

AGREEMENT

THE STATE OF TEXAS  
COUNTY OF FORT BEND

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INTERLOCAL PROJECT AGREEMENT BETWEEN  
FORT BEND COUNTY AND THE CITY OF MISSOURI CITY, TEXAS FOR  
CONSTRUCTION IMPROVEMENTS TO SOUTH GESSNER ROAD AND  
CRAVENS ROAD

This Interlocal Agreement (hereinafter referred to as "Agreement"), is made and entered into pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, by and between FORT BEND COUNTY, TEXAS (hereinafter referred to as "County"), acting through its governing body, Fort Bend County Commissioners Court, and the CITY OF MISSOURI CITY, TEXAS (hereinafter referred to as "City"), a home-rule municipality under the laws of the State of Texas, acting by and through the City Council of the City of Missouri City.

RECITALS

WHEREAS, County has agreed to assist the City with certain governmental functions and services on a "project by project" basis under the Primary Interlocal Agreement ("Primary Agreement") previously agreed to by the parties on September 22, 2009. The terms of that Primary Agreement are incorporated into this Agreement for all purposes as if they were set forth in this Agreement except as otherwise provided herein;

WHEREAS, the City desires to construct improvements such as concrete roadways, including drainage, traffic signals and all necessary appurtenances within the city limits of the City to South Gessner Road from US 90 A to Beltway 8 and Cravens Road from South Gessner Road to approximately 2000 feet south of South Gessner Road, hereinafter called the "Project," in accordance with the terms of this Agreement;

WHEREAS, part of the Project is within Fort Bend County and part of the Project is within Harris County;

WHEREAS, the City seeks monetary assistance for the Project from the County;

WHEREAS, Harris County has agreed to participate in the Project under the Interlocal Agreement previously agreed to by Harris County and the City on August 25, 2009, provided that the County agrees to provide monetary assistance for the Project;

WHEREAS, the County is willing to provide two million four hundred thousand dollars (\$2,400,000) for the Project, being hereinafter called the "County Contribution,"

provided the City designs and constructs the Project and is responsible for the remaining cost of the Project;

WHEREAS, the City and the County believe it is in the best interest of the citizens of Fort Bend County and the City of Missouri City to enter into this Agreement; and

NOW, THEREFORE, for and in consideration of the mutual covenants, agreements and benefits to the parties herein named, it is agreed as follows:

#### ARTICLE I PURPOSE

The purpose of this Agreement is to provide for construction improvements such as concrete roadways, including drainage, traffic signals and all necessary appurtenances within the city limits of the City to South Gessner Road from US 90 A to Beltway 8 and Cravens Road from South Gessner Road to approximately 2000 feet south of South Gessner Road.

#### ARTICLE II TERMS

This Agreement shall be effective on the date the last party executes this Agreement and shall terminate upon the completion of the Project.

#### ARTICLE III COUNTY'S RIGHTS AND DUTIES

3.01 Except as provided by Section 4.05, or unless this Agreement is amended and additional funds are thereby made available, it is expressly understood and agreed that the contribution of the County under this Agreement is two million four hundred thousand dollars (\$2,400,000), and the County shall not be obligated to expend more than the said contribution for this Project. The County shall provide funds for the County Contribution by reducing the amount of funds previously allocated by the County to any City transportation project funded by the County up to two million four hundred thousand dollars (\$2,400,000) and allocating those funds to this Project. The County and the City shall agree to the City transportation projects that will be subjected to a reduction of funds for this Project.

3.02 To the extent that any amount of monetary savings described in the Term Sheet for Trammel-Fresno Road, attached hereto as Exhibit A, is realized, the County shall reimburse each City transportation project from which funds were reduced as described in Section 3.01 by allocating such monetary savings to said projects at the City's discretion. The allocation of monetary savings to each City transportation project shall not be greater than the amount reduced from each transportation project.

3.03 The City shall select and negotiate with an engineer for preparation of plans,

specification and estimates (PS&E) for the Project, such engineer being hereinafter called the "Engineer." Upon completion of negotiations, the City shall inform the County of the estimated costs of PS&E to which the County Contribution would be applied, and provide documentation of such estimate. The County Engineer shall provide to the City a written determination indicating whether such estimate is justified. Upon providing to the City the written determination by the County Engineer that such estimated costs are justified, the County shall forward to the City the estimated costs of PS&E to which the County Contribution would be applied, subject to the County Contribution amount set forth above, not later than the 30th day after the date the City provides documentation of the estimated costs of PS&E. Upon receipt of such funds, the City shall proceed with development of the PS&E in accordance with County requirements and guidelines.

3.04 Payments by the County to City hereunder shall only be applied by the City to Project costs.

3.05 During the construction of the Project, County shall have the right of access to the construction site and shall have the right to review all documents, maps, plats, records, photographs, reports or drawings affecting said construction, provided, however, County shall give notice by telephone to the City Engineer prior to any inspection of either the site or documents and provided further that in conducting said inspections, County shall not interfere with the work in progress.

#### ARTICLE IV CITY'S RIGHTS AND DUTIES

4.01 The City will undertake to acquire all right-of-way necessary for the Project by purchase, gift, donation or exercise of the power of eminent domain.

4.02 Within sixty (60) days after the date the County Engineer provides to the City a written determination that PS&E costs are justified, as described in Section 3.03, and all utility/pipeline adjustments/relocations and modifications and acquisition of any necessary right-of-way for the Project have been finalized, the City will advertise for and receive bids for the construction of the Project in accordance with the approved PS&E.

4.03 Upon receipt and tabulation of the bids for the Project, City will determine the lowest and best bid for the construction of the Project. The City will cause the Engineer to make an estimate of the County Contribution and submit tabulations showing the calculation of the County Contribution to the County Engineer. City's determination of the lowest and best bid for the Project shall be final and conclusive.

4.04 Upon the City's determination of the lowest and best bid for the Project, if the City determines that the Project can be designed and accomplished without requiring the County to expend funds in excess of the County Contribution, the City shall so notify the County. Within thirty (30) days after such notice, the County shall forward to City an amount equal to the County Contribution less any prior payments by the County toward the County Contribution, but not to exceed a total expenditure under this

Agreement greater than the sum allocated by the County for the Project as set forth in Section 3.01. Within thirty days after receipt of such funds, City shall award the contract to the lowest and best bidder, in accordance with the usual and customary procedures of City. Notwithstanding the above, it is expressly agreed and understood that City reserves the right to reject all bids. In such event, City, in its discretion, may either re-advertise for bids pursuant to the same understanding with regard to rejection of bids or terminate this agreement as hereinafter provided. City's determination of the lowest and best bid for the Project shall be final and conclusive.

4.05 If the City determines that the total Project costs contemplated by this Agreement and the City's agreement with Harris County relating to this Project exceed six million four hundred fifteen thousand one hundred five dollars (\$6,415,105), the City shall have the following options:

- A. City may reject all bids and elect not to proceed with the award of the construction contract and terminate the Project without further obligation to County.
- B. City may reject all bids and re-advertise for bids as in the first instance.
- C. City may notify County of the bid and undertake to negotiate with County for City and County to agree in writing to pay the additional costs of the Project. In the event City and County agree in writing to pay the additional costs, the County shall forward to the City the agreed upon amount. If City and County fail to agree in writing to pay the additional costs, City may proceed under one of the other options.
- D. If the Project requires the City to expend funds in excess of the sum provided for by this Agreement for the remaining balance owed for the Project, and such funds are not otherwise provided for by this Agreement or a subsequent written agreement executed by both parties, the City may pay the remaining balance.

4.06 City shall be responsible for administering the construction contract.

4.07 The City shall provide PS&E to the County Engineer for review and comment at 75 percent and 100 percent completion.

4.08 The City shall cause the funds paid by the County to it hereunder that are not needed to meet obligations due or contemplated to be due within sixty (60) days, to be invested in the same manner as similar funds are invested by the City in federal obligations or interest-bearing time deposits. The determination by City of the portion of said funds needed to meet such obligations shall be conclusive. Upon completion of construction of the Project or termination as provided below, the City shall perform or cause to be performed, a final accounting. The City shall refund to the County all interest earned upon the County's contributions under this Agreement plus any funds provided by the County to the City that were in excess of the actual County

Contribution.

4.09 The City acknowledges and agrees that the County has not assumed any responsibility for the actual design or construction of the Project or the performance of the work. It is further acknowledged and agreed by the parties that the County is not responsible under this Agreement for the maintenance or condition of the Project facilities during construction. Upon completion of the Project, the City agrees to assume responsibility for the maintenance and repair of the Project.

#### ARTICLE V CURRENT REVENUE

Each party understands and agrees that each party paying for the performance of governmental functions or services under this Agreement must make those payments from current revenues available to that party.

#### ARTICLE VI ADMINISTRATIVE PROVISION

Each party, at its sole cost and expense, and its authorized representatives shall have the right to review and audit all books, records, vouchers and documents of whatever nature related to the other party's performance under this Agreement during the period of performance of this agreement and for five (5) years thereafter or for so long as there exists any dispute or litigation arising from this agreement.

#### ARTICLE VII LIABILITY

7.01 By this paragraph, neither party waives or relinquishes any immunity from liability, limitation of liability, or defense on behalf of itself, its officers, employees, and agents provided by the Constitution and laws of the State of Texas as a result of its execution of this Agreement and the performance of the covenants contained herein.

7.02 Each party to this Agreement agrees that it shall have no liability whatsoever for the actions or omissions of an individual employed by the other party, regardless of where the individual's actions occurred. Each party is solely responsible for the actions and/or omissions of its employees and officers.

#### ARTICLE VIII MISCELLANEOUS

8.01 Venue for any litigation involving this Agreement shall be in Fort Bend County, Texas.

8.02 If any one or more of the provisions contained in this Agreement shall be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be

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

8.03 This Agreement supersedes any and all other agreements, either oral or in writing between the parties hereto with respect to the subject matter hereof, and no other agreement, statement, or promise relating to the subject matter of this Agreement which is not contained herein shall be valid or binding.

8.04 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 parties hereto.

ARTICLE IX  
NOTICE

All notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received or, if earlier, on the third day following deposit in a United States Postal Service post office or receptacle with proper postage affixed (certified mail, return receipt requested) addressed to the respective other party at the address below or at such other address as the other party may have theretofore prescribed by notice to the sending party.

Address for notice shall be as follows:

City:           City of Missouri City  
                  1522 Texas Parkway  
                  Missouri City, Texas 77489  
  
                  Attention: Scott R. Elmer, P.E., City Engineer

County:       Fort Bend County  
                  1124-52 Blume Road  
                  Rosenberg, Texas 77471  
  
                  Attention: Jesse Hegemier, County Engineer

ARTICLE X  
ENTIRE AGREEMENT AND ATTACHMENT

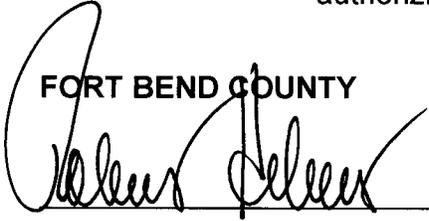
This instrument contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any modification concerning this instrument shall be of no force and effect unless such modification is made in writing, approved by the governing bodies and signed by all parties hereto.

[EXECUTION PAGE FOLLOWS]

IN TESTIMONY OF WHICH, this agreement, in duplicate counterparts, each having equal force and effect of an original, has been executed on behalf of the parties hereto as follows:

- a. It has on the 7<sup>th</sup> day of June, 2010, been executed on behalf of the City by the Mayor and attested by the City Secretary of the City of Missouri City, pursuant to authorization of the City Council of the City of Missouri City authorizing such execution.

**FORT BEND COUNTY**



Robert E. Hebert, County Judge

June 22, 2010

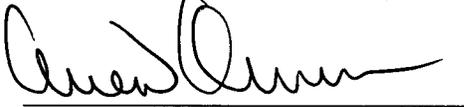
Date

ATTEST:



Dianne Wilson, County Clerk

**CITY OF MISSOURI CITY, TEXAS**

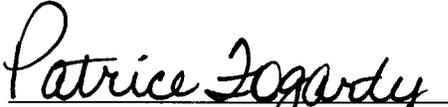


Allen Owen, Mayor

June 7, 2010

Date

ATTEST:



Patrice Fogarty, City Secretary

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of two million four hundred thousand dollars (\$2,400,000) to accomplish and pay the obligation of Fort Bend County under this contract.



6-22-2010

Fort Bend County Auditor

## Term Sheet for Trammel-Fresno Road

### Background

- Fort Bend County has a project in the 2008-2011 TIP to widen Trammel-Fresno Road, from 2-lane to 4-lane, from the Fort Bend Parkway to FM 521. Project funding includes:
  - Project total: \$17,403,750
  - Federal Funding: \$6,762,000
  - FB County Funding: \$10,641,750
  
- Missouri City had a project in the 2008-2011 TIP to widen Trammel-Fresno Road, from 2-lane to 4-lane, from Vicksburg Blvd to Hurricane Lane. Project funding includes:
  - Project Total: \$5,365,437
  - Federal Funding: \$4,292,350
  - COMC Funding: \$1,073,087
  
- The Missouri City project was over funded as the project cost estimate was developed and submitted prior to the City being able to partner with adjacent developers to donate right-of-way and to construct a 2-lane roadway along the new alignment. Additionally, the FBC project includes a portion of the Missouri City project. The revised cost estimate for the Missouri City project is approximately \$1,650,000. This leaves \$3,715,437 unspent in the project budget.
  
- Fort Bend County has developed plans for an on-ramp from Trammel-Fresno Rd. to the Fort Bend Parkway. The location of the on-ramp is near Hurricane Lane. Missouri City shows an extension of Hurricane Lane, north to Lake Olympia Blvd, on the adopted major thoroughfare plan. The relative locations of the two projects may cause traffic conflicts due to their proximity.
  
- Lake Olympia Blvd currently has a tolled on-ramp to the Parkway at its location. Extending Hurricane Lane to Lake Olympia will eliminate the need for a separate on-ramp from Trammel-Fresno to the FB Parkway. Recognizing this, COMC and FB County Engineering approached HGAC and obtained an approved TIP amendment to change the limits of the COMC project from "Vicksburg to Hurricane Lane" to "Vicksburg to Hurricane Lane then extend Hurricane Lane north to Lake Olympia and connect to the Fort Bend Parkway" and to combine the COMC project with the FB County project and make FB County the lead agency for the combined project.
  
- The TIP amendment removes the need for FB County to construct an separate on-ramp to the FB Parkway and allows FB County to utilize any surplus COMC project funds for the FB County portion of the project.
  
- The COMC has spoken with the landowner for the Hurricane Lane extension and the landowner is willing to donate the land for the project.