

STATE OF TEXAS                    §  
   §  
COUNTY OF FORT BEND        §

**INTERLOCAL AGREEMENT FOR  
COUNTY-MANAGED MOBILITY PROJECTS  
BOIS D’ARC 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 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 Bois D'Arc Road (the "Project").

### **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. 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 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 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.

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

E. 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.

F. 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.

G. 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.

#### **Section 4. City Rights and Obligations**

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 one million five hundred thirty-seven thousand and no/100 dollars (\$1,537,000), up to an amount not to exceed seven hundred eighty thousand and no/100 dollars (\$780,000.00), (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.

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

**Section 5. Liability**

The City and County are entitled to the immunities and defenses of the Texas Tort Claims Act.

**Section 6. Maintenance**

Upon completion of the Project, each Party shall maintain that portion of the Project within its own jurisdiction.

**Section 7. Period of the Agreement and Termination**

This Agreement becomes effective on the date signed by the last Party and shall remain in effect until 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 8. Fair Compensation**

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

**Section 9. 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 10. 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 11. 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 12. 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 13. 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 14. 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 15. 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 16. 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 17. 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 18. 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 19. 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 20. 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 21. 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: \_\_\_\_\_

ATTEST:

ATTEST:

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

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

APPROVED AS TO LEGAL FORM:

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