

THE STATE OF TEXAS           §  
                                                  §  
COUNTY OF FORT BEND       §

**INTERLOCAL AGREEMENT  
US 90A / FM 1640 IMPROVEMENTS – MOBILITY BOND PROJECT NO. 717**

This Interlocal Agreement (the "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 ("County"), a body corporate and politic, acting by and through its Commissioners Court, and the CITY OF ROSENBERG, TEXAS, a home-rule municipal corporation of the State of Texas, acting by and through its City Council ("City"). The County and City may be referred to collectively herein as the "Parties."

**RECITALS:**

WHEREAS, the Texas Department of Transportation ("TxDOT") has proposed roadway improvement projects along US 90A / FM 1640; and

WHEREAS, the completion of improvement projects requires the relocation and reconstruction of existing City owned water and sewer utility lines; and

WHEREAS, the Parties wish to outline their responsibilities related to the US 90A / FM 1640 Improvement Project – Mobility Project No. 717; and

WHEREAS, County and City believe it is in their best interests to enter into this Agreement to facilitate the provision of certain governmental functions to the citizens of Fort Bend County.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the parties agree as follows:

**SECTION 1  
PURPOSE**

The purpose of this Agreement is to outline the funding obligations related to the relocation and reconstruction of existing city-owned water and sewer facilities ("City Utilities") related to the proposed roadway improvement project being completed by TxDOT.

**SECTION 2  
PROJECT FUNDING**

2.1 The approved Project has total allocated funding in the amount of \$1,500,000.00. County mobility expenditures for the Project are limited to \$1,500,000.00.

2.2 County has the obligation to fund the ten percent (10%) local share of the right of way and utility relocation costs ("TxDOT Costs") for the Project.

2.2.1 County made an initial payment to TxDOT under this obligation in the amount of \$500,000.00 ("Initial Payment").

2.2.2 The remaining amount currently available for funding the City Utilities is \$1,000,000.00 (\$1,500,000.00 - \$500,000.00).

2.2.3 Once the final TxDOT Costs are determined, TxDOT will provide the County with the summary of the final TxDOT costs. Based on the final TxDOT costs, the County may be required to make an additional payment to or receive a credit from TxDOT.

2.3 City shall provide construction drawings and a cost analysis of the City Utilities to the County Engineer. The County Engineer will work with the City to identify the City Utilities costs eligible for reimbursement as part of the Project.

2.4 Upon award of the City Utilities construction contract and receipt of notification from City that the construction contract has been awarded by the City Council, County agrees to pay to the City, within sixty (60) days, fifty percent (50%) of the eligible City Utilities costs or the currently available funding, whichever is the lesser amount.

2.5 Upon receipt of the summary of the actual TxDOT costs, County and City shall review the total project costs compared to the allocated funding.

2.5.1 If the Initial Payment is in excess of the actual TxDOT costs resulting in a reimbursement to the County, at City's option:

2.5.1.1 The reimbursement due to the County may become eligible to reimburse City for eligible City Utilities costs; or

2.5.1.2 The reimbursement amount may be credited toward an approved County mobility project.

2.5.2 If the local share of the right of way cost for the Project exceeds the Initial Payment, City agrees to pay or otherwise compensate the County an amount

equal to the additional funding amount paid by County. At City's option, City may request reallocation of funding from an approved County mobility project to the Project to cover the additional funding amount in lieu of the agreed to payment.

### **SECTION 3**

#### **TERM**

This Agreement shall continue in force and effect from the date of execution of the last party hereto until the transaction contemplated in Section 2.5 above is consummated. Prior to County making payment as provided in Section 2.4 above, either party may terminate this Agreement at any time upon thirty (30) days written notice. However, upon County making such payment, neither party can terminate this Agreement.

### **SECTION 4**

#### **INSURANCE AND LIABILITY**

4.1 County and City are both governed by the Texas Tort Claims Act, Chapter 101.001 et seq., as amended, of the Texas Civil Practice and Remedies Code which sets limits of liability for certain causes of action. Each party to this Agreement warrants and represents that it is insured under a commercial insurance policy or is self-insured for all claims falling within the Texas Tort Claims Act.

4.2 Each party is solely responsible for the actions and omissions of its employees and officers. No party hereto waives or relinquishes any immunity or defense on behalf of itself, its trustees, its officers, employees, and agents as a result of the execution of this Agreement and the performance of the covenants contained herein.

### **SECTION 5**

#### **NOTICES**

5.1 Each party giving any notice or making any request, demand, or other communication (each, a "Notice") pursuant to this Agreement shall do so in writing and shall use one of the following methods of delivery, each of which, for purposes of this Agreement, is a writing: personal delivery, registered or certified mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid).

5.2 Each party giving a Notice shall address the Notice to the receiving party at the address listed below or to another address designated by a party in a Notice pursuant to this Section:

County: Fort Bend County Engineering  
Attn: County Engineer  
301 Jackson Street  
Richmond, Texas 77469

With a copy to: Fort Bend County  
Attn: County Judge  
401 Jackson Street  
Richmond, Texas 77469

City: City of Rosenberg  
Attn: City Manager  
P.O. Box 32  
Rosenberg, Texas 77471

5.3 A Notice is effective only if the party giving or making the Notice has complied with subsections 5.1 and 5.2 and if the addressee has received the Notice. A Notice is deemed received as follows:

5.3.1 If the Notice is delivered in person, or sent by registered or certified mail or a nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt.

5.3.2 If the addressee rejects or otherwise refuses to accept the Notice, or if the Notice cannot be delivered because of a change in address for which no Notice was given, then upon the rejection, refusal, or inability to deliver.

## **SECTION 6** **MISCELLANEOUS**

6.1 Each party shall make payments only from current revenues available to the party.

6.2 The parties may not amend or waive this Agreement, except by a written agreement executed by both parties.

6.3 The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive either party's sovereign immunity.

6.4 If a court finds or rules that any part of this Agreement is invalid or unlawful, the remainder of the Agreement continues to be binding on the parties.

6.5 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.

6.6 This Agreement cannot be assigned by either party.

6.7 This Agreement does not confer any enforceable rights or remedies upon any person other than the parties. No provision of this Agreement constitutes consent to suit.

6.8 The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.

IN WITNESS WHEREOF, the parties hereto have signed or have caused their respective names to be signed to multiple counterparts to be effective on the 16th day of December, 2014.

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FORT BEND COUNTY

*Robert E. Hebert*  
Robert E. Hebert, County Judge

1-6-2015  
Date

CITY OF ROSENBERG

*Robert Gracia*  
Robert Gracia, City Manager

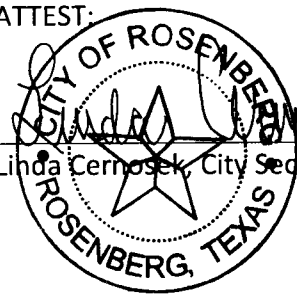
12-16-14  
Date

ATTEST:

*Jana Richard*  
County Clerk

ATTEST:

*Linda Cernosek*  
Linda Cernosek, City Secretary



APPROVED:

*Richard W. Stolleis*  
Richard W. Stolleis, County Engineer



APPROVED AS TO FORM:

*Scott Tschirhart*  
Scott Tschirhart, City Attorney  
Denton Navarro Rocha Bernal Hyde & Zech, P.C.