

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 NO. 13215 – WEST AIRPORT TURN LANES**

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 Stafford, 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"). The City and the County may be referred to collectively as the "Parties".

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, 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 the West Airport Turn Lanes at FM 1092.

Section 2. Definitions

- A. **City** means the City of Stafford, Texas.
- B. **County** means Fort Bend County, Texas.
- C. **Project** means improvements to West Airport Boulevard, being the construction of turn lanes at FM 1092.
- D. **Eligible Project Costs** means the City's funding match for the costs of construction of roadway improvements, Project-related drainage facilities, utility and pipeline conflicts, approved traffic control devices, and sidewalks up to five feet (5') wide under its agreement with the Texas Department of Transportation ("TxDOT") for Project Number: STP 2017 (782) MM; CSJ 1257-01-049; FM 1092 at West Airport Boulevard. Eligible Project Costs shall exclude, unless otherwise stipulated herein, engineering design and services related to the completion of Plans, Specifications and Estimates ("PS&E"), 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 design and construction costs of upgrades to eligible project components and similar facilities requested by the City to be included in 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's Rights and Obligations

A. 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 direct contribution towards Eligible Project Costs ("City's Direct Contribution"); or
- (2) Fifty Percent (50%) of Eligible Project Costs; or
- (3) \$179,500.00

B. The County is not obligated to expend any further funds above \$179,500.00 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 City's Direct Contribution.

C. The County will forward the lesser amount as detailed in Section 4. A., above to the City within thirty (30) days of County's receipt of the City's request for such payment.

D. Should the City fail to cooperate with TxDOT to initiate Project 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 agrees to fully cooperate with TxDOT to initiate construction of the Project within six (6) months of the execution of this Agreement or December 31, 2018, whichever is the earliest.

B. The City agrees that the improvements constructed under this Agreement, except those specifically identified as being County facilities, are either the City's or TxDOT's public infrastructure and shall be operated and maintained by the City or TxDOT.

C. In the event the City fails to cooperate with TxDOT 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.

D. 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. The County Auditor may review the City's records regarding this Project.

E. 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.D. above.

Section 6. Maintenance

Upon completion of the Project, all portions of such are either the City's or TxDOT's public infrastructure and shall be operated and maintained by the City or TxDOT.

Section 7. 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 (i.) an amount equal to the City's Direct Contribution, (ii.) Fifty Percent (50%) of Eligible Project Costs, or (iii.) \$179,500.00, WHICHEVER AMOUNT IS LESS, specifically allocated to fully discharge any and all liabilities that may be incurred by the County for 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 City's Direct Contribution up to the sum of Fifty Percent (50%) of Eligible Project Costs or \$179,500.00, 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 8. Insurance and Liability

A. 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.

B. 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 9. 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 10. 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 11. 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, 1 st 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 Stafford, Texas Attention: Leonard Scarcella, Mayor 2610 South Main Street Stafford, Texas 77477

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. 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.

Section 14. Execution

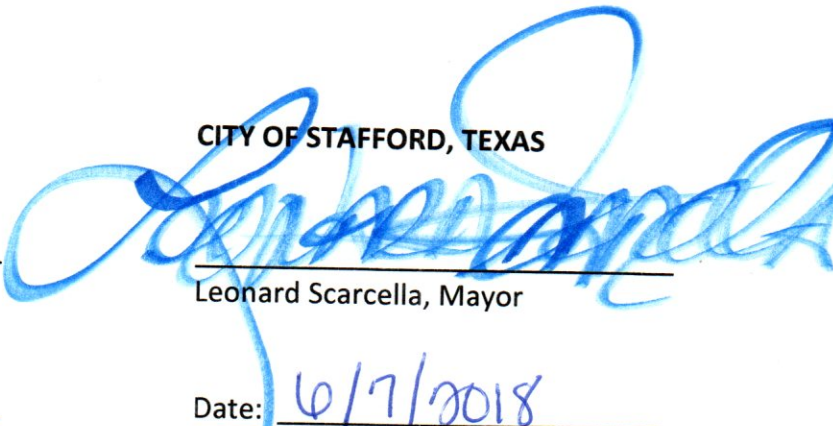
This Agreement has been executed by the City and the County upon and by the authority of their respective governing bodies. This Agreement shall become effective on the date executed by the final party, and remain in effect until (i.) September 30, 2022, (ii.) the Project is complete, or (iii.) the Agreement is terminated otherwise as provided herein; and the obligations under Sections 4 and 5 of this Agreement are fulfilled, whichever is sooner.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]

FORT BEND COUNTY, TEXAS

CITY OF STAFFORD, TEXAS

Robert E. Hebert, County Judge



Leonard Scarcella, Mayor

Date: _____

Date: 6/7/2018

ATTEST:

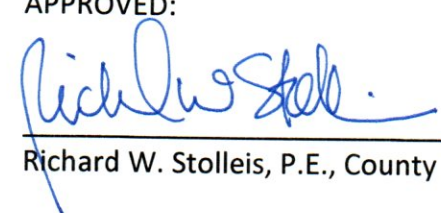
Laura Richard, County Clerk

ATTEST:



Tomika R. Lewis, City Secretary

APPROVED:



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