

THE STATE OF TEXAS §
 §
 COUNTY OF FORT BEND §

KNOW ALL MEN BY THESE PRESENTS:

INTERLOCAL AGREEMENT
FOR AIRPORT AVENUE RECONSTRUCTION PROJECT

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, in 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 the state or federal government; and

WHEREAS, the project contemplated in this Agreement is the street or road improvements for the reconstruction of Airport Avenue (west of Graeber Road to FM 2218), hereinafter referred to as the "Project;" and,

WHEREAS, 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; and

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

WHEREAS, the City and the County agree to participate in this Project according to the terms of this Agreement; and

WHEREAS, the governing bodies of the City and County have 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.
DEFINITIONS

- A. **City** means the City of Rosenberg, Texas.
- B. **County** means Fort Bend County, Texas.
- C. **Project** means street or road improvements for the reconstruction of Airport Avenue (west of Graeber Road to FM 2218) to be completed in phases.

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. During the work on the Project, 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, County shall not interfere with the work in progress. Any deficiencies noted by County shall be brought to the attention of City and the deficiencies shall be promptly addressed by City.

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

C. The County's sole obligation under this Agreement is to provide the funding for Project to the City as specified in this Section. The County agrees to pay the City an amount equal to the lesser of the following:

- (1) Fifty Percent (50%) of construction costs; or
- (2) \$800,000

B. Subject to the provisions of Section III. C. above, the County shall provide funding as described in Section III. C. from the 2007 General Obligation Bonds for mobility projects.

C. The County is not obligated to expend any further funds above \$800,000 on the Project from the 2007 General Obligation Bonds or any other sources of funding.

- D. The County will forward the lesser amount as detailed in paragraph III. A., above to the City upon the City's receipt of bids for construction of the Project. The City will forward to the County a request for payment that includes sufficient detail for the County to determine whether the City has solicited construction bids and the City is in receipt of all bids for evaluation for the Project. The County will forward payment to the City within 30 days of receipt of the proper request from the City, with sufficient details regarding the solicitation of construction bids.
- E. At all times during construction of the Project, County shall have full access to all of City's records and documentation pertaining to the Project.

IV. **CITY OBLIGATIONS**

- A. The City is responsible for managing the design and overseeing the construction and completion of the Project and complying with the applicable state and federal laws.
- B. In the event the City determines the Project lacks feasibility or for any other reason elects to forego its construction, the City shall provide written notice to the County of its decision to forego construction and, refund all amounts provided by County upon thirty (30) days of said notice to the County.
- C. The City shall submit reports to the County describing in sufficient detail the progress of the Project. These reports shall be submitted to County when the Project is 30% complete, 60% complete, 90% complete and 100% complete. Reports received by the City from contractors detailing the progress of the 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.
- D. The City will submit the plans for the Project to the County Engineer for review in accordance with the 2007 General Obligation Bond requirements for the Project. During the work on the Project, the County may review the documents, maps, plats, records, photographs, reports, and drawings pertaining to the Project and may inspect the work in progress, provided that it does not interfere with the work.
- E. Upon completion of the Project, but no later than 60 days after, the City will furnish the County with a full accounting of the funds expended on the Project and an electronic copy of the record drawings showing the Project as constructed. The County Auditor may review the City's records regarding this Project.
- F. If, after completion of Project and the City's receipt of the funds as stated in Section III, there are funds remaining and/or savings from Project, City shall return such funds to County within 30 days of County acceptance of full accounting required in Section IV.E. above.

V. **LIABILITY**

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

VI.
MAINTENANCE

Upon completion of the Project, each party shall maintain that portion of the Project within its own jurisdiction.

VII.
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 the total maximum amount of Fifty Percent (50%) of construction costs or \$800,000, WHICHEVER AMOUNT IS LESS, specifically allocated to fully discharge any and all liabilities that may be incurred by the County for the Project.

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 reimburse the City hereunder will not under any condition, circumstance or interpretation hereof exceed the sum of Fifty Percent (50%) of construction costs or \$800,000, WHICHEVER AMOUNT IS LESS.

VIII.
INSURANCE REQUIREMENTS

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

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
2110 4th Street
P.O. Box 32
Rosenberg, Texas 77471
(832) 595-3310
(832) 595-3311 fax
Attention: Interim City Manager
Attention: Robert Gracia

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

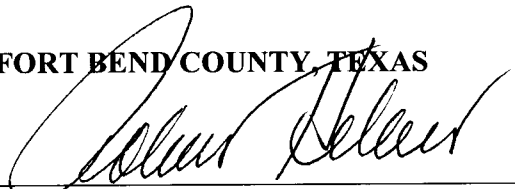
XII.
ENTIRE AGREEMENT

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.

XIII.
EXECUTION

This Agreement has been executed by the City and the County upon and by the authority of their respective governing bodies. This Agreement shall become effective on the date executed by the final party.

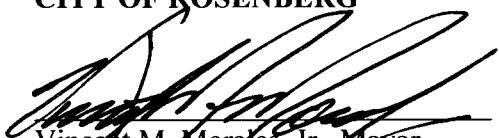
FORT BEND COUNTY, TEXAS



Robert E. Hebert, County Judge

Date 11/5/13

CITY OF ROSENBERG



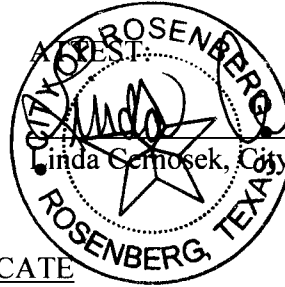
Vincent M. Morales, Jr., Mayor

Date: October 15, 2013

ATTEST:

Dianne Wilson

Dianne Wilson, Fort Bend County Clerk



ATTEST:

Linda Cernosek
Linda Cernosek, City Secretary

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$800,000 to accomplish and pay the obligation of Fort Bend County under the terms of this Agreement.

Robert Ed Sturdivant

Robert Ed Sturdivant,
Fort Bend County Auditor

ALL REPRESENTATIONS AND WARRANTIES MADE HEREIN ARE MADE BY THE CITY OF ROSENBERG, TEXAS, AND NOT BY THE CITY OF FORT BEND COUNTY, TEXAS.

