPORTATION CODE; and

WHEREAS, the parties assert that the Project is part of a city street that is an integral part of or a connecting link with county roads or state highways in accordance with Section 251.012 of the TEXAS TRANSPORTATION CODE; and

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

WHEREAS, the City and the County agree to participate in this Project according to the terms of this Agreement; and

WHEREAS, the governing bodies of the City and County have authorized this Agreement;

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

## **AGREEMENT**

### **Section 1. Purpose**

The purpose of this Agreement is to outline the funding obligations related to the improvements to Independence Boulevard [Segment 2].

### **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 2], being a four-lane divided boulevard from 1,400 feet east of Moore Road, which includes a concrete curb and gutter roadway, drainage improvements and associated work required for construction of a four-lane divided boulevard roadway to S. Revolution Way.
- D. **Eligible Project Costs** means costs, as determined by County, for engineering design and services related to the completion of Plans, Specifications and Estimates ("PS&E") and construction of roadway improvements, project related drainage facilities, utility and pipeline conflicts, approved traffic control devices, and sidewalks up to five feet (5') wide. Eligible Project Costs shall exclude 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 obligation under this Agreement is to provide the funding for Eligible Project Costs to the City as specified in this Section. The County agrees to pay the City an amount equal to the lesser of the following:

- (1) an amount equal to the City's contribution towards Eligible Project Costs; or
- (2) Fifty Percent (50%) of Eligible Project Costs; or
- (3) \$1,100,000

E. The County is not obligated to expend any further funds above \$1,100,000 on the Project from the 2013 General Obligation Bonds or any other sources of funding, nor shall the County's share of the Project exceed fifty percent (50%) of the cost of Eligible Project Costs or exceed the amount contributed by the City.

F. The County will forward the lesser amount as detailed in Section 4. D., above to the City upon the City's award of the construction contract for the Project. The City will forward to the County a request for payment that includes sufficient detail for the County to review the low bidder submittal. The County will forward payment to the City within 30 days of approval of the construction contract from the City Council and a request from the City for payment.

#### **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. 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 amounts provided by County upon thirty (30) days of said notice to the County.

C. 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.

D. 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.

E. 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.

F. If, after completion of Project and the City's receipt of the funds as stated in Section 4, 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.E. 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 Fifty Percent (50%) of Eligible Project Costs or \$1,100,000, WHICHEVER AMOUNT IS LESS, 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 reimburse the City hereunder will not under any condition, circumstance or interpretation hereof exceed the amount contributed by the City to the Project up to the sum of Fifty Percent (50%) of Eligible Project Costs or \$1,100,000, WHICHEVER AMOUNT IS LESS.

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:

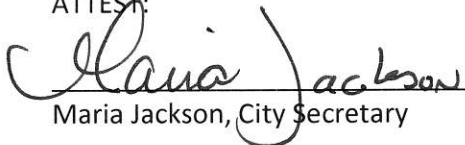
  
\_\_\_\_\_  
Richard W. Stolleis, P.E., County Engineer

**CITY OF MISSOURI CITY, TEXAS**

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

Date: 5.15.2017

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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