



## AGREEMENT

### **Section 1. Purpose**

The purpose of this Agreement is to outline the funding obligations related to the improvements to Missouri City Drive.

### **Section 2. Definitions**

- A. **City** means the City of Missouri City, Texas.
- B. **County** means Fort Bend County, Texas.
- C. **Project** means the reconstruction and extension of Missouri City Drive from Texas Parkway to Scanlin Drive.
- D. **Eligible Project Costs** means costs, as determined by County, for construction of roadway improvements, including engineering design and services related to the completion of Plans, Specifications and Estimates ("PS&E"), 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, unless otherwise stipulated herein, 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 design and construction costs of upgrades to eligible project components and similar facilities requested by the City to be included in the Project.

### **Section 3. 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 4. County's 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 brought to the attention of City by the County 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) Fifty Percent (50%) of Eligible Project Costs; or
- (2) \$1,100,000.00

D. The County is not obligated to expend any further funds above \$1,100,000.00 on the Project from the 2017 General Obligation Bonds or any other sources of funding, nor shall the County's share of the Project exceed fifty percent (50%) of the cost of Eligible Project Costs.

E. The County will forward the lesser amount as detailed in Section 4. D., 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 thirty (30) days of approval of the construction contract from the City Council and a request from the City for payment.

F. Should the City fail to initiate Project design or construction by the dates provided below, or elect to forego construction for any reason, the County shall have, within its sole discretion to exercise, the right to re-allocate its contribution as it determines appropriate.

#### **Section 5. City's Rights and 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. The City agrees to initiate design of the Project no later than March 31, 2021.

C. The City agrees to initiate construction of the Project no later than December 31, 2021.

D. The City agrees that the improvements constructed under this Agreement, except those specifically identified as being County facilities, are the City's public infrastructure and shall be operated and maintained by the City.

E. In the event the City fails to initiate Project design or construction within the time prescribed above, 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 such failure or its decision to forego construction. This Agreement shall automatically terminate upon the City's election to forego construction of the Project. However, in the case of the City's delay in initiating Project design or construction, the County shall have the option to proceed with its obligations under this Agreement, notwithstanding such delay. Upon an election to terminate this Agreement under any circumstances, City agrees to refund all amounts provided by County, if any, upon thirty (30) days of said notice to the County.

F. 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.

G. The City will submit the plans for the Project to the County Engineer for review in accordance with the 2017 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.

H. 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.

I. If, after completion of Project and the City's receipt of the funds as stated in Section 4, there are funds remaining and/or savings from Project, City shall return such funds to County within thirty (30) days of County acceptance of full accounting required in Section 5.H. above.

#### **Section 6. Liability**

The City and County are entitled to the immunities and defenses of the Texas Tort Claims Act. Nothing in the Agreement shall be construed to waive either party's sovereign immunity.

#### **Section 7. Maintenance**

Upon completion of the Project, the City shall maintain the portion of the Project within its jurisdiction.

#### **Section 8. 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 (i.) Fifty Percent (50%) of Eligible Project Costs, or (ii.) \$1,100,000.00, 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 Fifty Percent (50%) of Eligible Project Costs or \$1,100,000.00, WHICHEVER AMOUNT IS LESS.

C. Each party paying for the performance of its obligations under this Agreement shall make those payments from current revenues available to that party.

#### **Section 9. Insurance Requirements**

City agrees that it will require Contractor's insurance policies name County as well as City as additional insureds on all policies except for Workers' 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 Automobile 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 thirty (30) days of City's award of the contract for the Project construction.

**Section 10. 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 11. 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 12. 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 Attention: County Judge 401 Jackson Street, 1 <sup>st</sup> Floor Richmond, Texas 77469
With a copy to:	Fort Bend County Engineering Department Attention: County Engineer 301 Jackson Street Richmond, Texas 77469
City:	City of Missouri City, Texas Attention: Mayor 1522 Texas Parkway Missouri City, Texas 77489

**Section 13. 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. 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.

**Section 14. 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, and remain in effect until (i.) September 30, 2022, (ii.) the Project is complete, or (iii.) the Agreement is terminated otherwise as provided herein; and the obligations under Sections 4 and 5 of this Agreement are fulfilled, whichever is soonest.

**FORT BEND COUNTY, TEXAS**

*KP George*  
County Judge KP George

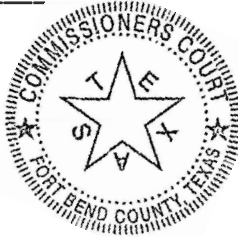
\_\_\_\_\_  
KP George, County Judge

Date 11-3-2020

ATTEST:

*Laura Richard*

\_\_\_\_\_  
Laura Richard, County Clerk



APPROVED:

*J. Stacy Slawinski*

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J. Stacy Slawinski, P.E., County Engineer

APPROVED AS TO LEGAL FORM:

*Marcus D. Spencer*

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Marcus D. Spencer, First Assistant County Attorney

**CITY OF MISSOURI CITY, TEXAS**

*Yolanda Ford*  
\_\_\_\_\_  
Yolanda Ford, Mayor

Date: 11/12/2020

ATTEST:

*Maria Jackson*

\_\_\_\_\_  
Maria Jackson, City Secretary

APPROVED AS TO LEGAL FORM

DocuSigned by:

*E. Joyce Iyamu*

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E. Joyce Iyamu, City Attorney



**AUDITOR'S CERTIFICATE**

I hereby certify that funds are available in the amount of \$ 1,100,000.00 to accomplish and pay the obligation of Fort Bend County under the terms of this Agreement.

*Robert Ed Sturdivant*

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Robert Ed Sturdivant, Fort Bend County Auditor