

STATE OF TEXAS §
 §
 COUNTY OF FORT BEND §

FIRST AMENDMENT TO INTERLOCAL AGREEMENT
 LAMAR DRIVE

THIS FIRST AMENDMENT to the Interlocal Agreement is made and entered into by and between Fort Bend County, a body corporate and politic under the laws of the State of Texas, acting herein by and through its governing body, the Commissioners Court ("County"), and the City of Richmond, a municipal corporation of the State of Texas, principally situated in Fort Bend County, acting by and through its City Commission, ("City").

RECITALS

WHEREAS, County and City entered into an Interlocal Agreement on or about February 2006 for road improvements and associated drainage for Lamar Drive between FM 762 and FM 1640, identified as Project No. 22, Fort Bend County Proposition Two (Mobility Bonds) (collectively, the "Agreement") attached hereto as Exhibit A, incorporated by reference as if set forth herein verbatim. County and City desire to amend said Agreement as set forth below.

NOW, THEREFORE, in consideration of the foregoing, the Agreement between County and City is hereby amended as follows:

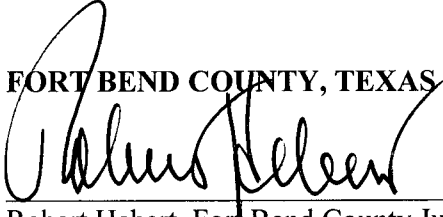
- A. An additional amount not-to-exceed \$632,000.00 (Six Hundred Thirty-Two Thousand Dollars) shall be available to the City for additional construction services provided under the Agreement.
- B. The amount of County's obligation under this First Amendment and the Agreement shall not exceed the \$2,632,000 or an amount equal to 50% of the awarded Construction Contract, whichever amount is less.
- C. No additional funding shall be available for services provided under the Agreement without prior written consent of County.
- D. Except as modified herein, the Agreement remains in full force and effect and has not been modified or amended.
- E. If there is a conflict between this First Amendment and the Agreement, the provisions of this First Amendment shall prevail.

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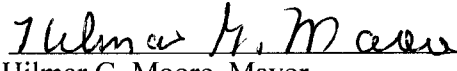
EXECUTION

This Agreement shall not become effective until executed by County.

FORT BEND COUNTY, TEXAS


Robert Hebert, Fort Bend County Judge

CITY OF RICHMOND


Hilmar G. Moore, Mayor

Date 3-22-2011

Date: December 20, 2010

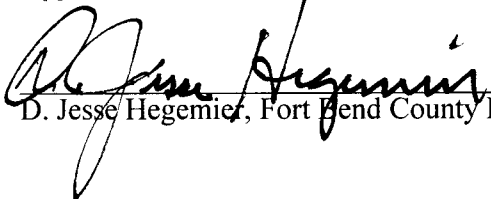
ATTEST:

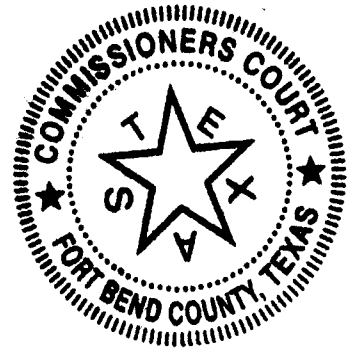

Dianne Wilson, Fort Bend County Clerk

ATTEST:


Mona Matak, City Secretary

Approved: COUNTY ENGINEER


D. Jesse Hegemier, Fort Bend County Engineer



AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$2,632,000 to accomplish and pay the obligation of the Fort Bend County under this contract.



Ed Sturdivant, Fort Bend County Auditor

Exhibit A: Interlocal Agreement dated February 14, 2006

EXHIBIT A

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF FORT BEND §

INTERLOCAL AGREEMENT

This Agreement is made and entered into pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code and Chapter 251.012 of the Texas Transportation Code, by and between the **CITY OF RICHMOND**, a municipal corporation and home-rule city of the State of Texas, principally situated in Fort Bend County, acting by and through its City Commission, ("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, on November 7, 2000, the citizens of Fort Bend County voted to approve the issuance of general obligation bonds to provide for the County to participate with other local governmental entities in the funding of certain regional street and road improvements and associated drainage facilities ("Mobility Projects") that are funded in part by the State or Federal governments;

WHEREAS, the City owns and operates a system of streets and roadways within Fort Bend County for public use and benefit, including Lamar Drive between FM 762 and FM 1640;

WHEREAS, the project contemplated in this Agreement is the street or road improvements and associated drainage therefore for Lamar Drive and identified as Project No. 22 on the attached Exhibit "A" [Fort Bend County - Proposition Two (Mobility Bonds)], ("Project");

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

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;

WHEREAS, the 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 roads or state highways in accordance with Section 251.012 of the Texas Transportation Code;

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

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

The parties agree that the representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth herein word for word.

II.

The parties agree that the County's sole obligation to the City under the terms of this Agreement is to provide funding as specified herein.

III.

The parties agree that the City shall be solely responsible, at City's sole cost and expense, for taking all actions necessary to complete the Project. The City further warrants that it will timely complete the Project.

IV.

- A. Upon approval by the Fort Bend County Engineer of the drawings and specifications of the Project, the City shall advertise for and receive bids for the construction of the Project pursuant to the usual and customary procedures of the City, in accordance with the drawings and specifications approved by the Fort Bend County Engineer, and in compliance with all applicable competitive bidding statutes.
- B. The City reserves the right to reject all bids. In such event, the City may either re-advertise for bids in accordance with the approved drawings and specifications or terminate this Agreement as provided herein.
- C. The City's determination of the lowest responsible bid for the Project shall be final and conclusive.

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- D. The City shall be responsible for the cost and administration of the construction contract.
- E. During the work on the Project, the County 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, the County shall not interfere with the work in progress.
- F. The County shall have the right to participate in the final inspection of the Project. At that time, any deficiencies noted by the County shall be promptly corrected by the City.

V.

- A. Upon lawful letting of the Construction Contract for the Project by the City to a qualified Contractor, the City shall submit a fully executed Construction Contract together with the drawings and specifications for the Project to the Fort Bend County Engineer for review and approval.
- B. The Fort Bend County Engineer shall review the Construction Contract to determine whether the Construction Contract complies with the terms of this Agreement and the terms of the Bond Referendum as well as to determine if the Project meets Fort Bend County Road Standards.
- C. The City shall not begin construction of the Project without written authorization from the Fort Bend County Engineer. The Fort Bend County Engineer shall not unreasonably withhold his approval.
- D. The City agrees to make or cause to be made all changes to the drawings and specifications reasonably requested by the Fort Bend County Engineer.
- E. If the Fort Bend County Engineer, in his sole discretion approves the Construction Contract, he shall forward the fully executed Construction Contract to the Fort Bend County Auditor for review.

VI.

- A. If the Fort Bend County Auditor, in his sole discretion, determines that the Construction Contract complies with the terms of this Agreement, the terms of the Bond Referendum and that the Construction Contract has been approved by the Fort Bend County Engineer, the Auditor shall pay the City the lesser of either (1) a one-time lump sum payment of \$2,000,000.00 or (2) an amount equal to 50% of the award Construction Contract, not to exceed \$2,000,000.00 ("Payment").

- B. This Payment shall be the County's sole obligation under the terms of this Agreement and the County shall not be obligated to expend any further funds on the Project.
- C. It is expressly understood by the parties that the maximum sum the County has available to accomplish its obligations under this Project is the sum certified below by the County Auditor, and that when the County has expended said sum to meet its obligations under this Agreement the County shall have no further obligation or duty. However, the City shall have the duty and the obligation to timely complete the Project from its own resources and/or assets.
- D. At all times during construction of the Project, the County shall have full access to all of the City's records and documentation pertaining to the Project.
- E. Upon completion of the Project, the City shall furnish the County with complete documentation and a full accounting of the funds expended on the Project.

VII.

- A. The County agrees that it will be liable for only those claims under which liability is imposed on it by the Texas Tort Claims Act.
- B. The City agrees that it will be liable for only those claims under which liability is imposed on it by the Texas Tort Claims Act.

VIII.

The City agrees that it will require that Contractor's insurance policies name the County as well as the City 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:

- 1. Worker's Compensation in the amount required by law. The policy shall include the All States Endorsement.
- 2. 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).
- 3. Comprehensive Automobile 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.

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The City may require insurance in excess of the amounts of coverage set out above, as it deems necessary; in such cases the County shall remain an additional insured. The City will provide the County with proof of insurance.

IX.

Upon completion of the Project the City shall provide a set of record drawings of the Project to the County showing the Project as constructed.

X.

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

XI.

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

XII.

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.

XIII.

The City or the 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. The parties shall thereafter have no obligation hereunder.

XIV.

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.

XV.

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.

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XVI.

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


City of Richmond
402 Morton Street
Richmond, Texas 77469
Phone: (281) 342-5456
Facsimile: (281) 252-8626
Attention: City Manager

Fort Bend County
1124-52 Blume Road
P. O. Box 1449
Rosenberg, Texas 77471
Phone: (281) 342-3039
Facsimile: (281) 342-7366
Attention: Engineering

XVII.

This Agreement has been executed by the City and the County upon and by the authority of an Order or Resolution passed at a properly constituted meeting of their respective governing bodies.

FORT BEND COUNTY, TEXAS



ROBERT E. HEBERT,
Fort Bend County Judge

February 14, 2006
Date

ATTEST:



DIANNE WILSON, Ph.D.,
Fort Bend County Clerk

CITY OF RICHMOND

By: 

HILMAR G. MOORE, Mayor

Date

ATTEST:




MONA MATAK, City Secretary

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AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$2,000,000.00 to accomplish and pay the obligation of Fort Bend County under the terms of this Agreement.


Name: Ed Steward
Fort Bend County Auditor

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