

THE STATE OF TEXAS §
 §
 COUNTY OF FORT BEND §

KNOW ALL MEN BY THESE PRESENTS:

**INTERLOCAL AGREEMENT
 FOR FM 2218/FM1640 IMPROVEMENTS
 AND STORM SEWER IMPROVEMENT
 PROJECT NO. 61 – 2000 Mobility Bonds**

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 Rosenberg, a municipal corporation and home-rule city of the State of Texas, principally 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.”)

RECITALS

WHEREAS, it is to the mutual benefit of the County and the City to construct the following roadway project included in the 2000 Mobility Bond Projects of County: F.M. Highway 2218 from U.S. Highway 59 to F.M. Highway 1640 (CSJ 2093-01-009) and F.M. Highway 1640 from F.M. Highway 2218 to F.M. Highway 762 (CSJ 1683-01-034) identified as Project No. 61 on the attached Exhibit A [Fort Bend County –Proposition Two (Mobility Bonds)]; and

WHEREAS, the County has requested the City include the construction of the expansion of the FM 2218 storm sewer to accommodate fully developed storm runoff from the County’s property (currently occupied by the Fort Bend Central Appraisal District), and additional property described herein; and

WHEREAS, the construction of each Project will improve the traffic flow/circulation and drainage in the service area; and

WHEREAS, the City and the County agree that 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 City and County agree that the Projects contemplated in this Agreement 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 County and City are willing to participate as set forth herein in the actual costs of the Project, including, the cost of construction, construction management, construction inspection, and construction testing costs related to the Projects; and

NOW, THEREFORE, for and in consideration of the mutual covenants, agreements and

benefits, the Parties agree as follows:

I. **DEFINITIONS**

- A. ***City*** means the City of Rosenberg, Texas.
- B. ***County*** means Fort Bend County, Texas.
- C. ***State*** means the State of Texas.
- D. ***Road Improvement Project*** means improvements of FM Highway 2218 from U.S. Highway 59 to FM Highway 1640 (CSJ 2093-01-009) and FM Highway 1640 from FM Highway 2218 to FM Highway 762 (CSJ 1683-01-034.)
- E. ***Storm Sewer Improvement Project*** means the oversizing of the FM 2218 storm sewer to accommodate fully developed storm runoff from the County's property (currently occupied by the Fort Bend Central Appraisal District), from an additional 5.0 acres for additional development and from a 0.59 acre extension of Airport Boulevard.

II. **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.

III. **COUNTY RIGHTS AND OBLIGATIONS**

- A. The parties agree that the State shall be responsible for the cost and administration of the construction contract for the Project.
- B. The County's sole obligation is to provide the funding to the City in the amount of \$1,930,933.96 as specified in this Section. Upon request for payment from the City, the County agrees to pay the City the following amount:

Road Improvement Project:	\$1,769,300.00
Storm Sewer Improvement Project:	\$ 161,633.96

- C. Subject to the provisions of Section III B. above, the County shall provide funding as described in Section III B for the Road Improvement Project from the 2000 General Obligation Bonds for Mobility Projects.
- D. The County is providing funding to the City for a fixed price Advanced Funding Agreement between the City and the State. The State will be responsible for any overruns in excess of the fixed amount contributed by the City, said fixed amount includes the contribution from the County and Richmond. In the event changed site conditions are discovered, the State may

request additional funds from the City. Should this request for additional funds be related to the Storm Sewer Improvement Project, the County agrees to provide the appropriate pro-rata share of the requested additional funds. The County is not obligated to expend any further funds on the Road Improvement Project.

- E. The County will forward payment to the City within 30 days of receipt of the proper request from the City.
- F. During the work on each Project, the County may review the documents, maps, plats, records, photographs, reports, and drawings pertaining to each Project and may inspect the work in progress, provided that it does not interfere with the work.

IV. CITY OBLIGATIONS

- A. In the event the State or the City determine the Project lacks feasibility or for any other reason elects to forego its construction, the City shall refund all amounts provided by County upon thirty (30) days written notice to the City. However, County agrees the refund of County funds shall occur only after such time the State has first refunded said County funds to the City.
- B. The City shall submit copies of progress reports to the County describing in sufficient detail the progress of each Project. These reports shall be submitted to County when the construction of each Project is 50% complete, 75% complete and 100% complete. Construction reports received by the City from the State detailing the progress of each Project shall suffice for the requirements of this section, so long as the City has reviewed such reports and confirmed accuracy of the contractor's report.
- C. Upon completion of each Project, but no later than 90 days after completion, the City will furnish the County with a full accounting of the County funds expended on each Project, provided the State has furnished the City with the full accounting and, if provided by the State, a set of record drawings showing each Project as constructed. The County Auditor may review the City's records regarding each Project by providing written notice to City.
- D. The County's funds are a part of a fixed sum contribution from the City to the State for the Project. Said funds will be used by the State to the fullest. In the event that, if, after completion of each Project and the City's receipt of the funds as stated in Section III, the State determines to return a portion of the local fixed sum contribution to the City, a pro-rata share of such funds from each Project shall be refunded to the County within ninety (90) days from the date the full accounting provided to the County as required in Section IV (C) above.
- E. The County has agreed to fund oversizing of the FM 2218 storm sewer to accommodate fully developed storm runoff from County's property (currently occupied by the Fort Bend Central Appraisal District), from an additional 5.0 acres for additional development and from a 0.59 acre extension of Airport Boulevard. In the event a developer presents a plan to the City for development of the 5 acres adjoining the County property and/or Airport Boulevard, the City will use its best efforts to assist the County in recovering the funding for the storm sewer oversizing not otherwise used by the County.

V.
LIABILITY

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

VI.
USE OF COUNTY RIGHT-OF-WAY

The County authorizes the City to use County-owned right-of-way, if any, upon which each Project is to be constructed and County-owned right-of-way, if any, immediately adjacent to the same for the purpose of constructing each Project.

VII.
MAINTENANCE

Upon completion of the Road Improvement Project, the State shall retain full ownership of and responsibility for the maintenance and repair of the Road Improvement Project to the same extent and in the same manner as for other like facilities of the State.

VIII.
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 an amount not to exceed \$1,930,933.96 specifically allocated to fully discharge any and all liabilities that may be incurred by the County for both Projects.

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 City may become entitled to hereunder and the total maximum amount that the County will provide the City hereunder will not under any condition, circumstance or interpretation hereof exceed the sum of \$1,930,933.96.

IX.
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.

X.
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.

XI.
NOTICES

All notices and communications under this Agreement shall be mailed by certified mail, return receipt requested, or delivered to the following addresses:

City of Rosenberg
2210 Fourth Street
P.O. Box 32
Rosenberg, Texas 77471
Attention: City Manager

County Engineer
1124-52 Blume Road
P.O. Box 1449
Rosenberg, Texas 77471
Attn: Jesse Hegemier

Don Brady, Director
Facilities Mgmt & Planning Dept
517 Eugene Heimann Circle,
Suite 500
Richmond, Texas 77469

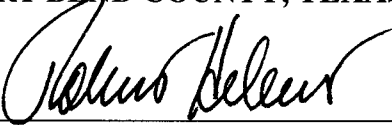
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XII.
ENTIRE AGREEMENT

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.


This Agreement has been executed by the City and the County upon and by the authority of their respective governing bodies. This Agreement is not effective until executed by both parties.

FORT BEND COUNTY, TEXAS


Robert Hebert, Fort Bend County Judge

Date March 9, 2010

ATTEST:

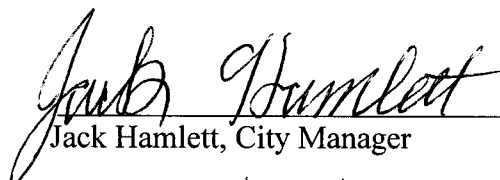

Dianne Wilson, Fort Bend County Clerk

Approved:


D. Jesse Hegemier, County Engineer



Don Brady, Director
Facilities Management & Planning Dept.

CITY OF ROSENBERG


Jack Hamlett, City Manager

Date: 2/26/2010

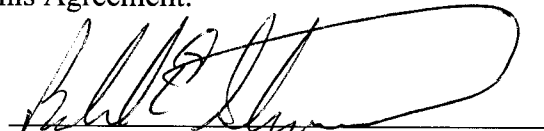
ATTEST:


Christine Krahn, Acting City Secretary



AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$1,930,933.96 to accomplish and pay the obligation of Fort Bend County under the terms of this Agreement.


Robert Ed Sturdivant,
Fort Bend County Auditor

RESOLUTION NO. R-1121

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE AN INTERLOCAL AGREEMENT, BY AND BETWEEN THE CITY OF ROSENBERG, TEXAS, AND FORT BEND COUNTY, TEXAS, REGARDING FM2218/FM1640 IMPROVEMENTS AND STORM SEWER IMPROVEMENTS.

* * * * *

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROSENBERG:


Section 1. The City Manager is hereby authorized to negotiate and execute an Interlocal Agreement (Agreement), by and between the City of Rosenberg, Texas, and Fort Bend County, Texas, establishing funding criteria for both Cities regarding participation in the FM 2218/FM1640 improvements and storm sewer improvements, more commonly known as the FM 2218 Widening Project. A copy of said final Agreement is attached hereto as Exhibit "A" and made a part hereof for all purposes.

PASSED, APPROVED, AND RESOLVED this 16th day of February 2010.

ATTEST:

APPROVED:


Linda Cernosek, CITY SECRETARY


Joe M. Gurecky, MAYOR

