

THE STATE OF TEXAS §
 §
 COUNTY OF FORT BEND §

AMENDED AND RESTATED INTERLOCAL AGREEMENT
FOR ROADWAY IMPROVEMENTS
2007 MOBILITY BOND PROJECT No. 701, 758, & 766

This AMENDED AND RESTATED INTERLOCAL Agreement for roadway improvements is made between Fort Bend County, a body corporate and politic under the laws of the State of Texas, acting by and through its Commissioners Court, hereinafter called "County", and the City of Houston, a home-rule municipality of the State of Texas principally located in Harris County, Texas, hereinafter called "City", and amends and supersedes the Interlocal Agreement for Roadway Improvements (2007 Mobility Bond Projects No. 701, 758 and 766), Contract No. C73414 (the "Original Agreement") (each, a "Party", and collectively, the "Parties").

RECITALS:

1. The Original Agreement, which was approved by the Houston City Council by Ordinance No. 09-0512, countersigned by the Houston City Controller on June 17, 2009, authorized by the Ft Bend County Commissioners' Court and executed by the Ft Bend County Judge on July 7, 2009, pertained to three Projects ("the Original Projects"): Fondren Road from Hillcroft Avenue to McHard Road, South Post Oak from Sam Houston to McHard Road and Blue Ridge Road from south of Rockergate Drive to McHard Road.
2. Some work has been done on the Original Projects, and the Parties have discussed a modification of the scope of the Original Projects and substitute the following Updated Projects in their place. It is to the mutual benefit of the County and the City to construct the following roadway Updated Projects, such improvements being herein after called the "Updated Project" or Updated Projects":
 - A. S. Post Oak Road from Sam Houston Tollway (Beltway 8) to McHard Road (FM 2234), with the new scope of work attached as Exhibit "A".
 - B. Hillcroft Avenue and Court Road Extension, with the scope of work attached as Exhibit "B".
3. The County and City are willing to participate as set forth herein in the actual costs of the Updated Project(s), including, without limitation, the cost of right of way acquisition, engineering, construction, construction management, construction inspection, and construction testing costs related to the Updated Project, herein after the "Costs" or the "Updated Project Costs".

4. This agreement is authorized by the Interlocal Cooperation Act, Chapter 791 of the TEXAS GOVERNMENT CODE.

5. The County and City in consideration of the mutual covenants and agreements herein contained, do mutually agree as follows:

TERMS

1. **ORIGINAL AGREEMENT SUPERSEDED:** The ORIGINAL AGREEMENT is superseded in its entirety and replaced with this Amended and Restated Agreement as of the Countersignature Date hereof.

2. **ALLOCATION OF COSTS:**

A. Allocation of Costs for the Updated Projects: As of the date of this Amended and Restated Agreement, the total estimated Updated Project costs, as prepared by the City of Houston, are \$11,500,000. The costs of the Updated Projects are to be allocated as follows:

.1 The City will contribute 50% of the total Updated Project Costs, plus any needed utility cost, up to but not to exceed \$5,750,000, subject to the appropriation of funds.

.2 The County's sole obligation is to provide the funding to the City as specified herein. Upon request for payment from the City, the County agrees to pay the City an amount equal to the *lesser* of the following:

- (a) FIFTY percent (50%) total Updated Project Costs; or
- (b) \$5,750,000.00.

3. **PAYMENT**

The County has remitted its total financial share of \$5,750,000.00 to the City.

4. **DESIGN AND ENGINEERING FOR THE UPDATED PROJECT**

A. The County will propose a selection of any registered civil engineer or civil engineering firms (the "Engineer" or "Engineers") for design of the Updated Projects. The County's selection will be subject to approval by the City. The City will not unreasonably withhold approval. The Engineer may subcontract surveying, geotechnical, and environmental services necessary for the Updated Project provided

such selection complies with all applicable laws and City of Houston contract requirements.

- B. Upon execution of this Agreement the City will enter into negotiations with the approved County selected Engineers for the Updated Project. The City will enter into engineering contracts for design of the Updated Projects in accordance with the Updated Project Sequence as defined in Section 6(E). Design shall include all engineering required for the Updated Project (preliminary, final, and construction phase engineering services), including geotechnical and environmental services. Should any one of the selected Engineers not satisfactorily perform and the City terminate their services, the County will be allowed to propose for the City's approval the replacement Engineer or Engineers to complete the Updated Project.
- C. As part of the Updated Projects, the City shall also acquire and deliver the necessary documentation for acquisition of right-of-way. The City shall obtain rights for the County to use all drawings, specifications and other documents obtained by the City for construction and upon request shall provide such documents to the County for its own use. The City shall provide notification to the County on project schedules and approvals. All right-of-way acquisition for the South Post Oak Updated Project is the sole responsibility of the City. The costs for acquisition of the necessary right-of-way are included in the City's financial share for the costs of the Updated Project under this Agreement. Ft. Bend County shall convey the appropriate easements within existing right of way, for construction & maintenance of the Hillcroft Avenue and Court Road Extension Updated Project. The City is responsible for acquiring additional right-of-way, if needed.
- D. The City shall have Plans, Specifications and Estimates ("PS&E") prepared for the Updated Projects.
- E. The City and design consultant shall meet and discuss Fort Bend County Toll Road Authority design concerns for the addition of Hillcroft Avenue and Court Road extension. After receiving written approval from the FBCTRA, the City may begin with design of the proposed roadways. The proposed Hillcroft Avenue and Court Road extension must not conflict with future improvements to the Fort Bend County Toll Road.

5. COMPETITIVE BID AND AWARD

- A. Within 90 days after the City has approved final design for each Updated Project, the City will competitively bid each Updated Project and award contracts for the construction of the Updated Projects. The City will comply with competitive bid laws applicable to the City, and other existing laws and ordinances governing the City's construction of public works. If the lowest bid for construction of the Updated

Projects is greater than the amount of funds allocated by the Parties for the Updated Projects, the City may reject all bids and re-advertise for bids for the construction of the Updated Project according to the terms specified in this section of the Agreement.

- B. Upon receipt of bids for the Updated Projects, the City will notify the County of the amount of the low bids, plus a fifteen percent (15%) contingency (the "Notice of Bid") not to exceed the amount allocated by the Parties. If a Party desires to object to the award of the contracts, it must provide written notice to the other Party within 15 days of the date the Notice of Bid is served on the Party. Otherwise, the Party will be deemed to have approved the award of the contract to the low bidder.
- C. If there are no objections to the award of the contract to the low bidder, the City will issue a notice to proceed to the contractor.
- D. The City will enter into separate contracts with the qualified low bidders (the "Contractors"), which will be subject to change orders that may increase or otherwise alter the cost for the work to be done under such Contracts ("Change Orders"). The Change Orders shall not exceed the total funds allocated by the Parties under this Agreement.

6. CONSTRUCTION

- A. The City shall administer the Contracts for the Updated Projects and provide on-site inspection of the construction. Administration duties include but are not limited to entering into all necessary change orders to the Contract, provided that all such change orders shall require the approval of the County, which shall not be unreasonably withheld or delayed. The City has no obligation to approve or to pay for any change orders that would increase its contribution to an amount above the funds appropriated upon award of the Contracts.
- B. The City shall inspect all construction for the conformity with City standards, and shall immediately request changes or corrections to the Contractor's work if the City finds such changes or corrections to be necessary upon inspection. The City shall approve all change orders to the Contract necessary by any request of the City.
- C. The City shall have the right to terminate any of the Contracts awarded and enforce its remedies under this Agreement as determined to be necessary by the City. In the event of any such termination, the City shall have the right to complete and/or cause the completion of the Updated Project itself through such other contractor as the City determines to be appropriate, provided that all work done in connection with such completion shall be in compliance with the City's standards for public works.

7. MAINTENANCE

The City shall maintain Hillcroft Avenue, and allow Ft. Bend County access via Hillcroft Avenue for maintenance of the existing Toll facility. The City shall maintain the portions of South Post Oak affected by this Agreement. The City may maintain the portions of Court Road Extension affected by this Agreement, if Court Road is located within the City of Houston city limits.

8. GENERAL PROVISIONS

- A. If on December 31, 2015, the City has not completed the PS&E for all the Updated Projects and the County has not exercised its right to terminate this Agreement before December 31, 2015, the County may terminate this Agreement at any time after such date. Any unused funds will be reimbursed according to the allocation of costs in Section 1 of this Agreement.
- B. It is expressly understood and agreed that, notwithstanding any other provision of this Agreement, the County has available the maximum sum of \$5,750,000 to satisfy its design and construction obligations under this Agreement and the County shall under no circumstances be required to expend more than the said maximum sum. It is further agreed that the County shall not be required to expend other than current funds to accomplish its obligations hereunder.
- C. It is expressly understood and agreed that, notwithstanding any other provision of this Agreement, the City has available the maximum sum of \$5,750,000 to satisfy its obligations under this Agreement and the City shall under no circumstances be required to expend more than the said maximum sum. It is further agreed that the City shall not be required to expend other than current funds to accomplish its obligations hereunder.
- D. In accordance with Subsections B and C of this Section 6, total project costs shall not exceed \$11,500,000. Total project costs include all costs associated with Sections 3 - 5 of this Agreement. If the Updated Projects' total cost reaches 95% of \$11,500,000, any remaining work will be deleted from the Updated Projects' scope and all respective contracts will be closed in a manner that will not exceed Updated Project funding limits.
- E. The Updated Project Sequence is as follows:
 - .1 South Post Oak - 2007 Mobility Bond Updated Project No. 758; and
 - .2 Hillcroft Avenue and Court Road Extension

9. TERMINATION

A. This Agreement may be terminated by any of the following conditions:

- .1 By mutual agreement and consent of the City's Director of Public Works and Engineering Department ("Director") and County up until the award of a construction contract for such Updated Project.
- .2 By either Party, upon the failure of the other Party to fulfill its obligations as set forth in this Agreement. To the extent permitted by law, the breaching Party shall pay any cost incurred due to such breach.
- .3 Termination for Convenience by City. The Director may terminate this Agreement at any time, up until the award of a construction contract for each Updated Project, by giving 30 days written notice to County. The City's right to terminate this Agreement for convenience is cumulative of all rights and remedies which exist now or in the future.

B. Should this Agreement terminate, for section 9.A.1 OR 9.A.2 above, the City shall subtract half of any reasonable costs incurred by the City, from the County's financial share received under this Agreement, and return the balance of the County's payment to the County. Should this Agreement terminate for section 9.A.3 above, the City shall reimburse the County its allocation of costs for such Updated Project that is the subject of termination under section 9.A.3.

C. If either Party elects to terminate this Agreement prior to completion of the Updated Project(s), it shall do so in such a manner that the roadways for the Updated Project(s) are operational and are not left in an unreasonably hazardous condition.

D. If either Party elects to terminate this Agreement at any time, for any reason, then that Party shall notify the other not less than 30 days prior to the termination.

10. ASSIGNMENT

No Party hereto will 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.

11. 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 prescribed

hereinbelow 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:

COUNTY:

County Judge Robert Hebert
Attn: Ann Werlin
301 Jackson Street, Suite 719
Richmond, Texas 77469

Copy to:

Richard W. Stolleis, P.E.
County Engineer
301 Jackson Street
Richmond, Texas 77469

CITY:

Department of Public Works and Engineering
Engineering & Construction Division
InterAgency Section
611 Walker Street, 14th Floor
P.O. Box 1562
Houston, Texas 77251-1562

Attn.: Thomas A. Artz, P.E.

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, to-wit:

- A. It has on the 6th day of May, 2014, been executed on behalf of the County by the County Judge of Fort Bend County, Texas, pursuant to an order of the Commissioners Court of Fort Bend County authorizing such execution.

FORT BEND COUNTY

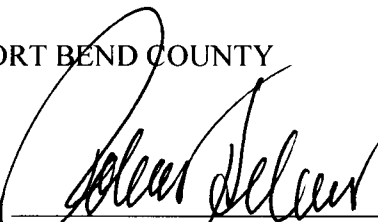
APPROVED AS TO FORM:

COUNTY ATTORNEY


ATTEST:

By 
Assistant County Attorney

FORT BEND COUNTY

By 
ROBERT HEBERT, County Judge

ATTEST:


Dianne Wilson, County Clerk

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$5,750,000.00 to accomplish and pay the obligations of Fort Bend County herein.




Ed Sturdivant, County Auditor

CITY OF HOUSTON

ATTEST/SEAL:

City Secretary

APPROVED:

Director, Department of Public
Works and Engineering

APPROVED AS TO FORM:

Assistant City Attorney
L.D. File No. 0520800019001

CITY OF HOUSTON

By _____
ANNISE PARKER, Mayor

COUNTERSIGNED:

City Controller

DATE COUNTERSIGNED:

EXHIBIT "A"
SOUTH POST OAK - 2007 MOBILITY BOND UPDATED PROJECT No. 758

Project Scope:

- **Beltway 8 to West Ridge Creek Drive** – Expand roadway with the addition of one lane in each direction. An estimated 2,840 L.F. (1,420 L.F. each direction) of roadway will be constructed. No panel replacement is necessary at this segment.
- **West Ridge Creek Drive to Court Road** – Repair damaged panels, collapsed inlets and addition of turning lane at intersections. Approximately 10% (729 S.Y.) of roadway panels will be replaced.
- **West Ridge Creek to FM 2234** – Repair and replacement of roadway sections and collapsed inlets.
- **Traffic signal upgrade** (including Flashing yellow left turn signals) - New traffic signals are to be installed at the intersections of S. Post Oak / Ridge Creek Drive and S. Post Oak / Court Road.
- **Waterline replacement** – Due to the condition of existing 30-year old 12" asbestos pipe waterline, a 12" PVC (1,200 L.F.) waterline replacement was recommended.

EXHIBIT "B"
HILLCROFT AVENUE AND COURT ROAD EXTENSION

Project Scope:

Design and prepare plans, specifications, estimates, right of way acquisitions and construction contract documents for the construction of Hillcroft Avenue between the existing toll road ramps and an extension of Court Road from Quailynn Road east to the proposed Hillcroft Avenue.

This Project also includes the extensions of water lines and storm drain systems along each roadway corridor as well as bridges spanning the Fort Bend County Drainage District Ditch B-8-B, box culvert drainage structures crossing Fort Bend County Drainage District Ditch A, and storm water detention.

The City and design consultant shall meet and discuss Fort Bend County Toll Road Authority design concerns for the addition of Hillcroft Avenue and Court Road extension. After receiving written approval from the FBCTRA, the City may begin with design of the proposed roadways. Proposed Hillcroft Avenue and Court Road extension must not conflict with future improvements to the Fort Bend County Toll Road.