

AGREEMENT

THE STATE OF TEXAS
COUNTY OF FORT BEND



INTERLOCAL PROJECT AGREEMENT BETWEEN
FORT BEND COUNTY AND THE CITY OF MISSOURI CITY, TEXAS FOR
ACCESS MANAGEMENT IMPROVEMENTS TO STATE HIGHWAY 6
INTERSECTIONS – MOBILITY BOND PROJECT NO. 750

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 City with certain governmental functions and services on a "project by project" basis under the Primary Interlocal Agreement (hereinafter referred to as "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; and

WHEREAS, the City desires to design and construct access management improvements at various intersections of State Highway 6 for approximately six (6) miles from Dulles Avenue to the Fort Bend Parkway, consisting of the design and construction of medians, Intelligent Transportation System signal upgrades, the addition of turn lanes and drainage improvements, as required, as provided in the 2007 Mobility Bond Projects, Project No. 750, hereinafter referred to as "the Project," in accordance with the terms of this Agreement; and

WHEREAS, the Project is within Fort Bend County; and

WHEREAS, the estimated cost of the design and construction of the Project is three million three hundred fifty-nine thousand four hundred thirteen dollars (\$3,359,413); and

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

WHEREAS, the County is willing to provide one million seven hundred fifty-nine thousand four hundred thirteen dollars (\$1,759,413) or Fifty-Two (52%) of Project costs, whichever amount is less, for the Project, hereinafter referred to as "the County Contribution," provided City designs and constructs the Project and is responsible for

the remaining cost of the Project, estimated to be one million six hundred thousand dollars (\$1,600,000); and

WHEREAS, City and 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.

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 of the Project, to-wit: access management improvements at various intersections of State Highway 6 for approximately six (6) miles from Dulles Avenue to the Fort Bend Parkway, consisting of the design and construction of medians, Intelligent Transportation System signal upgrades, the addition of turn lanes and drainage improvements, as required.

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 County's sole obligation under this Agreement is to provide the County Contribution specified in this Article. Subject to the provisions of this Article, County agrees to pay City out of the 2007 General Obligation Bonds for Mobility Projects an amount that constitutes the LESSER of the following:

- (A) Fifty-Two Percent (52%) of Project costs; or
- (B) \$1,759,413

3.02 County is not obligated to expend any further funds on the Project that are payable out of the 2007 General Obligation Bonds for Mobility Projects.

3.03 County will forward the lesser amount as detailed in Article 3.01 above as follows:

- (A) Twenty-Five percent (25%) upon City's award of a construction contract for the Project;
- (B) Twenty-Five percent (25%) when Twenty-Five percent (25%) of the construction has been completed for the Project;
- (C) Twenty-Five percent (25%) when Fifty percent (50%) of the construction has been completed for the Project; and

(D) Twenty-Five percent (25%) when Seventy-Five percent (75%) of the construction has been completed for the Project.

3.04 City will forward to County a request for payment that includes sufficient detail for County to determine whether the requirement of this Article has been met for the particular payment request. County will forward payment to the City within 30 days of County's receipt of the request and detail from City.

3.05 During the design and construction of the Project, County shall have the right of access to the Project 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 After the date either (1) the Engineer completes preparation of the plans, specifications and estimates (hereinafter referred to as "PS&E") or (2) all utility/pipeline adjustments/relocations and modifications for the Project have been finalized, whichever is later, City will advertise for bids for the construction of the Project in accordance with the PS&E.

4.02 Upon receipt and tabulation of the bids for the Project, City will determine the lowest and best bid for the construction of the Project. City will cause the Engineer to submit the tabulation of the bids to the County Engineer. City's determination of the lowest and best bid for the Project shall be final and conclusive.

4.03 Upon City's determination of the lowest and best bid for the Project, if City determines that the Project can be completed for an amount equal to or less than three million three hundred fifty-nine thousand four hundred thirteen dollars (\$3,359,413), City shall so notify County. Notwithstanding the above, it is expressly agreed and understood that City reserves the right to reject any and 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.

4.04 If City determines that the total Project costs contemplated by this Agreement exceed three million three hundred fifty-nine thousand four hundred thirteen dollars (\$3,359,413), 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, an amendment to this Agreement shall be prepared to reflect the increased costs. However, in no event shall the County Contribution exceed fifty-two percent (52%) of Project costs. 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 City to expend funds in excess of one million six hundred thousand dollars (\$1,600,000) 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, City may pay the remaining balance.

4.05 City shall be responsible for administering the construction contract.

4.06 City shall submit reports to County describing in sufficient detail the progress of the Project. These reports shall be submitted to County when construction of the Project is 50% complete, 75% complete and 100% complete. Construction reports received by City from contractors detailing the progress of the Project shall suffice for the requirements of this Article, so long as City has reviewed such reports and confirmed accuracy of the contractor's report.

4.07 Upon completion of construction of the Project, but no later than ninety (90) days after completion, City shall perform or cause to be performed, a final accounting of the funds expended and a set of record drawings showing the Project as constructed. City shall refund to County any funds provided by County to City that were not expended in the construction of the Project in accordance with this Agreement or in excess of the actual County Contribution.

4.08 City acknowledges and agrees that 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 County is not responsible under this Agreement for the maintenance or condition of the Project facilities during construction. Upon completion of the Project, City agrees to assume responsibility for the maintenance and repair of the Project.

ARTICLE V LIMIT OF APPROPRIATION

5.01 Prior to the execution of this Agreement, City has been advised by the County, and City clearly understands and agrees, such understanding and agreement being of the absolute essence to this Agreement, that County shall have available the total maximum amount of Fifty-Two Percent (52%) of the total cost of the Project or \$1,759,413, WHICHEVER AMOUNT IS LESS, payable out of the 2007 General

Obligation Bonds for Mobility Projects specifically allocated to fully discharge any and all liabilities that may be incurred by County for the Project under this Agreement.

5.02 City does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum funding for the Project that City may become entitled to out of the 2007 General Obligation Bonds for Mobility Projects and the total maximum amount that County will reimburse City for the Project hereunder out of the 2007 General Obligation Bonds for Mobility Projects will not under any condition, circumstance or interpretation hereof exceed the amount of Fifty-Two Percent (52%) of the total cost of the Project or \$1,759,413, WHICHEVER AMOUNT IS LESS.

ARTICLE VI 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 VII 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 VIII LIABILITY

8.01 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.

8.02 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 IX MISCELLANEOUS

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

9.02 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.

9.03 Except as expressly provided herein, 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.

9.04 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 party hereto.

ARTICLE X 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 XI ENTIRE AGREEMENT AND ATTACHMENT

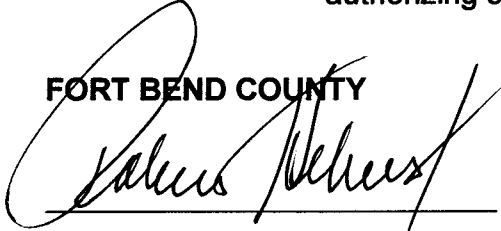
This instrument contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any modification concerning this instrument shall be of no force and effect unless such modification is made in writing, approved by the governing bodies and signed 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 15th day of August, 2011, 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

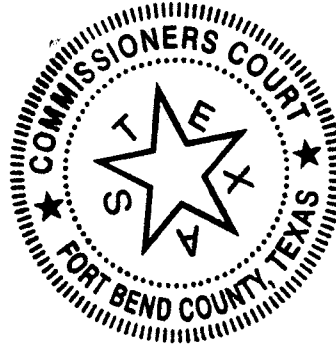
9-6-2011

Date


ATTEST:



Dianne Wilson, County Clerk



CITY OF MISSOURI CITY, TEXAS

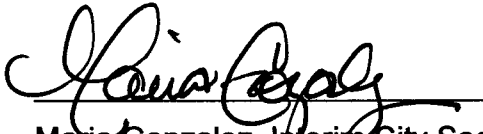


Allen Owen, Mayor

August 15th, 2011

Date

ATTEST:



Maria Gonzalez, Interim City Secretary

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AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of one million seven hundred fifty-nine thousand four hundred thirteen dollars (\$1,759,413) to accomplish and pay the obligation of Fort Bend County under this contract.


Fort Bend County Auditor