

THE STATE OF TEXAS

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COUNTY OF FORT BEND

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KNOW ALL MEN BY THESE PRESENTS:

**INTERLOCAL AGREEMENT FOR COUNTY-MANAGED ROAD CONSTRUCTION PROJECTS
13313 HUGGINS DRIVE**

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, ("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"). City and 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 obligations related to the proposed improvements to Huggins Drive in the City of Fulshear, Texas.

Section 2. Definitions

- A. **City** means the City of Fulshear, Texas.
- B. **County** means Fort Bend County, Texas.
- C. **Project** means improvements to Huggins Drive including the construction of a three-lane concrete roadway from FM 359 (Main Street) to Katy Fulshear Road with open ditch drainage designed to allow for future widening; extension of the City utilities; and underground drainage/detention.
- D. **Eligible Project Costs** means costs, as determined by County in its sole discretion, for 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 include costs for engineering design and services related to the completion of Plans, Specifications and Estimates ("PS&E") and construction related services for such roadway improvements. Eligible Project Costs shall exclude the extension of the City's utilities, design and construction costs related to landscaping, irrigation, lighting, hike and bike trails, oversizing of water, and wastewater.

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 agrees to advance funding for Eligible Project Costs up to a maximum of \$4,500,000 to the City to facilitate early completion of the Project. The County may, in its sole discretion, advance funding to the City for Eligible Project Costs in excess of \$4,500,000 to be reimbursed by the City with interest calculated at a 3.51% annual rate. The County's maximum contribution to the Project after reimbursement by the City shall not exceed \$4,500,000.
- B. 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.
- C. 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, as identified by the City prior to

County proceeding with design of the Project.

D. The County shall competitively bid and construct the Project in accordance with approved plans and specifications. Prior to the award of the contract for construction of the Project by the County, the County will consider written comments provided by the City related to the low bidder for the Project.

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, with input from the City, 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 contractor and/or consultants under construction contracts 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. The County may elect to forgo 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 forgo construction, refund all amounts provided by City, and provide the PS&E to the City for the City's construction of the Project upon sixty (60) days of said notice to the City.

H. 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. Within thirty (30) calendar days of the execution of this Agreement, the City shall provide the required construction details, design standards and technical specifications applicable to roadways and drainage in which the Project should be designed to meet. Prior to the County initiating final design of the Project, the City shall provide the County Engineer with written approval of the preliminary engineering report. Upon transmittal of the construction plans by the County, the City shall review and comment on the County's construction plans within two (2) weeks of receipt by the City. All project design and construction comments shall be directed to the County Engineer or his designated representative for dissemination to the County's contractors, consultants and employees.

B. Promptly after bids are received and prior to the award of the construction contract, the City shall provide any pertinent information in writing to the County related to the award of the construction contract for the Project by the County in accordance with Subchapter C, Chapter 262 of the Texas Local Government Code, (the "County Purchasing Act"), consistent with Section 4. D., above.

C. 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.

D. The City shall be responsible for the acquisition of any and all parcels necessary for construction of the Project as determined by the PS&E. The City will make available for the Project, all right of way, easements and parcels acquired in the vicinity of and necessary for the Project owned, acquired and or controlled by the City at no cost to the County.

E. The City will pay the incremental cost of extending or upsizing water, wastewater, and drainage facilities. Such incremental cost is to be determined by an alternate bid based on different sizes of the water, wastewater, and drainage facilities. 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. The City shall transfer one hundred percent (100%) of the developer's contribution for costs of the Project from Katy Fulshear to Charger Way.

G. Within sixty (60) days of the beginning of the fiscal year (October 1st) following the County's issuance of the full accounting pursuant to Section 4. H. above, the City shall initiate annual payments to the County to reimburse the County any funds advanced for costs determined not to be Eligible Project Costs, and any funds advanced in excess of \$4,500,000, plus interest calculated at a 3.51% annual rate, in accordance with Section 4. The City agrees to reimburse the County such amount with interest within seven (7) years of its initial payment to the County.

H. Upon completion of the construction of the Project, the City agrees to perform an initial acceptance of the Project to provide mowing and routine (non-warranty) maintenance necessary for the Project for a period of one (1) year. Prior to the expiration of such one (1) year period, the City shall make a final acceptance of the Project into its maintenance system, including roadway, water, sewer, detention basins, drainage easements, and drainage improvements for continued operation and maintenance by the City.

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 \$4,500,000, with a total County contribution not to exceed \$4,500,000 after reimbursement by the City for the County's advance of certain Eligible Project Costs pursuant to Section 4. A, and any amounts in excess of that amount for Project enhancements and improvements as determined in Section 5.E, specifically allocated to fully discharge any and all liabilities that may be incurred by the City 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 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 condition, circumstance or interpretation hereof exceed the estimated amount of \$4,500,000 for Eligible Project Costs, after all reimbursement payments are made by the City in accordance with Section 5. G. above.

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 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 contained in each Party's annual budget and is subject to the approval of each Party in each fiscal year. The Parties further agree that should the governing body of any Party fail to approve a budget that includes sufficient funds for the continuation of this Agreement, or should the governing body of any Party fail to certify funds for any reason, then and upon the occurrence of such event, this Agreement shall automatically terminate as to that Party and that Party shall then have no further obligation to the other Party. When the funds budgeted or certified during any fiscal year by a Party to discharge its obligations under this Agreement are expended, the other Party's sole and exclusive remedy shall be to terminate this Agreement.

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 st 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 Fulshear, Texas Attn: City Manager P.O. Box 279 Fulshear, Texas 77441
With a copy to:	Grady Randle, Fulshear 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. This Agreement shall become effective on the date executed by the final party, remain in effect until September 30, 2029 or until the Project is complete and the obligations under Sections 4 and 5 of this Agreement are fulfilled, whichever is sooner.

FORT BEND COUNTY, TEXAS

CITY OF FULSHEAR, TEXAS

KP George, County Judge

Aaron Groff, Mayor

Date: _____

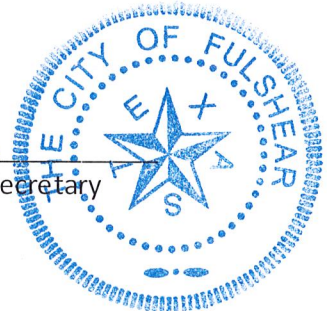
Date: 1-19-2021

ATTEST:

ATTEST:

Laura Richard, County Clerk

Kimberly Kopecky, City Secretary



APPROVED:

J. Stacy Slawinski, 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