

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 COUNTY-MANAGED ROAD CONSTRUCTION PROJECT FORT BEND COUNTY MOBILITY PROJECT NO. 17110 – BENTON ROAD – SEGMENT 1

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, a municipal corporation and home-rule city of the State of Texas, 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 2017 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, hereinafter defined and contemplated in this Agreement is the construction of 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 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 proposed improvements to Benton Road – Segment 1 in the City of Rosenberg, Texas.

Section 2. Definitions

- A. **City** means the City of Rosenberg, Texas.
- B. **County** means Fort Bend County, Texas.
- C. **Project** means the improvements to Benton Road – Segment 1, including the construction of a four-lane, concrete boulevard with storm sewer, and improvements to the Burlington Northern Santa Fe (“BNSF”) railroad crossing and intersection at FM 762.
- D. **Eligible Project Costs** means costs, as determined by County, for the design 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, unless otherwise stipulated herein, 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 Rights and Obligations

A The County is responsible for completing the design and overseeing the construction of the Project in compliance with the applicable state and federal laws related to the Project. This responsibility shall include the management of the relocation of utilities, including gas, overhead power and telecommunications, and entering into a contract for engineering design and construction phase services and inspections. The City acknowledges and accepts the fact that County is obligated to follow Chapter 262 of the Texas Local Government Code as it relates to the award of the contract.

- 1. The County executed a Professional Services contract for the design of the Project on May 22, 2018.
- 2. The County agrees to initiate construction of the Project by January 31, 2021.

B The County shall competitively bid and construct the Project in accordance with specifications.

C. The County shall include the City in engineering design construction plan reviews including the Preliminary Engineering Design review at thirty percent (30%) and at other milestones to be agreed upon mutually by the Parties, and allow the City to provide input regarding the design.

D. Prior to the award of the contract for construction of the Project by the County, the County will provide any pertinent information in writing to the City related to the low bidder and the award of the construction contract for the Project.

E. Promptly after bids are received by the County and prior to the award of the construction contract, the County will forward to the City a request for payment that includes sufficient detail for the City to make an initial payment to the City for the Project.

F. The County shall be responsible for coordinating with BNSF and the Texas Department of Transportation ("TxDOT") to obtain the necessary approvals and permits for the construction of portions of the Project within their respective rights of way.

G. The County shall be responsible for the acquisition of any and all property necessary for construction of the Project in accordance with its design.

H. During the work on the Project, the County shall provide the City the opportunity to review all documents, maps, plats, records, photographs, reports and drawings affecting the construction and to inspect the work in progress. The County shall oversee the construction and completion of the Project. Any deficiencies brought to the attention of County by the City shall be addressed by the County. If the County Engineer determines that the deficiencies are actionable under the terms of the construction contract, the County will work with the construction contractor to correct any City identified deficiencies. Notwithstanding the foregoing, all final decisions related to the construction contract performance shall be at the County's sole discretion.

I. The County shall submit reports to the City describing in sufficient detail the progress of the Project. These reports shall be submitted to the City's designee at increments agreed to between the Parties as appropriate for the various phases of the Project. Reports received by the County from contractor and/or consultants detailing the progress of the Project shall suffice for the requirements of this section.

J. The County may elect to forego construction of the Project at any time. The County shall provide written notice to the City of its decision to forego construction and refund all amounts provided by City upon sixty (60) days of said notice to the City.

K. In the event the County elects to forego construction of the Project, the County agrees upon written request from City, to make the construction plans, specifications, contracts and bid documents available to City at no cost, for City's use to construct all, or any portions of the Project. Subject to concurrence from the Project Engineer(s), the County agrees to provide City with any approvals or releases as may be necessary to allow the City to utilize said documents to construct the Project, in a timely manner.

L Upon completion of construction of the Project, but no later than ninety (90) calendar days after final payments to all vendors, the County will furnish the City with a full accounting of the funds expended on the Project and an electronic copy of the record drawings showing the Project. The City may review the County's records regarding this Project to confirm the accuracy of the full accounting.

Section 5. City Rights and Obligations

A The total length of the Project is 3,740 linear feet with 2,380 linear feet located within the City's municipal boundaries. The Parties hereby agree to share fifty percent (50%) of the Eligible Project Costs attributable to the portion of Project located within the City's municipal boundaries. The County will pay for one hundred percent (100%) of all Eligible Project Costs attributable to the portion of the Project located outside of the City's municipal boundaries. Therefore, the funding for the total amount of the Eligible Project Costs shall be allocated as follows: City participation = 31.8%; County participation = 68.2%. The City agrees to pay the County no less than 31.8% of the Eligible Project Costs under the terms of this Agreement

B The City will forward payment to the County an initial payment as reimbursement for the City's portion of Project design, pipeline and utility relocations, right of way acquisition for property acquired by the County inside the municipal boundaries of the City, and, as appropriate, for construction related Eligible Project Costs within sixty (60) calendar days of City's receipt of the request.

C The City shall assist the County in coordinating with the owners of property adjoining the Project to provide a drainage outfall to sufficiently accommodate the Project.

D During the work on the Project, City 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. Any deficiencies shall be provided in writing to the County Engineer. The City agrees that the County is the contracted party and the City shall not provide any direction to the consultant or the contractor, except with concurrence of the County Engineer.

E The City will pay the incremental cost of upsizing water, wastewater, and/or drainage facilities. Such incremental cost may be determined by an alternate bid based on different sizes of the water, wastewater, and drainage facilities or by agreement between the Parties. The City shall provide written confirmation of the scope of enhancements and improvements determined not to be Eligible Project Costs as defined in this Agreement that are requested by the City to be included in the Project.

F Within thirty (30) calendar days of City's acceptance of the full accounting, City shall pay the County for all remaining costs to be reimbursed by the City to the County, including additional funds due from the City for enhancements and improvements that are not Eligible Project Costs, required to satisfy the City's obligation under this Agreement.

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 (i) 68.2% of the Eligible Project Costs, or (ii) \$2,820,000.00, WHICHEVER AMOUNT IS LESS, specifically allocated to fully discharge any and all liabilities that may be incurred by the County for the Project, after all reimbursement payments are made by the City to the County.

B. The City further understands and agrees, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum funding that the County may contribute to the Project and the total maximum amount that the County will be obligated to spend on the Project will not under any condition, circumstance or interpretation hereof exceed the 68.2% of the Eligible Project Costs or \$2,820,000.00, WHICHEVER AMOUNT IS LESS, after all reimbursement payments are made by the City to the County in accordance with Section 5.G. above.

C. Prior to the execution of this Agreement, the County has been advised by the City, and the County clearly understands and agrees, such understanding and agreement being of the absolute essence to this Agreement, that the City shall have available the total maximum amount of (i) 31.8% of the Eligible Project Costs, or (ii) \$1,315,000.00, WHICHEVER AMOUNT IS LESS, specifically allocated to fully discharge any and all liabilities and reimbursement obligations of the City for costs incurred by the County for the Project.

D. The County further understands and agrees, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum funding that the City may contribute to the Project and the total maximum amount that the City will be obligated to spend on the Project will not under any condition, circumstance or interpretation hereof exceed the 31.8% of the Eligible Project Costs or \$1,315,000.00, WHICHEVER AMOUNT IS LESS, after all reimbursement payments are made by the City to the County in accordance with Section 5.G. above.

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

F. In the event the Project costs exceed the total maximum funding available from the County and the City, the County and the City hereby agree to use their respective best efforts to allocate additional funds to complete the Project. However, should the governing bodies of the County or the City elect not to appropriate sufficient additional funds to complete the Project, either party shall have the right to terminate this Agreement without fault or penalty to either party.

Section 9. Insurance Requirements

County agrees that it will require Contractor’s insurance policies name City as well as County 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.

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: County Judge
401 Jackson Street, 1st Floor Richmond, Texas
77469

With a copy to: Fort Bend County Engineering Department
Attn: County Engineer
301 Jackson Street
Richmond, Texas 77469

City: City of Rosenberg, Texas
Attn: City Manager
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. 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, remain in effect until September 30, 2022 or until the Project is complete and the obligations under Sections 4 and 5 of this Agreement are fulfilled, whichever is sooner.

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FORT BEND COUNTY, TEXAS

CITY OF ROSENBERG, TEXAS

Robert E. Hebert, County Judge

William Benton
William Benton, Mayor

Date: _____

Date: September 18, 2018

ATTEST:

ATTEST:

Laura Richard, County Clerk

Danyel Swint
Danyel Swint, 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 this contract.

Robert Ed Sturdivant, County Auditor

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