

**SECOND AMENDED AND RESTATED INTERLOCAL AGREEMENT FOR
ROADWAY IMPROVEMENTS 2007 MOBILITY BOND PROJECT NOS. 701, 758, &
766**

This SECOND AMENDED AND RESTATED INTERLOCAL AGREEMENT is made between the City of Houston, a home-rule municipality of the state of Texas (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”) (each a “Party” and collectively the “Parties”), and amends and supersedes both the Interlocal Agreement for Roadway Improvements, contract number C73414 (the “Original Agreement”) and the Amended and Reinstated Interlocal Agreement for Roadway Improvements (the “First Amendment”).

RECITALS:

1. The Original Agreement, which was approved by the Houston City Council by Ordinance No. 09-0512, countersigned by the Houston City Controller on June 17, 2009, authorized by the Fort Bend County Commissioners’ Court and executed by the Fort Bend County Judge on July 7, 2009 pertained to three Projects (the “Original Projects”): Fondren Road from Hillcroft Avenue to McHard Road, South Post Oak from Sam Houston to McHard Road, and Blue Ridge Road from south of Rockergate Drive to McHard Road.
2. The First Amendment, which was approved by the Houston City Council by Ordinance No. 2014-0558, countersigned by the Houston City Controller on June 13, 2014, authorized by the Fort Bend County Commissioners’ Court and executed by the Fort Bend County Judge on May 6, 2014, modified the scope of the Original Projects updating and substituting the following improvements: South Post Oak Road from Sam Houston Tollway (Beltway 8) to McHard Road (FM 2234) and Hillcroft Avenue and Court Road Extension (the “Updated Projects” and in combination with the Original Projects the “Projects”).
3. This Second Amendment allocates additional funds to the agreement and clarifies maintenance and access agreements between the Parties.
4. The County and City are willing to participate as set forth herein in the actual costs of the Projects, including, without limitation, the cost of right-of-way acquisition, engineering, construction, construction management, inspection, and testing (the “Costs”).
5. This agreement is authorized by the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code.
6. The County and City in consideration of the mutual covenants and agreements herein contained, do mutually agree as follows:

TERMS

1. SUPERSESSSION

The Original Agreement and the First Amendment are superseded in their entireties and replaced in full with this Second Amendment as of the Countersignature Date.

2. ALLOCATION OF COSTS

As of the date of this Second Amendment, the total estimated Costs, as prepared by the City, are \$17,500,000.00. These Costs are to be allocated as follows:

- A. The City will contribute to the total Costs, plus any needed utility costs, in an expected amount of \$11,750,000.00, subject to the appropriation of funds.
- B. The County's will provide funding to the City in an amount up to but not to exceed \$5,750,000.00.

3. PAYMENT

The County has remitted its total financial share of \$5,750,000.00 to the City.

4. DESIGN AND ENGINEERING

- A. The County will propose a selection of any registered civil engineer or civil engineering firms (the "Engineer") for design of the Projects. The County's selection of an Engineer will be subject to approval by the City. The City will not unreasonably withhold approval. The Engineer may subcontract surveying, geotechnical, and environmental services necessary for the Projects provided such selection complies with all applicable laws and City contract requirements.
- B. Upon execution of this Agreement the City will enter into negotiations with the approved County selected Engineer for the Projects. The City will enter into engineering contracts for design of the Projects. Design shall include all engineering required for the Projects (preliminary, final, and construction phase engineering services), including geotechnical and environmental services. Should the Engineer not satisfactorily perform their duties leading to the City terminating their services, the County will be allowed to propose for the City's approval, a replacement Engineer to complete the Projects.
- C. As part of the Projects, the City shall also acquire and deliver the necessary documentation for acquisition of necessary right-of-ways within the city limits. The City shall obtain rights for the County to use all drawing, specifications, and other documents obtained by the City for construction, and upon request shall provide such documents to the County for its own use. The City shall provide notification to the County on project schedules and

approvals. All right-of-way acquisition for the South Post Oak Updated Project is the sole responsibility of the City. The costs for acquisition of the necessary right-of-way are included in the City's financial share for the costs of the Updated Project under this Agreement. Ft. Bend County shall convey the appropriate easements within existing right of way, for construction & maintenance of the Hillcroft Avenue and Court Road Extension Updated Project. The City is responsible for acquiring additional right-of-way, if needed.

- D. The City shall have Plans, Specifications, and Estimates (“PS&E”) prepared for the Projects.
- E. The City and Engineer shall meet and discuss Fort Bend County Toll Road Authority’s (the “FBCTRA”) design concerns. After receiving written approval from the FBCTRA the City may begin that Project.

5. COMPETITIVE BID AND AWARD

- A. Within one hundred and twenty (120) days after the City has approved final design for each project, the City will competitively bid each Project and award contracts for the construction of the Project. The City will comply with all competitive bid laws applicable to the City, and other Existing laws and ordinances governing the City’s construction of public works. If the lowest bid for construction of the Updated Projects is greater than the amount of funds allocated by the Parties for the Projects is greater than the amount of funds allocated by the Parties for the Projects, the City may reject all bids and re-advertise for bids for the construction of the Project according to the terms specified in this section of the Agreement.
- B. Upon receipt of bids for the Projects, the City will notify the County of the amount of the bids, plus a fifteen percent (15%) contingency (the “Notice of Bid”), not to exceed the amount allocated by the Parties herein. If a Party desires to object to the award of a contract, they must provide written notice to the other Party within fifteen (15) days of the date the Notice of Bid is served.
- C. If there are no objections to the award of the contract to the low bidder, the City will issue a notice to proceed to the contractor.
- D. The City will enter into separate contracts with the bidders (the “Contractors”), which will be subject to change orders that may increase or otherwise alter the cost of the work done. The change orders shall not exceed the Cost allocated by the Parties herein.

6. CONSTRUCTION

- A. The City shall administer the Contracts for the Projects and provide on-site inspection of the construction. Administration duties include, but are not

limited to: entering into all necessary change orders to the Contract, provided that all such change orders shall require the approval of the County, which shall not be unreasonably withheld or delayed. The City has no obligation to approve or to pay for any change orders that would increase its contribution to an amount above the funds allocated herein.

- B. The City shall inspect all construction for the conformity with the City standards and shall immediately request changes or corrections to the Contractor's work if the City finds such changes or corrections to be necessary upon inspection. The City shall approve all change orders to the Contract necessary by any request of the City.
- C. The City shall have the right to terminate any of the Contracts awarded and enforce its remedies under this Agreement.
- D. The construction of Hillcroft Avenue will require the relocation of existing streetlights owned and maintained by Fort Bend County Toll Road Authority ("FBCTRA"). FBCTRA shall complete relocation of streetlights in conflict with the proposed construction as shown in the design plans and at its sole cost, within ninety (90) days of notice by City of scheduled advertisement of project for bid. Upon notification by FBCTRA and County of the completion of streetlight relocation, City shall proceed with issuance of notice to proceed to the contractor.

7. MAINTENANCE

- A. The County shall allow the City to maintain Project areas while allowing the County to have access, as necessary, for maintenance of the existing Toll facility. Maintenance includes, but is not limited to: mowing grass, street sweeping, pavement maintenance, storm sewer maintenance, box culvert maintenance, bridge maintenance, concrete channel lining maintenance, sidewalk maintenance, and curb drain maintenance, as shown in Exhibit A.
- B. The County shall operate and maintain the proposed detention pond discussed in Exhibit A. However, the City shall still be the owner of said detention pond.

8. GENERAL PROVISIONS

- A. If on December 31, 2023 the city has not completed the PS&E for all the Projects and the County has not exercised its right to terminate this Agreement, the County may terminate this Agreement at any time. Any unused funds will be reimbursed according to the allocation herein.
- B. It is expressly understood and agreed that, notwithstanding any other provision of this Agreement, the County has available the maximum sum of \$5,750,000.00 to satisfy its obligations under this Agreement and the County shall under no circumstance be required to expend more than the said

maximum sum. It is further agreed that the County shall not be required to expend any funds other than current funds to accomplish said obligations.

- C. It is expressly understood and agreed that, notwithstanding any other provision of this Agreement, the City has available the sum of \$11,750,000.00 to satisfy its obligations under this Agreement and the City may, but under no circumstance be required to, expend more than the said sum.

9. TERMINATION

- A. This Agreement may be terminated by any of the following conditions:
 - 1. By mutual agreement and consent of the City and the County up until the award of a construction contract for such Projects.
 - 2. By either Party, upon the failure of the other Party to fulfill its obligations as set forth herein. To the extent permitted by law, the breaching Party shall pay any cost incurred due to such breach.
 - 3. The City may terminate at any time up until the award of a construction contract for such Projects. The City's right to terminate in this scenario is cumulative of all rights and remedies which exist now or in the future.
- B. Should this Agreement terminate under Section 9(A)(1) or 9(A)(2) above, the City shall subtract half of any reasonable costs incurred by the City from the County's financial share received under this Agreement and return the balance to the County. Alternatively, should this Agreement terminate under Section 9(A)(3) above the City shall reimburse the County its allocation of costs.
- C. If either Party elects to terminate this Agreement prior to completion of the Projects, it shall do so in such a manner that the roadways are operational and are not left in an unreasonably hazardous condition.
- D. If either Party elects to terminate this Agreement at any time, for any reason, then that Party shall notify the other no less than thirty (30) days prior to the termination.

10. ASSIGNMENT

No Party 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.

11. NOTICE

Any notice required to be given under this Agreement ("Notice") shall be in writing and shall be duly served when it shall have been personally delivered to the address below, or deposited, enclosed in a wrapper with the proper postage prepaid thereon, and duly registered or certified, return receipt requested, in a

United States Post Office, addressed to the County or the City at the following addresses:

City: City of Houston
Houston Public Works
611 Walker, 14th Floor
P.O. Box 1562
Houston, Texas 77002
Attention: Embry Woods, P.E.

County: Fort Bend County
Attention: County Judge
301 Jackson Street, Suite 719
Richmond, Texas 77469

Copy to: Fort Bend County Engineering Department
Attention: County Engineer
301 Jackson Street
Richmond, Texas 77469

12. GOVERNING LAW

This Agreement shall be governed by the laws of the State of Texas and the forum for any action under or related to the Agreement is exclusively in a state or federal court of competent jurisdiction in Texas. The exclusive venue for any action under or related to the Agreement is in a state or federal court of competent jurisdiction in Houston, Harris County, Texas.

13. ELECTRONIC SIGNATURE

The Parties hereby agree that each Party may sign and deliver this Agreement electronically or by electronic means and that an electronic transmittal of a signature, including but not limited to, a scanned signature page, will be as good, binding, and effective as an original signature.

(The rest of this page is intentionally left blank.)

FORT BEND COUNTY

By: _____
KP George, County Judge

ATTEST

Laura Richard, County Clerk

CITY OF HOUSTON

By: _____
Sylvester Turner, Mayor

ATTEST

City Secretary

COUNTERSIGNED BY:

City Controller

DATE COUNTERSIGNED:

APPROVED:

Director
Houston Public Works

APPROVED AS TO FORM:

Assistant City Attorney
L.D. File No. _____

EXHIBIT "A"
SOUTH POST OAK - 2007 MOBILITY BOND UPDATED PROJECT No. 758

Project Scope:

- **Beltway 8 to West Ridge Creek Drive** – Expand roadway with the addition of one lane in each direction. An estimated 2,840 L.F. (1,420 L.F. each direction) of roadway will be constructed. No panel replacement is necessary at this segment.
- **West Ridge Creek Drive to Court Road** – Repair damaged panels, collapsed inlets and addition of turning lane at intersections. Approximately 10% (729 S.Y.) of roadway panels will be replaced.
- **West Ridge Creek to FM 2234** – Repair and replacement of roadway sections and collapsed inlets.
- Traffic signal upgrade (including Flashing yellow left turn signals) - New traffic signals are to be installed at the intersections of S. Post Oak / Ridge Creek Drive and S. Post Oak / Court Road.
- Waterline replacement – Due to the condition of existing 30-year old 12" asbestos pipe waterline, a 12" PVC (1,200 L.F.) waterline replacement was recommended.

EXHIBIT "B"
HILLCROFT AVENUE AND COURT ROAD EXTENSION

Project Scope:

Design and prepare plans, specifications, estimates, right of way acquisitions and construction contract documents for the construction of Hillcroft Avenue between the existing toll road ramps and an extension of Court Road from Quailynn Road east to the proposed Hillcroft Avenue.

This Project also includes the extensions of water lines and storm drain systems along each roadway corridor as well as bridges spanning the Fort Bend County Drainage District Ditch B-8-B, box culvert drainage structures crossing Fort Bend County Drainage District Ditch A, and storm water detention.

The City and design consultant shall meet and discuss Fort Bend County Toll Road Authority design concerns for the addition of Hillcroft Avenue and Court Road extension. After receiving written approval from the FBCTRA, the City may begin with design of the proposed roadways. Proposed Hillcroft Avenue and Court Road extension must not conflict with future improvements to the Fort Bend County Toll Road.

EXHIBIT "C"

HILLCROFT AVENUE FACILITIES MAINTENANCE BY ENTITY