

THE STATE OF TEXAS     §  
   §  
 COUNTY OF FORT BEND §

KNOW ALL MEN BY THESE PRESENTS:

**INTERLOCAL AGREEMENT**  
**FOR EXPANSION OF BURNEY ROAD**

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 SUGAR LAND, 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, TEXAS, a body corporate and politic under the laws of the State of Texas, acting by and through its Commissioners Court ("County.")

**RECITALS**

WHEREAS, in 2000 and 2007, the citizens of Fort Bend County voted to approve the issuance of general obligation bonds that allows the County to participate with other local governmental entities to fund certain regional street and road improvements and associated drainage facilities ("Mobility Projects") that are funded in part by state or federal government; and

WHEREAS, City owns and operates a system of streets and roadways within Fort Bend County for public use and benefit, including Burney Road from Voss Road to Florence Road; and

WHEREAS, the project contemplated in this Agreement is the street or road improvements and associated drainage for Burney Road from Voss Road to Florence Road, excluding the Voss intersection and including the Florence intersection, as identified in the 2000 and 2007 Fort Bend County Mobility Bond Projects, hereinafter referred to as the "Project;" and

WHEREAS, preliminary design for the Project was completed under the 2000 Mobility Bond Projects, but construction of the Project has not been commenced; and

WHEREAS, construction of the Project will improve traffic flow/circulation and drainage in the service area, and such Project is desired by City and County; and

WHEREAS, the County may not expend the 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 the links with county roads or state highways in accordance with Section 251.012 of the TEXAS TRANSPORTATION CODE;

WHEREAS, City and County agree that the Project contemplated in this Agreement is part of a city street that is an integral part of or a connecting link with county with county roads or state highways in accordance with Section 251.012 of the TEXAS TRANSPORTATION CODE; and

WHEREAS, the Commissioners Court of Fort Bend County finds that the Project contemplated in this Agreement serves a County purpose; and

WHEREAS, City and County are agreeable to undertake the Project, provided the parties agree to assume certain responsibilities associated with the development of the Project; and

WHEREAS, the governing body of City has duly authorized this Agreement and the governing body of County has duly authorized this Agreement;

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

## **I. INCORPORATION OF PREAMBLE**

The parties agree that the representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are incorporated into this Agreement.

## **II. DEFINITIONS**

*City* means the City of Sugar Land, Texas.

*County* means Fort Bend County, Texas.

*Project* means the reconstruction of Burney Road from Voss Road to Florence Road, excluding the Voss intersection and including the Florence intersection, that includes a 4-lane divided roadway with concrete curbs and gutters, a sidewalk on the east side, and drainage and traffic signal improvements.

## **III. COUNTY'S OBLIGATIONS**

A. The parties agree that County shall be solely responsible for taking all actions necessary to complete the Project in compliance with the engineering plans and specifications approved by the City and all applicable state and federal laws. County further warrants that it will timely complete the Project.

B. Under the 2000 Mobility Bond Projects, County selected a consulting engineer to design pavement and drainage improvements for the Project. The Project must be designed in compliance with the City's ordinances and regulations.

C. County shall advertise for and receive bids for the construction of the Project pursuant to the usual and customary procedures of County, in accordance with the plans, drawings and specifications

approved by City's Engineer and in compliance with all competitive bidding statutes applicable to the City and County. The bid request must contain line items for the Project that are separate from the line items for that portion of Burney Road located within the County. The County may not bid the Project until it receives written notice from the City that the City has acquired the necessary land within the City limits for the Project.

D. County reserves the right to reject all bids. In such event, County may either re-advertise for bids in accordance with the approved plans, drawings and specifications or terminate this Agreement as provided herein. If this Agreement is terminated, the County will refund all amounts provided by the City upon 30 days' written notice to the County.

E. County's determination of the lowest responsible bid for the Project shall be final and conclusive. However, if the lowest responsible bid for the Project exceeds \$1,200,000, the County will submit a copy of that bid to the City for the City's review. And the County will not award a Contract for the Project unless the City agrees to pay additional funds as provided in Section IV.D. of this Agreement.

F. County shall be responsible for the cost of administration of the construction contract.

G. Upon lawful letting of the construction contract for the Project by County to a qualified contractor, County shall submit a copy of the fully executed construction contract together with copies of plans, drawings and specifications for the Project to City's Engineer.

H. County shall not begin construction on the Project without written authorization from City's Engineer, which shall not unreasonably be withheld.

I. County agrees to make or cause to be made all changes to the plans, drawings and specifications reasonably requested by City.

J. County will provide the City with prior notice of all progress meetings and will submit copies of progress reports to the City describing in sufficient detail the progress of the Project. These reports shall be submitted to the City when construction of the Project is 50% complete, 75% complete and 100% complete. Construction reports received by the County from contractors detailing the progress of the Project will suffice for the requirements of this Section, so long as the County has reviewed the reports and confirmed the accuracy of the contractor's report.

K. Upon completion of the Project, but no later than 90 days after the completion, the County shall furnish City with complete documentation and a full accounting of the funds expended on the Project. The City may review the County's records regarding this Project by providing written notice to the County.

L. Upon completion of the Project, but no later than 90 days after completion, the County shall provide a set of record drawings of the Project to City showing the Project as constructed.

M. If, after completion of the Project and the County's receipt of funds from the City, there are funds remaining and or savings for the Project, 34% of the funds shall be refunded to the City within 90 days from the date of the full accounting provided to the City.

#### IV. CITY'S RESPONSIBILITIES

A. During the work on the Project, City shall have the right to review all documents, maps, plats, records, photographs, reports and drawings affecting the construction and to inspect the work in progress, provided however, that in conducting such inspections, City shall not interfere with the work in progress. Any deficiencies noted by City shall be brought to the attention of County and the deficiencies shall be promptly addressed by the County.

B. City shall have the right to participate in the final inspection of the Project. At that time, any deficiencies noted by City shall be promptly addressed by County.

C. The City's sole obligation under this Agreement is to provide the funding specified in this Agreement. Subject to Paragraph D. below, the City agrees to pay the County thirty four percent (34%) of the Project cost, up to the maximum amount of \$1,200,000.

D. If the lowest responsible bid for the Project exceeds \$1,200,000, and except as provided in Paragraph D(2) below:

(1) The City may agree to fund additional costs after reviewing the bid (Additional Costs). If the City agrees to pay the Additional Costs, the City will pay:

(a) Thirty-four percent of the Additional Costs that pertain solely to the Project.

(2) Within eighteen (18) months of the latter date of the parties' signatures on this Agreement, the County must:

(a) Complete the design of the Project; and

(b) Award the contract for construction of the Project.

If the County does not award a contract for construction of the Project within eighteen (18) months of the latter date of the parties' signatures on this Agreement, the County is *solely* responsible for any Project costs that exceed \$1,200,000.

E. Upon request from the County, the City will forward the agreed upon amount as follows:

(1) Fifty percent (50%) when Fifty percent (50%) of the construction has been completed for the Project; and

(2) Fifty percent (50%) when Ninety-Five percent (95%) of the construction has been completed for the Project.

F. The County will forward to the City a request for payment that includes sufficient detail for the City to determine whether the requirement of IV.E. above has been met for the particular payment request. The City will forward payment to the County within 30 days of the City's receipt of the request and detail from the County.

G. At all times during construction of the Project, City shall have full access to all of the County's records and documentation pertaining to the Project.

## **V. TERM AND TERMINATION**

A. This agreement shall commence upon the later date of execution by the City or the County and shall terminate upon final inspection and City's and County's acceptance of the Project.

B. City or County may terminate this Agreement, without cause, at any time prior to the letting of the contract for construction of the Project upon receipt by written notice to the other party. In the event this Agreement is terminated by City prior to the letting of the construction contract, City shall reimburse County fifty percent (50%) of the design fees for the Project. The parties shall thereafter have no obligation hereunder. This Agreement is not subject to termination, cancellation or revocation by any party once the construction has commenced.

## **VI. INSURANCE REQUIREMENTS**

County agrees that it will require Contractor's insurance policies to name City as well as County as additional insured on all policies, including, but without limitation, Worker's Compensation and Employer's Liability. Any such insurance policies shall include at least the following minimum coverage:

A. Worker's Compensation in the amount required by law. The policy shall include the All States Endorsement.

B. Comprehensive General Liability Insurance including contractual liability insurance, \$1,000,000 per occurrence, \$2,000,000 aggregate (defense costs excluded from face amount of policy).

C. Comprehensive Automatic Liability Insurance, including owned, non-owned and hired vehicles used for the Project, with bodily injury and property damage with a combined limit of not less than \$1,000,000 each occurrence.

D. The County may require insurance in excess of the amount of coverage set out above, as it deems necessary, in such cases City shall remain an additional insured. County will provide City with proof of insurance within 30 days of County's award of the contract for the Project construction.

**VII.**  
**USE OF CITY RIGHT-OF-WAY**

City hereby grants to County the right to use City right-of-way, if any, upon which the project is to be constructed and City right-of-way, if any, immediately adjacent to the same for the purpose of constructing the Project.

**VIII.**  
**OWNERSHIP AND MAINTENANCE OF ROAD**

Upon completion of the Project, City shall assume full responsibility for the maintenance and repair of the Project facilities within its city limits, to the same extent and in the same manner as for other like facilities of City. Also, subject to the City's right to terminate at any time for convenience upon ten days' advance written notice and subject to available funding in each fiscal year, the City will maintain that portion of Burney Road within the County located between Voss Road and Florence Road to the same extent and in the same manner as for other like facilities of City.

**IX.**  
**MISCELLANEOUS**

- A. 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 party.
- B. All services required pursuant to this Agreement that City or County must pay for will be paid from current bond funds or current revenues available to City or County.
- C. It is agreed that nothing herein contained is intended or should be construed as in any manner creating or establishing a relationship of co-partners between City and County, or as creating or establishing the relationship by either party as agent, representative, or employee of the other party for any purpose, or in any manner, whatsoever. The parties further agree that neither party is an agent, servant, or employee of the other party.
- D. This Agreement shall be construed in accordance with and governed by the laws of the State of Texas. Venue for any legal actions arising out of this Agreement shall lie exclusively in Fort Bend County, Texas.
- E. County agrees that it will be liable for only those claims under which liability is imposed on it by the Texas Tort Claims Act.
- F. City agrees it will be liable only for those claims under which liability is imposed on it by the Texas Tort Claims Act.
- G. The parties to this Agreement do not intend by this Agreement that any specific third party may obtain a right by virtue of the execution or performance of this Agreement.

**X.  
NOTICE**

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

City of Sugar Land  
2700 Town Center Blvd. N.  
P.O. Box 110  
Sugar Land, Texas 77487-0110  
(281) 275-2218  
(281) 275-2771 fax  
Attention: City Engineer

Fort Bend County  
1124-52 Blume Road  
P.O. Box 1449  
Rosenberg, Texas 77471  
(281) 342-3039  
(281) 342-7366 fax  
Attention: D. Jesse Hegemier

**XI.  
EXECUTION**

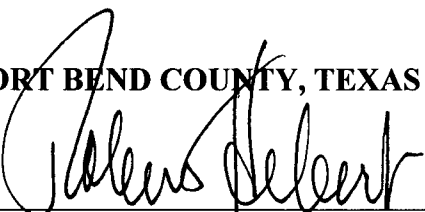
- A. This Agreement has been executed by City and County upon and by the authority of an order or resolution passed at a properly constituted meeting of their respective governing bodies.
- B. This Agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings or written or oral agreements respecting the Agreement's subject matter.
- C. The undersigned officers and/or agents are properly authorized to execute this contract on behalf of the Parties hereto, and each hereby certifies to the other that any necessary resolution or order extending such authority have been duly passed and are now in full force and effect. The signatories to this Agreement warrant that each has the authority to enter into this Agreement on behalf of the party represented.

*REMAINDER OF PAGE INTENTIONALLY LEFT BLANK*

**SECTION 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 signed by all parties hereto.

**FORT BEND COUNTY, TEXAS**

  
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Robert Hebert, Fort Bend County Judge

Date 9-28-2010

ATTEST:

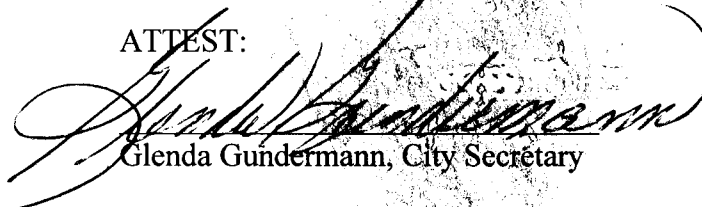
  
\_\_\_\_\_  
Dianne Wilson, Fort Bend County Clerk

**CITY OF SUGAR LAND**

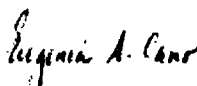
  
\_\_\_\_\_  
Allen Bogard, City Manager

Date: 09-07-2010

ATTEST:

  
\_\_\_\_\_  
Glenda Gundermann, City Secretary

Reviewed for Legal Compliance:

  
Eugenia A. Carr