

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 CONTRIBUTION OF RIGHT OF WAY FUNDS  
FM 2218 FROM SH 36 TO US 59**

This Agreement is made and entered into pursuant to the Interlocal Cooperation Act, Chapter 791 of the TEXAS GOVERNMENT CODE, by and between the City of Rosenberg, a municipal corporation and home-rule city of the State of Texas, 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"). The City and the County may be referred to collectively herein as the "Parties".

**RECITALS**

WHEREAS, the Texas Department of Transportation ("TxDOT") has deemed it necessary to make certain highway improvements on Highway No. FM 2218 from SH 36 to US 59, and this section of highway improvements will necessitate the acquisition of certain right of way and the relocating and adjusting of utilities (the "Project"); and

WHEREAS, the TxDOT will assume responsibility for acquisition of all necessary right of way and adjustment of utilities for the Project upon County agreeing to enter a fixed price joint participation agreement pursuant to 43 TAC §15.52 ("TxDOT Agreement") to participate in funding the cost of acquiring right of way and relocating or adjusting utilities for the proper improvement of the State Highway System; and

WHEREAS, the City and the County wish to jointly contribute to the County's participation under the TxDOT Agreement proportionately based on jurisdictional boundary limits; 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 believe it is in their respective best interests to enter into this Agreement to facilitate the provision of certain governmental functions to the citizens of Fort Bend County and 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. 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 2. Purpose**

The purpose of this Agreement is to outline the funding obligations related to the improvements to FM 2218 from SH 36 to US 59.

### **Section 3. Local Participation**

3.1 The Total Estimated Cost for Right of Way Acquisition and Reimbursable Utility Adjustments under the TxDOT Agreement is \$9,072,577.00, as shown in Exhibit A, attached hereto and incorporated herein for all purposes.

3.2 The County shall fund ten percent (10%) of the Total Estimated Cost, for a total amount of \$907,257.70 ("Local Participation").

3.3 The City agrees to reimburse the County for fifty percent (50%) of the Local Participation for costs ROW Parcels and Utility Adjustments within the jurisdictional boundary limits of the City. The Parties agree the table below reflects an accurate allocation of the Local Participation attributable to the costs of the Project located within the jurisdictional boundary limits of the City. Therefore, the City agrees to reimburse the County an amount equal to \$52,089.17 as shown below:

|                                                         |                                      |
|---------------------------------------------------------|--------------------------------------|
| Local Share for ROW Parcels within City Boundary Limits | \$68,007.60                          |
| Local Share for Utilities within City Boundary Limits   | \$36,170.74                          |
|                                                         | <u>(County and City split) X 50%</u> |
|                                                         | <b>\$52,089.17</b>                   |

3.4 The City's maximum contribution is \$52,089.17. Within thirty (30) days of final execution of this Agreement, the City shall submit payment in the amount \$52,089.17 to the County. The City shall take all necessary steps to ensure funds are properly appropriated to accomplish and pay the financial obligations of the City under this Agreement. If for any reason TxDOT cancels the project or decides not to acquire the ROW Parcels, or provide for the Utility Adjustments, the County shall return all, or any unused portions of the payment to the City within thirty (30) days of being notified by TxDOT. The City is not obligated to reimburse the County or expend any further funds above \$52,089.17 for the Local Share for ROW Parcels and Utility Adjustments within City Boundary Limits.

3.5 This Agreement shall continue in force and effect from the date of execution of the last party hereto until the transaction contemplated in Section 3.4 above is consummated. Prior to City making payment as provided in Section 3.4 above, either party may terminate this Agreement at any time upon fourteen (14) days written notice. However, upon City making such payment, neither party can terminate this Agreement.

#### **Section 4. Insurance and Liability**

4.1 County and City are both governed by the Texas Tort Claims Act, Chapter 101.001 et seq., as amended, of the Texas Civil Practice and Remedies Code which sets limits of liability for certain causes of action. Each party to this Agreement warrants and represents that it is insured under a commercial insurance policy or is self-insured for all claims falling within the Texas Tort Claims Act.

4.2 Each party is solely responsible for the actions and omissions of its employees and officers. No party hereto waives or relinquishes any immunity or defense on behalf of itself, its trustees, its officers, employees, and agents as a result of the execution of this Agreement and the performance of the covenants contained herein.

#### **Section 5. 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<br>Attn: Robert E. Hebert, County Judge<br>401 Jackson Street, 1 <sup>st</sup> Floor<br>Richmond, Texas 77469          |
| With a copy to: | Fort Bend County Engineering Department<br>Attn: Richard Stolleis, P.E., County Engineer<br>301 Jackson Street<br>Richmond, Texas 77469 |
| City:           | City of Rosenberg, Texas<br>Attn: John Maresh, City Manager<br>P.O. Box 32<br>Rosenberg, Texas 77471                                    |

#### **Section 6. Miscellaneous**

6.1 Each party shall make payments only from current revenues available to the party.

6.2 The parties may not amend or waive this Agreement, except by a written agreement executed by both parties.

6.3 The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement. Nothing in the Agreement shall be construed to waive either party's sovereign immunity.

6.4 If a court finds or rules that any part of this Agreement is invalid or unlawful, the remainder of the Agreement continues to be binding on the parties.

6.5 This Agreement supersedes any and all other agreements, either oral or in writing between the parties hereto with respect to the subject matter hereof, and no other agreement, statement, or promise relating to the subject matter of this Agreement which is not contained herein shall be valid or binding.

6.6 This Agreement cannot be assigned by either party.

6.7 This Agreement does not confer any enforceable rights or remedies upon any person other than the parties. No provision of this Agreement constitutes consent to suit.

6.8 The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.

#### **Section 7. 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; and the obligation under subsection 3.4 of this Agreement is fulfilled, whichever is sooner.

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**FORT BEND COUNTY, TEXAS**

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

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

ATTEST:

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

APPROVED:

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

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
Marcus D. Spencer, First Assistant County Attorney

ATTACHMENT:

Exhibit A – Project Costs

**CITY OF ROSENBERG, TEXAS**

William Benton  
William Benton, Mayor

Date: May 01, 2018

ATTEST:

Danyel Swint  
Danyel Swint, City Secretary



# EXHIBIT A

County **Fort Bend**  
 District **Houston**  
 ROW CSJ # **2093-01-028**  
 CCSJ # **2093-01-010**  
 Federal Project # N/A  
 FHWA CFDA # 20.205  
 Not Research and Development

**Standard Agreement to Contribute  
 State Performs Work  
 Attachment C**

| Description                                         | Total<br>Estimated<br>Cost | State Participation |                       | Local<br>Participation |                     |
|-----------------------------------------------------|----------------------------|---------------------|-----------------------|------------------------|---------------------|
|                                                     |                            | %                   | Cost                  | %                      | Cost                |
| Right of Way<br>Acquisition                         | \$5,922,577.00             | 90%                 | \$5,330,319.30        | 10%                    | \$592,257.70        |
| Reimbursable<br>Utility<br>Adjustments              | \$3,150,000.00             | 90%                 | \$2,835,000.00        | 10%                    | \$315,000.00        |
| Joint Bid<br>Reimbursable<br>Utility<br>Adjustments | \$0                        | 0%                  | \$0                   | 0%                     | \$0                 |
| <b>TOTAL</b>                                        | <b>\$9,072,577.00</b>      | <b>90%</b>          | <b>\$8,165,319.30</b> | <b>10%</b>             | <b>\$907,257.70</b> |

Except as otherwise provided in the Agreement, the fixed amount of Local Government participation will be that amount provided above.

**RESOLUTION NO. R-2507**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, AUTHORIZING THE MAYOR TO EXECUTE, FOR AND ON BEHALF OF THE CITY OF ROSENBERG, TEXAS, AN INTERLOCAL AGREEMENT FOR CONTRIBUTION OF RIGHT-OF-WAY FUNDS – FM 2218 FROM SH 36 TO US 59, BY AND BETWEEN THE CITY OF ROSENBERG, TEXAS, AND FORT BEND COUNTY, TEXAS, FOR THE ACQUISITION OF CERTAIN RIGHT-OF-WAY AND RELOCATION OF UTILITIES RELATED TO THE TEXAS DEPARTMENT OF TRANSPORTATION (TXDOT) FM 2218 EXPANSION PROJECT, GENERALLY LOCATED BETWEEN I-69/US 59 AND SH 36, IN THE AMOUNT OF \$52,089.17.**

\* \* \* \* \*

**WHEREAS**, the Texas Department of Transportation (TxDOT) has deemed it necessary to make certain highway improvements on Highway No. FM 2218 from SH 36 to US 59 (Project), which will necessitate the acquisition of certain right-of-way and the relocating and adjusting of certain utilities; and,

**WHEREAS**, TxDOT and Fort Bend County (County) have entered a fixed price point participation agreement pursuant to 43 TAC §15.52 to participate in funding the cost of acquiring right-of-way and relocating or adjusting utilities for improvement of the State Highway System; and,

**WHEREAS**, the City of Rosenberg desires to contribute to the County's funding participation proportionately based on jurisdictional boundary limits of the Project; and,

**WHEREAS**, the City Council of the City of Rosenberg finds and determines it is in the best interests of the City to contribute to the County's funding participation for acquisition of certain right-of-way and utilities relocations for Project areas within the City Limits of Rosenberg; now, therefore,

**BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROSENBERG:**

Section 1. The City Council of the City of Rosenberg hereby authorizes the Mayor to execute an Interlocal Agreement for Contribution of Right-of-Way Funds – FM 2218 from SH 36 to US 59 (Agreement), by and between the City of Rosenberg, Texas, and Fort Bend County, Texas, for funding contributions toward acquisition of certain right-of-way parcels and certain utility relocation costs within the boundaries of the City of Rosenberg required for the Texas Department of Transportation (TxDOT) FM 2218 Expansion Project, which generally extends along FM 2218 from SH 36 to US 59/I-69.

Section 2. The City of Rosenberg shall reimburse the County in the amount of \$52,089.17, which is fifty percent (50%) of the County's local participation costs for right-of-way acquisition and utility adjustments within the corporate limits of Rosenberg in the Project area.

Section 3. A substantially similar copy of said Agreement is attached hereto as Exhibit "A" and made a part hereof for all purposes.

**PASSED, APPROVED, AND RESOLVED** this 1<sup>st</sup> day of May 2018.

**ATTEST:**

Danyel Swint  
Danyel Swint, **CITY SECRETARY**

**APPROVED:**

William Benton  
William Benton, **MAYOR**

