

INTERLOCAL AGREEMENT

(Koeblen Road Seg. 1 – Project No. 20107)

THE STATE OF TEXAS §

§

COUNTY OF FORT BEND §

This Interlocal Agreement (“Agreement”) is made and entered into by and between FORT BEND COUNTY, TEXAS (the “County”), a political subdivision of the state of Texas, and FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 162 (the “District”), a political subdivision of the state of Texas. County and District may be collectively referred to as the “Parties” and each individually a “Party.”

WHEREAS, this Agreement is entered into pursuant to Chapter 791 of the Texas Government Code, the Interlocal Cooperation Act (the “Act”), which authorizes local governments to contract with one another to provide governmental functions, mutual aid, and services under the terms of the Act; and

WHEREAS, the Parties are each a local governmental entity and are authorized under the Act to provide certain governmental functions, including, but not limited to the provision of road and drainage improvements; and

WHEREAS, County and District, as part of a road widening and reconstruction project for Koeblen Road under Fort Bend County Mobility Bond Project No. 20107, desires to install a 16-inch water line, which funds may only be expended on city streets that are an integral part of or connecting link with county roads or state highways pursuant to Article III, Section 52 (b) and (c) of the Texas Constitution and Section 251.012 of the Texas Transportation Code; and

WHEREAS, the Parties assert that the portion of Koeblen Road to be improved under this Agreement is part of a city street that is an integral part of or a connecting link with a County road or state highway; and

WHEREAS, the District has entered or will enter into a Cost Sharing Agreement for the Construction of Facilities with Fort Bend County Municipal Utility District No. 232 and the City of Rosenberg, Texas (the “Cost Sharing Agreement”) to provide the funds, on a pro rata basis, to finance the District’s portion of the costs of the Project (as defined herein) pursuant to Section 2 of this Agreement, and to provide for the ownership and maintenance responsibilities related to the Project pursuant to Section 9 below; and

WHEREAS, County and District have determined it would be in the best interest of County and District, and to the inhabitants thereof, that provisions be made for the installation of the 16-inch water line on Koeblen Road in accordance with the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants, obligations, and mutual benefits, the Parties hereto agree as follows:

1. **Scope of Work.**

- (a) The Parties acknowledge and agree that this Scope of Work represents the general requirements for the Project to facilitate the installation of a sixteen-inch (16") water line on Koeblen Road from the termination point of Danzinger Development's 16-inch (16") water line to the existing 16-inch (16") water line termination located just west of Sunrise Meadow Drive and as further provided in the Cost Estimate attached hereto as "Exhibit A" and incorporated by reference for all intents and purposes (the "Project").
- (b) The Project shall be facilitated, managed, and administered by County. County shall take all reasonable actions to ensure that the Project is constructed in a good and workmanlike manner with all reasonable diligence.
- (c) County shall only be obligated to design and construct the Project to the extent that sufficient funds are provided by District for the same pursuant to the terms of Section 2 of this Agreement.

2. **Allocation of Project Costs.** District shall contribute funds for the total cost of the Project which cost is estimated at Seven Hundred Eight Two Thousand Eight Hundred Seventy and 60/100 (\$782,870.60). District understands and agrees that such costs may be higher or lower than the Cost Estimate attached hereto as Exhibit A. Such costs to District will be based on actual costs incurred by County for the Project.

- (a) Initial Payment: Within thirty (30) days of Effective Date of this Agreement, District shall make an initial payment of thirty-five thousand one hundred thirty five and 00/100 Dollars (\$35,135.00) to County for the design costs incurred for the Project as provided in Exhibit A attached hereto.
- (b) Secondary Payment: Upon County's receipt and approval of a bid award for the Project in accordance with Section 4 of this Agreement, District shall pay to County the estimated costs for construction of the Project within forty five (45) days of receipt of invoice from County.
- (c) Final Payment: Within thirty (30) days of completion of the Project, County shall furnish District with a full accounting of the funds expended on the Project. Within forty five (45) days of District's acceptance of the full accounting provided by County, District shall remit payment to County for the total amount due for the work performed and completed on the Project.

- (d) Excess Funds: If, during the course of full accounting of the Project referenced in section 2(c) above, it is discovered that excess funds were received by County from District for the Project, County shall remit such excess funds that have not been used for the Project to District within forty five (45) days of County's full accounting of the Project.
3. **Design and Specifications.** County shall select the design engineer and design all aspects of the Project in accordance with County standards and regulations. The plans and specifications shall be reviewed and approved by the Fort Bend County Engineer. District, before the plans and specifications of the design of the Project are finalized, shall have the right and opportunity to review all documents pertaining to the design of the Project, including any maps, records, photographs, reports, and drawing affecting the construction of the Project. District shall provide any comments or feedback regarding the design of the Project to the County Engineer no later than thirty (30) calendar days after its receipt of such design documents. District acknowledges and agrees that the comments and feedback provided to County shall not be binding upon County and the County Engineer, in his sole discretion, shall have the final determination regarding any comments or feedback received from the District for the design of the Project.
4. **Competitive Bid and Award.** Upon completion of final plans and specifications, County will advertise for competitive bids for construction of the Project (together or in separate contracts) in accordance with requirements applicable to County. Upon receipt of bids for the Project, County will notify the District of the amount of the recommended bid ("Notice of Bid") and will prepare and distribute to the District the following: (a) a list of contractors that submitted a qualified bid, (b) a written bid tabulation, which segregates all costs related to the construction of the Project from any other projects or facilities included in the bid, and (c) a breakdown of each Party's pro rata share of the estimated Construction Costs, based upon the proportionate shares, as set forth in Exhibit B, and the amount of the bid recommended for acceptance, including engineering and contingency amounts. If the District desires to object to the award of the contract, it must provide written notice to County within fifteen (15) days of District's receipt of the Notice of Bid. Otherwise, the District will be deemed to have approved the award of the contract to the lowest responsible bidder, in County's judgment, who would be most advantageous to the Parties and would result in the best and most economical completion of the Project. County will enter into a contract with the qualified bidder ("Construction Contract"), which may be subject to change orders that increase, decrease, or otherwise alter the Project Costs under such contract. If County constructs the Project in multiple contracts, the provisions of this Agreement shall apply to each Construction Contract.
5. **Insurance Requirements.** County will require its Contractor's insurance policies to name District, in addition to County, as additional insured on all policies except for Worker's Compensation and Professional Liability. Any such insurance policies shall include at least the following minimum coverage:

- (a) Workers Compensation in accordance with the laws of the State of Texas. Substitutes to genuine Workers' Compensation Insurance will not be allowed.
- (b) Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.
- (c) Business Automobile Liability coverage applying to owned, non-owned and hired automobiles with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage combined.

6. **Construction of the Project.** After awarding the Construction Contract, County shall administer the Construction Contract for the benefit of the Parties. County shall provide on-site inspection of the construction of the Project in accordance with the terms of the Construction Contract(s). County shall approve or deny all applications for payment and requests for extensions of time and shall pay all valid pay applications issued under the Construction Contract(s). County shall approve or deny all change orders submitted under the Construction Contract(s). County shall have the right to terminate the Construction Contract(s) and to enforce its remedies thereunder, as determined by County to be necessary. In the event of any such termination, County shall have the right to complete and/or cause the completion of the Project itself and/or through such other contractor(s) as County determines to be appropriate; provided that all work done in connection with such completion shall be in compliance with County's standards for road work. The costs of any necessary and approved completion work shall be considered part of the Project.
7. **Inspection of Books and Records.** County shall permit District, or any duly authorized agent of District, to inspect and examine the books and records of County for the purpose of verifying the amount of work performed for the Project. District's right to inspect such books and records shall survive the termination of this Agreement for a period of four years. Notwithstanding the foregoing, County shall bear no liability or responsibility for deliverables that have been modified post-delivery or used for a purpose other than that for which they were prepared under this Agreement.
8. **Appropriation of Project Costs.** Each Party represents and warrants to the other that, as of the Effective Date of this Agreement, the governing body of each Party hereto has identified, appropriated, and set aside sufficient monies to fund the costs of the Project pursuant to the terms of this Agreement.
9. **Completion of the Project; Ownership of Project Improvements.** Completion of the

Project shall occur upon the Parties' final inspection and acceptance of the Project and certified as complete by County and District's Engineers, with such acceptance occurring on or after the expiration of any one-year period for which a maintenance bond is in place for the Project. Upon completion and acceptance of the Project, the District, will be the sole owner of the 16-inch waterline that is the subject of this Agreement and will be responsible for the perpetual maintenance and repair of such waterline at its sole cost and expense; provided however, that District may assign some or all, or a portion of, its ownership and/or maintenance obligations in this Section 9 to Fort Bend County Municipal Utility District No. 232 and/or the City of Rosenberg, Texas, pursuant to the Cost Sharing Agreement. Unless expressly provided for pursuant to the terms and conditions of the Cost Sharing Agreement, neither Fort Bend County Municipal Utility District No. 232 nor the City of Rosenberg, Texas will: (i) hold any ownership rights in the 16-inch water line that is the subject of this Agreement; or (ii) have access to, receive service from, or otherwise connect to the 16-inch waterline. The Parties hereby agree that the County is not responsible for regulating access to, or ownership rights of, the 16-inch waterline as it relates to the District, Fort Bend County Municipal Utility District No. 232, and/or the City of Rosenberg, Texas, and the District shall be responsible for enforcing the provisions of the immediately preceding sentence.

10. **Inspection and Deficiencies.** District, or an authorized representative or agent of the District, shall have the right to enter the Project Site and inspect the work performed by County for the Project. Within ten (10) business days of completion of the Project, District shall notify County in writing of any complaints regarding any deficiencies and the quality of workmanship by County for the Project. County shall address and correct such deficiencies within a reasonable time if the County Engineer determines that such deficiencies are actionable under the terms of the County's construction contract(s). Notwithstanding the foregoing, all final decisions regarding the correction of any deficiencies shall be at the County's sole discretion.
11. **Time of Performance.** Time for performance of the obligations of the Parties hereunder shall commence no later than four (4) months after the Effective Date of this Agreement, or within such time as may be extended by the Parties.
12. **Notice.** Any and all notices required or permitted under this Agreement shall be in writing and shall be properly addressed and sent via personal delivery, US first class postage prepaid, registered or certified mail, return receipt requested, Federal Express, Express Mail, or other overnight delivery service as follows:

If to County:	Fort Bend County Engineering Department Attn: County Engineer 301 Jackson St., 4th Floor Richmond, Texas 77469
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And

Fort Bend County, Texas
Attn: County Judge
401 Jackson St, 1st Floor
Richmond, Texas 77469

If to District:

Fort Bend County Municipal Utility District 162
c/o Allen Boone Humphries Robinson, LLP
Attn: Mr. Harry H. Thompson
3200 Southwest Freeway, Suite 2600
Houston, Texas 77027
Email: Hthompson@abhr.com

13. **Entire Agreement and Modification.** This Agreement constitutes the entire Agreement between the Parties and supersedes any and all previous agreements, written or oral, pertaining to the subject matter of this Agreement. This Agreement may only be amended or modified by written agreement executed by both Parties.
14. **No Waiver of Immunity.** Neither the execution of this Agreement nor any other conduct of either Party to this Agreement shall be considered a waiver or surrender of its governmental powers or immunity under the Texas Constitution or the laws of the State of Texas.
15. **Benefit.** This Agreement shall be for the sole and exclusive benefit of County and District and shall not be construed to confer any benefit or right upon any other party.
16. **Applicable Law and Venue.** This Agreement shall be construed according to the laws of the state of Texas. Venue for any claim arising out of or relating to the subject matter of this Agreement shall lie in a court of competent jurisdiction of Fort Bend County, Texas.
17. **Assignment.** Subject to the District's right to assign some or all, or a portion of its ownership and/or maintenance obligations as provided for in Section 9 of this Agreement, neither Party may assign its rights, duties, or obligations hereunder, without the prior written consent of the other, which consent shall not be unreasonably withheld.
18. **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof and this

Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

19. **Effective Date.** The Effective Date of this Agreement shall be the date this Agreement is signed by the last Party hereto.
20. **Captions.** The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of the Agreement.
21. **Electronic and Digital Signatures.** The Parties to this Agreement agree that any electronic and/or digital signatures of the Parties included in this Agreement are intended to authenticate this writing and shall have the same force and effect as the use of manual signatures.
22. **Multiple Counterparts.** This Agreement may be executed in multiple counterparts, each having equal force and effect of an original.
23. **Human Trafficking.** BY ACCEPTANCE OF THIS AGREEMENT, DISTRICT ACKNOWLEDGES THAT FORT BEND COUNTY, TEXAS IS OPPOSED TO HUMAN TRAFFICKING AND THAT NO COUNTY FUNDS WILL BE USED IN SUPPORT OF SERVICES OR ACTIVITIES THAT VIOLATE HUMAN TRAFFICKING LAWS.
24. **Authorization.** This Agreement shall become binding and effective only after it has been authorized and approved by the governing bodies of each Party, as evidenced by the signature of the appropriate authority. Each Party further represents that, by execution of this Agreement, it has been duly authorized by its governing body or other appropriate authority from whom such Party is legally bound to obtain authorization.

{EXECUTION PAGE FOLLOWS}

FORT BEND COUNTY, TEXAS

KP George, County Judge

Date

ATTEST:

Laura Richard, County Clerk

APPROVED:

J. Stacy Slawinski, P.E.,
County Engineer

FORT BEND COUNTY
MUNICIPAL UTILITY DISTRICT NO. 162



Name - Signature

Dale Clayton

Name - Printed Name

President

Title

ATTEST:



Name - Signature

Floyd Martinez

Name - Printed

Secretary

Title

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$_____ to
accomplish and pay the obligation of Fort Bend County, Texas under this Agreement.

Robert E. Sturdivant,
County Auditor

EXHIBIT A

(Follows Behind)

Design Services

Construction Services