

STATE OF TEXAS                   §  
   §  
COUNTY OF FORT BEND       §

**INTERLOCAL AGREEMENT FOR  
COUNTY-MANAGED MOBILITY PROJECTS  
WALLIS STREET RENOVATION**

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 Fulshear, a municipal corporation and home-rule city of the State of Texas, situated in Fort Bend County, acting by and through its City Council, (the "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, (the "County"). The City and the County may be referred to herein individually as a "Party" and collectively as the "the Parties."

**RECITALS**

WHEREAS, the County is authorized to participate with other local governmental entities to fund certain regional street and road improvements and associated drainage facilities 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 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 and other obligations related to the design and construction of certain improvements to Wallis Street, (the "Project") should the citizens of the County vote to approve the issuance of general obligation bonds allowing the County to participate with other local governmental entities to fund the Mobility Projects.

### **Section 2. 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 3. Nature of Agreement**

The obligations under this Agreement are contingent in nature and intended to become effective upon the citizens of the County voting to approve the issuance of general obligation bonds allowing the County to participate with other local governmental entities to fund Mobility Projects, including this Project, in the November 2020 General Election ("Voter Approval").

### **Section 4. County Rights and Obligations upon Voter Approval**

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 project phase services, inspections, and materials testing.

B The County will submit the plans for the Project to the City for review and comment to ensure the Project is designed in accordance with the current City design standards applicable to roadways, utilities, and drainage prior to the County proceeding with the final design of the Project.

C The County shall competitively bid and construct the Project in accordance with approved plans and specifications.

D 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 promptly 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.

E 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 at increments agreed to between the parties as appropriate for the various phases of the Project. Reports received by the County from its contractors detailing the progress of the Project shall suffice for the requirements of this section, so long as the County has reviewed such reports and confirmed accuracy of the reports.

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

G The County shall be responsible for the acquisition of any and all parcels necessary for construction of the Project as determined by the PS&E. The County will make available for the Project, all right of way, easements and parcels acquired in the vicinity of and necessary for the Project.

#### **Section 5. City Rights and Obligations upon Voter Approval**

A 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.

B The City shall provide fifty percent (50%) of the actual costs of the Project, currently estimated at a total of five million two hundred thousand and no/100 dollars (\$5,200,000.00), up to an amount not to exceed two million six hundred thousand and no/100 dollars (\$2,600,000.00), (the "City Contribution").

C Further, the City will pay the incremental cost of extending or upsizing water, wastewater, and drainage facilities or other work requested by the City beyond the initially agreed upon scope of work for the Project ("City Enhancements"). Such incremental cost is to be determined by an alternate bid based on the specific City Enhancements requested by the City. The City shall provide written confirmation of the scope of the City Enhancements and acknowledgment of obligation to pay for such enhancements. The City will be solely responsible for the costs of the City

Enhancements.

D. The City shall forward payments to the County for its City Contribution and City Enhancements incrementally as follows:

1. An initial payment of fifteen percent (15%) within forty-five (45) days of the County's issuance of a request for payment, and the City's receipt and acceptance of the full accounting of the funds expended on the Project; and
2. The remaining eighty-five percent (85%) payable in six (6) equal payments due on October 15<sup>th</sup> beginning the year following the initial payment by the City, and each year thereafter for a total of seven (7) payments, including the initial payment.

#### **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. Period of the Agreement and Termination**

This Agreement becomes effective on the date signed by the last Party and shall remain in effect until either (i) the November 2020 General Election results reflect a failure of Voter Approval, or (ii) completion of the Project and reimbursement payable under this Agreement unless terminated earlier pursuant to the terms hereof. The County may elect to forego construction of the Project at any time prior to award of the construction contract. The County shall provide written notice to the City of its decision to forego construction and refund all amounts provided by City, if any, upon sixty (60) days of said notice to the City.

#### **Section 9. Fair Compensation**

The Parties acknowledge and agree that each of the payments contemplated by this Agreement fairly compensate the performing Party.

#### **Section 10. Funding**

The Parties understand and acknowledge that the funding of this Agreement is contingent upon Voter Approval. The Parties further agree that should the November 2020 General Election results reflect a failure of Voter Approval, this Agreement shall automatically terminate as to both Parties.

### **Section 11. No Joint Enterprise**

The Agreement is not intended to, and shall not be construed to, create any joint enterprise between the Parties. The City has exclusive control over and under the public highways, streets, and alleys of the City and shall have dominant control over the project contemplated by this Agreement.

### **Section 12. Supervision and Administration**

Pursuant to Texas Government Code §791.013, the Parties may create an administrative agency, designate a local government, or contract with a qualified tax-exempt organization to supervise the performance of this Agreement.

### **Section 13. Alternative Dispute Resolution**

Pursuant to Texas Government Code § 791.015 and Texas Government Code Chapter 2009, in the event of a dispute over the terms and conditions of this Agreement or the Parties' rights, duties, and performance under this Agreement, the Parties agree to submit such dispute to alternative dispute resolution procedures set forth in Texas Civil Practice and Remedies Code Chapter 154.

### **Section 14. Public Information**

This Agreement is public information. To the extent, if any, that any provision of this Agreement is in conflict with Texas Government Code Chapter 552 et seq., as amended (the "Texas Public Information Act"), such provision shall be void and have no force or effect.

### **Section 15. No Personal Liability**

Nothing in this Agreement shall be construed as creating any personal liability on the part of any employee, officer, or agent of any Party to this Agreement.

### **Section 16. No Indemnification by City or County**

The Parties expressly acknowledge that the City's and the County's authority to indemnify and hold harmless any third party is governed by Article XI, Section 7 of the Texas Constitution, and any provision that purports to require indemnification by the City or the County is invalid. Nothing in this Agreement requires that either the City or County incur debt, assess or collect funds, or create a sinking fund.

### **Section 17. Sovereign Immunity Acknowledged and Retained.**

THE PARTIES EXPRESSLY ACKNOWLEDGE AND AGREE THAT NO PROVISION OF THIS AGREEMENT IS IN ANY WAY INTENDED TO CONSTITUTE A WAIVER BY ANY PARTY OF ANY IMMUNITY FROM SUIT OR LIABILITY THAT A PARTY MAY HAVE BY OPERATION OF LAW. THE CITY AND THE COUNTY RETAIN ALL GOVERNMENTAL IMMUNITIES.

### **Section 18. 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 19. 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 20. 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 21. 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, 1 <sup>st</sup> Floor Richmond, Texas 77469
With a copy to:	Fort Bend County Commissioner, Precinct 3 Attention: Commissioner 22333 Grand Corner Drive Katy, Texas 77494
City:	City of Fulshear, Texas Attn: City Manager P.O. Box 279 Fulshear, Texas 77441

With a copy to:

Grady Randle, City Attorney  
820 Gessner, Suite 1570  
Houston, Texas 77024

**Section 22. 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 23. Execution**

This Agreement has been executed by the City and the County upon and by the authority of their respective governing bodies.

**FORT BEND COUNTY, TEXAS**

**CITY OF FULSHEAR, TEXAS**

\_\_\_\_\_  
KP George, County Judge

\_\_\_\_\_  
Aaron Groff, Mayor

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

Date: 10-20-2020

ATTEST:

ATTEST:

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

\_\_\_\_\_  
Kimberly Kopecky, City Secretary



APPROVED AS TO LEGAL FORM:

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



1.3 Construct Pedestrian-Friendly Intersections at Key Locations

To create a more pedestrian-friendly environment in downtown, it is necessary to improve pedestrian movement along Main Street within the downtown district. The current roadway is unsafe for pedestrians due to high speed traffic and the lack of crossing facilities. By creating enhanced pedestrian-friendly intersections at locations along the corridor, visitors can utilize both sides of Main Street and safely cross at designated crossing.

The conceptual plan identifies enhanced intersections on Main Street at 1st, 2nd, 3rd, and 4th Streets. The purpose of these intersections is to alert drivers that pedestrians are in the area, passively slow traffic, and improve aesthetics of the roadway. Features of the intersections include a change in street material, pedestrian crossing lighting or signage, and improved streetscape. A change in roadway material is a visual cue to drivers that something is different, creates a texture change on the roadway surface, and designates the area as a pedestrian crossing. Aesthetic improvements to the intersection include a unique material design on the roadway and landscaping at all four corners.

Finance Tools:	City CIP
Potential Partnerships:	Public Improvement District
Implementation Horizon:	City, EDCs, TxDOT, H-GAC
Approximate Cost:	10 Year
	Varies



Examples of Enhanced Intersections



1.4 Create One-Way Pair Utilizing Main and Wallis Streets

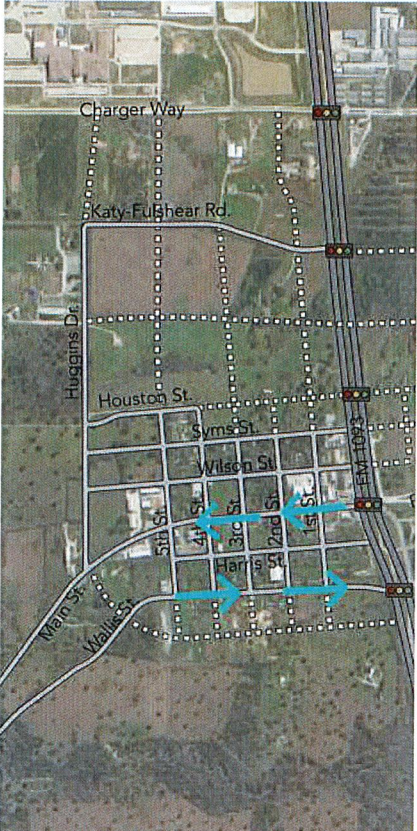
At the beginning of the process, it was determined a one-way pair would provide one of the best opportunities for encouraging development and creating a pedestrian-friendly environment in downtown. Crossing a one-way street with only half the traffic volume would be much preferred to crossing the larger and busier two-way roadway.

After the presentation of two one-way pair alternatives, the Advisory Group and community were in consensus of Main (northbound) and Wallis (southbound) Streets being the pair through downtown. The one-way pair would reduce traffic by approximately one-half on Main Street. The other half of the traffic would be less disruptive on an improved Wallis Street.

Having the other paired street, Wallis Street, two blocks away means a greater dispersion of the effects of through traffic on FM 359 across two blocks; not creating one block in the middle that would have significant traffic on both sides of the block. The two-block separation of the one-way pairs allows Harris Street, in the middle, to be advanced as a pedestrian-oriented downtown focal center that could be closed for special events.

Since FM 359 is a TxDOT thoroughfare, close coordination with TxDOT will be necessary throughout the process.

Finance Tools:	City CIP
Potential Partnerships:	Public Improvement District
Implementation Horizon:	City, TxDOT, Fort Bend County
Approximate Cost:	10 Year
	Varies



One-way pair utilizing Main and Wallis Streets