

FIRST AMENDED AND RESTATED INTERLOCAL AGREEMENT FOR COUNTY MANAGED PROJECT

(Koeblen Road Seg. 3 – Project No. 20115)

THE STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

This First Amended and Restated 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 the City of Rosenberg, Texas (the “City”), a Texas home-rule municipality. County and City 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, in order to improve mobility, County and City desire to improve a portion of Koeblen Road utilizing funds from the Fort Bend County Mobility Bond Project No. 20115, 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, County and City have determined it would be in the best interest of County and City, and to the inhabitants thereof, that provisions be made for the improvement of Koeblen Road in accordance with the terms of this Agreement; and

WHEREAS, on or about September 26, 2023, the Parties previously entered into that certain interlocal agreement for the improvement of a portion of Koeblen Road (the “Original Agreement”); and

WHEREAS, the terms and provisions of this Agreement replace the Original Agreement in its entirety.

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

1. **Purpose.** The purpose of this Agreement is to outline the funding and project management obligations for the Project.
2. **Recitals.** The recitals set forth above are incorporated herein by reference and made a part of this Agreement.
3. **Definitions.**
 - (a) “Project” means the improvements that are the subject of this Agreement including the roadway improvements provided in Section 4 below.
 - (b) “Eligible Project Costs” means the costs, as determined by County in its sole discretion, for construction of the Project including: engineering design and services related to the completion of any Plans, Specifications, and Estimates (“PS&E”) for the Project; Project related drainage facilities; utility and pipeline conflicts; approved traffic control devices; sidewalks up to five feet (5’) wide consistent with current City Infrastructure Standards; and construction related services for such roadway improvements. Eligible Project Costs shall further include resolution of utility conflicts created by construction of Project elements and similar facilities proposed to be part of the Project.
 - (c) “Non-Eligible Project Costs” shall mean any design and construction costs related to Project enhancements, all upgrades to the Project requested by City, and all other items that do not fall within the definition of Eligible Project Costs (as determined by County) including, but not limited to: landscaping; irrigation; lighting; hike and bike trails; reconstruction of utilities (except utility conflicts created by the construction of Project elements); and oversizing of water, sewer, and drainage facilities.
 - (d) “Effective Date” means the date this Agreement is executed by the last signing Party hereto.
4. **Project/ Scope of Work.**
 - (a) The Parties acknowledge and agree that this Scope of Work represents the general requirements for the Project to facilitate the completion of the design and construction of certain improvements to a portion of Koeblen Road beginning at the intersection of Farm to Market Road 2218 (“FM 2218”) continuing in a Southeasterly direction along the right-of-way of Koeblen Road, and ending at a point in the future right-of-way of Spacek Road. Such improvements to Koeblen

Road shall replace the existing 2-lane asphalt road with a concrete boulevard (including curb, gutter, storm sewers, and sidewalks) as follows:

- (1) Design and construction of a concrete half boulevard section from FM 2218 to approximately 1,000 feet west of future Spacek Road; and
 - (2) Design and construction of a full boulevard for the remaining stretch of Koeblen Road to future Spacek Road.
- (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 City for the same pursuant to Section 5 of this Agreement.

5. Allocation of Project Costs.

- (a) City Project Costs: City shall contribute funds for the Eligible Project Costs which costs are estimated at Four Million One Hundred Thousand and 00/100 Dollars (\$4,100,000.00) (the "Cost Estimate"). City understands and agrees that the Eligible Project Costs may be higher or lower than the Cost Estimate, depending on the needs of the Project. In any event, City shall contribute fifty percent (50%) of the Eligible Project Costs to County as follows:
- (1) Initial Payment: Within thirty (30) days of Effective Date of this Agreement, City shall make an initial payment of Two Million Fifty Thousand and 00/100 Dollars (\$2,050,000.00) to County (the "Initial Payment"). Upon receipt of the Initial Payment, County shall instruct its engineers to commence design of the plans and preparation of the specifications for the construction of the Project in accordance with Section 6 of this Agreement.
 - (2) Final Payment: Within thirty (30) days of Completion of the Project, County shall furnish City with a full accounting of the funds expended on the Project. Within thirty (30) days of City's acceptance of the full accounting provided by County, City shall remit payment to County for the total amount due for the work performed and completed on the Project.
 - (3) Excess Funds: If, during the course of full accounting of the Project referenced in section 5(a)(2) above, it is discovered that excess funds were received by County from City for the Project, County shall remit such

excess funds that have not been used for the Project to City within thirty (30) days of County's full accounting of the Project.

- (b) Notwithstanding the foregoing or anything contained to the contrary herein, City understands and agrees that any funds expended by County for the Project shall be limited to Eligible Project Costs only. City shall be responsible for the funding of any and all Non-Eligible Project Costs, including the incremental cost of extending or upsizing any water, wastewater, and drainage facilities, if any. Such incremental cost shall be determined by an alternate bid based on different sizes of said water, wastewater, and drainage facilities. Prior to advertising for competitive bids, County shall notify City in writing as to which enhancements and improvements for the Project constitute Non-Eligible Project Costs. Upon receipt of County's notification, City shall provide written confirmation to County as to the scope of enhancements and improvements determined to be Non-Eligible Project Costs, and shall be responsible for the funding of the same upon receipt of invoice by County.
6. **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. City, upon reasonable notice to County, 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. City 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 review. City 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 City for the design of the Project.
7. **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 City of the amount of the recommended bid ("Notice of Bid"). If the City desires to object to the award of the contract, it must provide written notice to County within fifteen (15) days of City's receipt of the Notice of Bid. Otherwise, the City 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.

8. **Insurance Requirements.** County will require its Contractor's insurance policies to name City, 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.
9. **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.
10. **Administration of County Funds and Limit of Appropriation.**
- (a) The County's sole financial obligation under this Agreement is to provide funding in the amount of fifty percent (50%) of the Eligible Project Costs. The funds provided by County are from a Mobility Road Bond initiative and no other funds will be available, regardless and irrespective of any cost overruns or unanticipated expenditures.
 - (b) City has been advised by County, and by execution of this Agreement, City understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available for the Project the

total maximum sum of fifty percent (50%) of the Eligible Project Costs. 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 County shall contribute to the Project and the total maximum amount that County shall be obligated to spend on the Project shall not under any conditions, circumstances, or interpretations hereof exceed fifty (50%) of the Eligible Project Costs, after all payments are made by City in accordance with Section 5 above.

11. **Appropriation of Funds.** 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.
12. **Completion of the Project; Maintenance/ Ownership of Project Improvements.** Completion of the Project shall occur upon the Parties' final inspection of the Project and certified as complete by the County Engineer. Upon Completion of the Project, County, at its sole cost and expense, shall be responsible for the perpetual maintenance and repair of any portion of the Project, and any related improvements thereof, that extend beyond the Rosenberg city limits boundary line. Upon Completion of the Project, City, at its sole cost and expense, shall be responsible for the perpetual maintenance and repair for any portion of the Project, including any related improvements thereof, located within the Rosenberg city limits, including all improvements constructed for the roadways and respective segments identified in Section 4 of this Agreement. City's maintenance and repair obligations under this Section shall survive the termination of this Agreement, however caused, and shall further include any portion of the Project that may be annexed in the future within the boundaries of the Rosenberg city limits.
13. **Inspection and Deficiencies.** City 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, City 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.
14. **Time for Performance and Termination.**
 - (a) County shall initiate the construction of the Project no later than twelve (12) months after bid opening, or within such time as may be extended by written amendment of the Parties.

(b) County, in its sole discretion, may elect to forgo construction of the Project at any time prior to award of the Construction Contract(s). County shall provide written notice to City of its decision to forgo such construction, and shall refund any amounts provided by City that have not been expended for the Project. County shall further provide the PS&E, if any, to City for City's administration of the Project within sixty (60) days of County's notice of termination.

15. **Force Majeure.** In the event either Party is rendered unable, wholly or in part, by Force Majeure to carry out any of its obligations under this Agreement, then, within a reasonable time after the occurrence of such event, but no later than ten (10) calendar days after, the Party whose obligations are so affected (the "Affected Party") thereby shall notify the other in writing stating the nature of the event and the anticipated duration. The Affected Party's obligations under this Agreement shall be suspended during the continuance of any delay or inability caused by the event, but for no longer period. The Affected Party shall further endeavor to remove or overcome such delay or inability as soon as is reasonably possible.

For purposes of this Agreement, Force Majeure includes, but is not limited to: acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of the government of the United States of America or the State of Texas or any civil or military authority other than a Party to this Agreement, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, severe storms, floods, washouts, drought, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, and any other incapacities of any Party, similar to those enumerated, which are not within the control of the Party claiming such inability, which such Party could not have avoided by the reasonable exercise of due diligence and care.

16. **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

And

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

If to City: City of Rosenberg
Attn: City Manager
2110 4th Street
P.O. Box 32
Rosenberg, Texas 77471

17. **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. **IT IS ACKNOWLEDGED BY CITY THAT NO OFFICER, AGENT EMPLOYEE, OR REPRESENTATIVE OF COUNTY HAS ANY AUTHORITY TO CHANGE THE TERMS OF THIS AGREEMENT OR ANY ATTACHED EXHIBITS HERETO UNLESS EXPRESSLY AUTHORIZED BY THE FORT BEND COUNTY COMMISSIONERS COURT.**
18. **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.
19. **Benefit.** This Agreement shall be for the sole and exclusive benefit of County and City and shall not be construed to confer any benefit or right upon any other party.
20. **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.
21. **Assignment.** 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.
22. **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.
23. **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.
24. **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.

25. **Multiple Counterparts.** This Agreement may be executed in multiple counterparts, each having equal force and effect of an original.
26. **Human Trafficking.** BY ACCEPTANCE OF THIS AGREEMENT, CITY 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.
27. **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

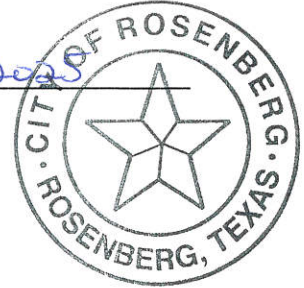
CITY OF ROSENBERG, TEXAS

KP George, County Judge

William T. Benton
William Benton, Mayor

Date

September 2, 2025
Date



ATTEST:

Laura Richard, County Clerk

ATTEST:

Danyel Swint
Danyel Swint, City Secretary

APPROVED:

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

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

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