

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. Purpose

The purpose of this Agreement is to outline the funding obligations related to the proposed improvements to FM 762/10th Street in the City of Richmond, Texas.

Section 2. Definitions

A. **City** means the City of Richmond, Texas.

B. **County** means Fort Bend County, Texas.

C. **Project** means the improvements to FM 762/10th Street Extension from US 90A to Clay Street, as provided in the preliminary design with at-grade crossing of Union Pacific Railroad (UPRR), Mobility Bond Project #13106, CFA Project No. 1511-003-01, including right-of-way acquisition, outfall drainage improvements and utility relocations; to plan and construct a four-lane concrete roadway with curbs; expand the road right-of-way to 120 feet (or as otherwise determined jointly by City and County to be needed to meet the ultimate mobility needs for the Richmond area); to improve mobility in north Richmond as the first phase of a long-range project to provide an access bridge of the Brazos River; and improving roadway drainage with the construction of an underground storm drain system.

D. **Eligible Project Costs** means costs, as determined by County in its sole discretion, for construction of roadway improvements, project related drainage facilities, utility and pipeline conflicts, approved traffic control devices, and sidewalks up to five feet (5') wide consistent with current City Infrastructure Standards. Eligible Project Costs shall include costs for engineering design and services related to the completion of Plans, Specifications and Estimates ("PS&E"); the costs of County's right-of-way acquisition for the Project; and construction related services for such roadway improvements. Eligible Project Costs shall exclude design and construction costs related to landscaping; ornamental lighting; irrigation; hike and bike trails; and the oversizing of water, wastewater, and drainage utilities outside the project boundaries. Eligible Project Costs shall include resolution of utility conflicts created by the construction of Project elements and similar facilities proposed to be part of 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 Rights and Obligations

A Design and Right of Way Acquisition

1. The County is responsible for managing the design of the Project in accordance the applicable state and federal laws related to this Project.
2. The County will submit the plans for the Project to the City for review and comment to ensure the Project is designed in accordance with the current City design standards applicable to roadways, lighting, signage, and drainage, as identified by the City prior to County proceeding with design of the Project. The street name signs shall be installed in accordance with the City's standards and the Texas Manual on Uniform Traffic Control Devices.
3. The County agrees to acquire the remaining right-of-way for the full 120 feet right-of-way width, other than Parcel 1 described on Exhibit A hereof, necessary for construction of the Project in the name of the Public for public purposes, specifically for use as a public street and right of way for public utilities.

B. Construction of the Project

1. The County shall bid and construct the Project in accordance with approved specifications and compliance with the applicable state and federal laws related to the Project. This responsibility shall include the management of the relocation of utilities, including gas, overhead power and telecommunications, and entering into a contract for engineering design and construction project phase services and inspections.
2. Prior to the award of the contract for construction of the Project by the County, the County will consider written comments provided by the City related to the low bidder for the Project. The contract to construct the Project shall also include:
 - a) The construction of the twelve-inch (12") and six-inch (6") water lines to replace existing 12" and 6" water lines, as required due to conflicts created by the construction of Project elements and similar facilities proposed to be part of the Project; and
 - b) The construction of an eight-inch (8") sewer line to replace the existing four-inch (4") sewer line, as required due to conflicts created by the construction of Project elements and similar facilities proposed to be part of the Project.

C. The City acknowledges and accepts the fact that County is obligated to follow Chapter 262 of the Texas Local Government Code as it relates to the award of the contract.

D. During the work on the Project, the County shall provide the City the opportunity to review all documents, maps, plats, records, photographs, reports and drawings affecting the construction and to inspect the work in progress. The County, with input from the City, shall oversee the construction and completion of the Project. Any deficiencies brought to the attention of County by the City shall be promptly addressed by the County. If the County Engineer determines that the deficiencies are actionable under the terms of the construction contract, the County will work with the construction contractor to correct any City identified deficiencies. Notwithstanding the foregoing, all final decisions related to the construction contract performance shall be at the County's sole discretion.

E. The County shall submit reports to the City describing in sufficient detail the progress of the Project. These reports shall be submitted to City at increments agreed to between the parties as appropriate for the various phases of the Project. Reports received by the County from contractor and/or consultants detailing the progress of the Project shall suffice for the requirements of this section, so long as the County has reviewed such reports and confirmed accuracy of the contractor's report.

F. County will coordinate with the Texas Department of Transportation to obtain the necessary approvals and permits for the intersection improvements and connection to FM 762 and US 90A.

G. The County may elect to forego construction of the Project at any time. The County shall provide written notice to the City of its decision to forego construction and pay to the City all amounts previously paid by City related to the acquisition of Parcel 1 described on Exhibit A, cost and associated fees and other consideration required by UPRR for 10th Street to cross the UPRR rail corridor, any enhancements and improvements that are not Eligible Project Costs, and \$250,000 for the abandoned 3rd Street right of way between Fort Street and Austin Street upon sixty (60) days of said notice to the City.

H. Upon completion of construction of the Project, but no later than ninety (90) calendar days after final payments to all vendors, the County will furnish the City with a full accounting of the funds expended on the Project and an electronic copy of the record drawings showing the Project. The City may review the County's records regarding this Project to confirm the accuracy of the full accounting.

I. The County agrees and commits to the acquisition of at least fifty percent (50%) of the right of way for the Project within twenty-four (24) months of approval of the Agreement by the Commissioners Court. The Parties may agree to an extension of the twenty-four (24) month period if circumstances, unique to the acquisition of the right of way, prevent the acquisition of the above-stated percentage of right of way.

Section 5. City Rights and Obligations

A. Prior to award the Project for construction by the County, the City shall pay the

County for all costs to be reimbursed by the City to the County, including additional funds due from the City for enhancements and improvements that are not Eligible Project Costs, required to satisfy the City's obligation under this Agreement.

B. The City shall request and secure the rights for 10th Street to cross the UPRR rail corridor. The County shall be responsible for any and all associated fees and other considerations required by UPRR, including the maintenance or re-establishment of the 10th Street crossing as part of the City's wayside horn system on the UPRR rail line, up to an amount not to exceed one million dollars and no/100 (\$1,000,000.00). Any and all associated fees and costs for other considerations required by UPRR to secure the rights for 10th to cross the rail corridor in excess of one million dollars and no/100 (\$1,000,000.00) shall be paid by the City.

C. Within thirty (30) calendar days of the execution of this Agreement, the City shall provide the required construction details, design standards and technical specifications applicable to roadways and drainage in which the Project should be designed to meet. Prior to the County initiating final design of the Project, the City shall provide the County Engineer with written approval of the preliminary engineering report. Upon transmittal of the construction plans by the County, the City shall review and comment on the County's construction plans within two (2) weeks of receipt of by the City. All project design and construction comments shall be directed to the County Engineer or his designated representative for dissemination to the County's contractors, consultants and employees.

D. During the work on the Project, City 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. Any deficiencies shall be provided in writing to the County Engineer. The City agrees that the County is the contracted party and the City shall not provide any direction to the consultant or the contractor, except with concurrence of the County Engineer.

E. The City has acquired the parcel necessary for construction of the Project identified as Parcel 1 ("City Acquisition Parcel") on Exhibit A. The City will make available for the Project, all right of way, easements and parcels acquired in the vicinity of and necessary for the Project owned, acquired and or controlled by the City at no cost to the County.

F. The City shall fund any and all Project enhancements and all upgrades to the Project requested by the City and all items determined not to be Eligible Project Costs as defined in Section 1. Such Project enhancements and upgrades to Project enhancements shall include, but are not limited to, landscaping; ornamental lighting; irrigation; hike and bike trails; and the oversizing of water, sewer and drainage facilities, as determined by the County. The City shall provide written confirmation of the scope of enhancements and improvements determined not to be Eligible Project Costs as defined in this Agreement that are requested by the City to be included in the Project. The City's costs for such Project enhancements shall be the incremental costs exceeding the costs for such unenhanced facilities that are included in the Eligible Project Costs and for oversizing of water, sewer, and drainage facilities shall be the increase in costs relating to

such oversizing (such as the larger standard size pipe diameter, trench size, etc.).

G. Upon completion, the City agrees to accept the Project into its maintenance system, including water, sewer, and drainage improvements for continued operation and maintenance by the City.

H. As additional consideration for the Project, upon submission of a petition for abandonment that is sufficient pursuant to Sec. 28-301 of the Richmond Code, the City agrees to consider action to abandon the street right-of-way of Third Street between Fort Street and Austin Street, subject to reservation of easements for existing utilities. Such easement reservations may be subject to modification and alteration as the County replats the property as the Emergency Operations Center campus.

Section 6. Liability

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

Section 7. Maintenance

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

Section 8. Limit of Appropriation

A. Prior to the execution of this Agreement, the County has been advised by the City, and the County clearly understands and agrees, such understanding and agreement being of the absolute essence to this Agreement, that the City shall have available the total maximum amount of \$600,000 and contribute the required portion of Parcel 1 as its total contribution, pursuant to Section 5. E., and any amounts in excess of that amount for Project enhancements and improvements as determined in Section 5.F, specifically allocated to fully discharge any and all liabilities that may be incurred by the City for the Project. Except for the City's costs related to the City Acquisition Parcels in accordance with Section 5. E. and adjustments in cost due to improvements requested by the City in accordance with Section 5.F.; City shall not be obligated to pay any additional amount.

B. The County 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 County may become entitled to hereunder and the total maximum amount that the City will reimburse the County hereunder will not under any condition, circumstance or interpretation hereof exceed the amount contributed by the City to the Project in accordance with Sections 5.E and F.

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

County agrees that it will require Contractor's insurance policies name City as well as County 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.

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
Attn: County Judge
401 Jackson Street, 1st Floor
Richmond, Texas 77469

With a copy to: Fort Bend County Engineering Department
Attn: County Engineer
301 Jackson Street
Richmond, Texas 77469

City: City of Richmond, Texas
Attn: Terri Vela, City Manager 402

Morton Street
Richmond, Texas 77469

Section 13. Phase 2 Memorandum of Understanding

A. The Parties agree that this Agreement is the first phase of a project to include the planning, funding, design, development and completion of Phase 2 of the FM 762 Extension/10th Street Project (extension from Clay Street, across the Brazos River, along McCrary Road to FM 359).

- B. Each Party pledges to use its best efforts to reach agreement for Phase 2 including the following:
1. the preferred funding options;
 2. the timeline for right-of-way designation and acquisition;
 3. estimated dates for the commencement of major activities, i.e. plan development, bidding, construction; and
 4. effectuation of the project.

Section 14. 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 15. 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 until the Project is complete and the obligations under Sections 4 and 5 of this Agreement are fulfilled.

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FORT BEND COUNTY, TEXAS

CITY OF RICHMOND, TEXAS

KP George

Rebecca K. Haas

KP George, County Judge

Rebecca K. Haas, Mayor

Date: 2-9-2021

Date: 01.22.21

ATTEST:

ATTEST:

Laura Richard

Laura Scarlato

Laura Richard, County Clerk

Laura Scarlato, City Secretary

APPROVED:

J. Stacy Slawinski

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

APPROVED AS TO LEGAL FORM:

Marcus D. Spencer

Marcus D. Spencer, First Assistant County Attorney

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$ 250,000.00 to accomplish and pay the obligation of Fort Bend County under this contract.

Robert Ed Sturdivant

Robert Ed Sturdivant, County Auditor

1/20/2021

EXHIBIT A

Description of Parcel 1: (Signed Metes & Bounds Description as attachment.)