

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

**INTERLOCAL AGREEMENT FOR CITY-MANAGED ROAD CONSTRUCTION PROJECT
INDUSTRIAL BOULEVARD RECONSTRUCTION IMPROVEMENTS**

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 Sugar Land, 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, 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, as defined herein below and contemplated in this Agreement, is the construction or roadway improvements that will enhance the 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:

AGREEMENT

Section 1. Definitions

- A. **City** means the City of Sugar Land, Texas.
- B. **County** means Fort Bend County, Texas.
- C. **Project** means improvements to Industrial Boulevard, which will include reconstruction of the roadway from US 90A to Jess Pirtle Boulevard as a four-lane divided roadway; intersection signalization; associated relocations, drainage improvements, and rail improvements necessary to accommodate the road improvements.
- D. **Eligible Project Costs** means costs, as determined by County, for engineering design and services related to the completion of Plans, Specifications and Estimates ("PS&E") and construction of roadway improvements, project related drainage facilities, utility and pipeline conflicts, approved traffic control devices, and sidewalks up to five feet (5') wide. Eligible Project Costs shall exclude design and construction costs related to landscaping, irrigation, lighting, hike & bike trails, reconstruction of utilities, except utility conflicts created by the construction of Project elements and similar facilities proposed to be part of the Project.

Section 2. 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.

Section 3. 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 Eligible Project Costs 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) Twenty-Five Percent (25%) of Eligible Project Costs; or
- (2) \$1,000,000.

D. The County is not obligated to expend any further funds above \$1,000,000 on the Project, nor shall the County's share of the Project exceed Twenty-Five Percent (25%) of the cost of Eligible Project Costs.

E. The County will forward the lesser amount as detailed in Section 3. C., above to the City upon the City's award of the construction contract for the Project. The City will forward to the County a request for payment that includes sufficient detail for the County to review the low bidder submittal. The County will forward payment to the City within 30 days of City Council approval of the construction contract for the Project and a request from the City for payment.

Section 4. 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 at increments agreed to between the parties as appropriate for the various phases of the Project. 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 has entered into a contract with ARKK Engineers, LLC to design the Project. The Project is being designed and will be constructed according to the City's Development Code requirements and Design Standards. The City will submit the plans for the Project to the County Engineer for review.

E. Upon completion of the Project, but no later than ninety (90) 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 3, 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 4.E. above.

Section 5. Liability

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

Section 6. Maintenance

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

Section 7. 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 Twenty-Five Percent (25%) of Eligible Project Costs or \$1,000,000, 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 Twenty-Five Percent (25%) of Eligible Project Costs or \$1,000,000, WHICHEVER AMOUNT IS LESS.

Section 8. Insurance Requirements

City agrees that it will require Contractor's insurance policies to name County as well as City as additional insureds on all policies, except for Worker's Compensation and Professional 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.

Section 9. 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.

Section 10. 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.

Section 11. Notices

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

County: Fort Bend County Engineering Department
Attn: Richard Stolleis, P.E., County Engineer
301 Jackson Street
Richmond, Texas 77469

With a copy to: Fort Bend County
Attn: Robert E. Hebert, County Judge
401 Jackson Street, 1st Floor
Richmond, Texas 77469

City: City of Sugar Land, Texas
Attn: Christopher Steubing, P.E., C.F.M., City Engineer
2700 Town Center Blvd, North
Sugar Land, Texas 77479

Section 12. 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.

Section 13. 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.

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