

THE STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

KNOW ALL MEN BY THESE PRESENTS:

**INTERLOCAL AGREEMENT FOR CITY-MANAGED MOBILITY PROJECT
FORT BEND COUNTY PROJECT NOS. 715, 13104, AND 716 – BRYAN ROAD AND SPACEK ROAD**

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 Rosenberg, Texas, 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 2007 and 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, as defined below, 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 Bryan Road and Spacek Road.

Section 2. Definitions

- A. **City** means the City of Rosenberg, Texas.
- B. **County** means Fort Bend County, Texas.
- C. **Project** means the construction of four-lane concrete curb and gutter roadways with storm sewer and related drainage detention facilities along Bryan Road from FM 2218 to Spacek Road and Spacek Road from Bryan Road to north to Walnut Glen Lane.
- D. **Eligible Project Costs** means costs, as determined by County, construction of roadway improvements, Project related drainage facilities, utility and pipeline conflicts, approved traffic control devices, sidewalks up to five feet (5') wide, and construction phase inspection and project management services. Eligible Project Costs shall exclude, unless otherwise stipulated herein, right of way acquisition, engineering design and services related to the completion of Plans, Specifications and Estimates ("PS&E") for the Project, design and/or construction costs related to landscaping, irrigation, lighting, hike & bike trails, reconstruction or new construction of utilities, except utility conflicts created by the construction of Project elements, design and construction of upgrades to eligible project improvements and similar facilities proposed by the City to be part of the Project.
- E. **Right of Way Acquisition (ROW) Costs** means all costs associated with the acquisition of all fee, easement and other interest in real property required for the construction, operation and maintenance of the road(s).

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's Rights and Obligations

- A. 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 brought to the attention of City by the County shall be promptly addressed by City.
- B. 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.
- C. The County's sole obligation under this Agreement is to provide the funding for Eligible Project Costs and reimbursement of the ROW Costs as specified in this Section.

- (1) Eligible Project Costs – The County agrees to pay the City an amount equal to the lesser of the following:
 - a) an amount equal to the City’s direct contribution towards Eligible Project Costs, which shall not include a contribution made by a third party on the City’s behalf (“City’s Direct Contribution”); or
 - b) Fifty Percent (50%) of Eligible Project Costs; and
- (2) ROW Costs – The County agrees to reimburse the City one hundred percent (100%) up to a maximum amount of \$1,000,000.
- (3) The County’s maximum contribution to the Project, including Eligible Project Costs and ROW Costs, is a total amount of \$6,768,392.

D. The County is not obligated to expend any further funds above \$6,768,392 on the Project (Eligible Project Costs and ROW Costs) from the 2007 General Obligation Bonds, 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 City’s Direct Contribution. The County is not obligated to reimburse the City for ROW Costs in excess of \$1,000,000.

E. The County will forward the lesser amount for Eligible Project Costs as detailed in Section 4. C. (1) 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.

F. The County will forward the reimbursement for ROW Costs to the City within thirty (30) days of the County’s acceptance of City’s full accounting of its funds expended on the Project.

G. Should the City fail to initiate Project design or construction by the dates provided below, or elect to forego construction for any reason, the County shall have, within its sole discretion to exercise, the right to re-allocate its contribution as it determines appropriate.

Section 5. City’s Rights and 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 has completed the Project PS&E and has received bids for the Project.

C. The City agrees to initiate construction of the Project within twelve (12) months of the execution of this Agreement or September 30, 2018, whichever is the earliest.

D. In the event the City fails to initiate Project construction within the time prescribed above, 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 such failure or its decision to forego construction. This Agreement shall automatically terminate upon the City’s election to forego construction of the Project. However, in the case of the City’s delay in initiating Project

construction, the County shall have the option to proceed with its obligations under this Agreement, notwithstanding such delay. Upon an election to terminate this Agreement under any circumstances, City agrees to refund all amounts provided by County, if any, 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 2007 or 2013 General Obligation Bond requirements for the Project, as appropriate. 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, specifically identifying ROW Costs and a request for reimbursement by the County for such ROW Costs pursuant to Section 4. C. (2) above, 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 the Project and the full accounting, additional funds are necessary to fulfill the County's obligation to provide funding for Eligible Project Costs adjusted for actual costs consistent with Section 4. C. (1) above, the County shall submit such additional funding to the City, subject to the limitations stated therein, within thirty (30) days of the County's acceptance of the full accounting.

I. However, if the City has funds remaining from the County's payment for Eligible Project Costs made upon the awarding of the construction contract due to lower actual costs, the amount of such remaining funds shall be applied to the amount requested by the City for reimbursement of ROW Costs pursuant to Section 4. C. (2), subject to the limitation stated therein.

Section 6. Liability

The City and County are entitled to the immunities and defenses of the Texas Tort Claims Act. No provision of this agreement shall affect or waive any sovereign or governmental immunity available to either party and/or its elected officials, officers, employees and agents under Federal or Texas law nor waive any defenses or remedies at law available to either party and/or its elected officials, officers, employees and agents under Federal or Texas law.

Section 7. Maintenance

Upon completion of the Project, the City shall maintain the portion of the Project within its 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 \$6,768,392, specifically allocated to fully discharge any and all liabilities that may be incurred by the County for the Project. Notwithstanding the County's total maximum amount available, the County contribution obligation shall remain limited as provided in Section 4.

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 \$6,768,392, subject to the limitations as provided in Section 4.

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
Attention: Robert E. Hebert, County Judge
401 Jackson Street, 1st Floor
Richmond, Texas 77469

With a copy to: Fort Bend County Engineering Department
Attention: Richard Stolleis, P.E., County Engineer
301 Jackson Street
Richmond, Texas 77469

City: City of Rosenberg, Texas
Attention: City Manager
2110 Fourth Street
P.O. Box 32
Rosenberg, Texas 77471

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. Severability

In the event that one or more of the provisions contained in the Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein, but shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect.

Section 15. Venue

This agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with the laws of the State of Texas, without regard to its conflict of laws principles. Exclusive venue shall be in a court of competent jurisdiction in Fort Bend County, Texas.

Section 16. 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 (i.) September 30, 2022, (ii.) the Project is complete, (iii.) the Agreement is terminated otherwise as provided herein or (iv) the obligations under Section 4 and 5 of this Agreement are fulfilled, whichever is sooner.

FORT BEND COUNTY, TEXAS

CITY OF ROSENBERG, TEXAS

Robert E. Hebert, County Judge

William Benton
William T. "Bill" Benton, Mayor

Date: _____

Date: 9-19-17

ATTEST:

ATTEST:

Laura Richard, County Clerk

Linda Cernosek
Linda Cernosek, City Secretary
Assistant City Secretary

APPROVED:

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

APPROVED AS TO LEGAL FORM:

Marcus D. Spencer, First Assistant County Attorney

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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